

GAHC020006762021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : C. REVN/13/2021

LHOUGEVOLIE USOU
R/O NERHEMA VILLAGE KOHIMA, NAGALAND

VERSUS

STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT
OF NAGALAND

2:THE COMMISSIONER
NAGALAND KOHIMA

3:ASSISTANT DEPUTY COMMISSIONER
CHIEPHOBOZOU SUB DIVISION
GOVERNMENT OF NAGALAND
KOHIMA

4:NEISITUO MERHIESO
NERHEMA VILLAGE
KOHIMA NAGALAND

Advocate for the Petitioner : BELINDA

Advocate for the Respondent : GOVT ADV NL

Date of hearing :16.04.2024.

Date of Judgment :17.05.2024

**BEFORE
HON'BLE MR. JUSTICE BUDI HABUNG**

:: Judgment and Order ::

[CAV]

1. Heard Mr. T. Khezhie, learned counsel for the petitioner. Also heard Mr. E. Thiba Phom, learned Government Advocate for the State respondent Nos. 1, 2 and 3 and Ms. Khriekethonuo, learned counsel for the respondent no. 4.

2. This Civil Revision petition has been filed under Article 227 of the Indian Constitution read with Rule 32 of the Rules for Administration of Justice (for short Rules) and Police in Nagaland, 1937 and Section 115 of CPC assailing the impugned judgment and order dated 22.10.2021 passed by the Dobashi Court (DBs in short), Chiephobozou, Kohima in Pol Case No. 01/2021 and paragraph 4 of the order dated 09.10.2019 passed by the Nerhema Village Council, Kohima.

3. The case of the petitioner in brief is that there was a partition of an ancestral clan's property between the family of the petitioner and the private respondent No.4. The said property is located at Tephriebe under Nerhema Village, Kohima. The members of the family unanimously agreed the said partition/division of the clan's property. Accordingly, the partition agreement was reduced into writing on 29.11.2002 (Annexure-3). As per the said agreement, amongst other, it was decided that the upper portion of the landed property between the Bawe road till the road leading to the

bungalow shall be given to Neizelhou, who was the father of the petitioner. The agreement further expressly provided that "***in order to avoid any dispute, the elders in the clan has appended their signature***", accordingly, the elders of the clan had put their signatures in the agreement.

4. The said partition agreement is not in dispute. But the private respondent and his brothers started encroaching and excavating over the petitioner's land at Tephriebe when the petitioner was out in tour. The act of private respondent was illegal and in violation of the said partition agreement dated 20.09.2019. Hence, the wife of the petitioner objected and confronted the private respondent. And on such confrontation, the private respondent had physically assaulted the wife of the petitioner. As a result, the petitioner filed a complaint before the Nerhema Village Council, Kohima. After hearing the parties, the Nerhema Village Council then had decided the case on 09.10.2019. Considering the evidences and basing on the family property partition agreement executed on 29.11.2002, the land in question was decided in favour of the petitioner by the Village Council, firmly stating that the said agreement was binding upon the parties. Thus, the title of the landed property in question was decided in favour of the petitioner.

5. However, in the said decision of the land encroachment case, the Village Council had also passed an additional decision at paragraph-4. The additional decision in para-4 of the said order read as follows: "***(4)while deciding the instant case, the issue of Üsouand Merhieso was also raised. It is decided that, henceforth, the parties collectively should use as Merhieso as their surname***". This additional decision at

para-4 according to the petitioner is not at all connected with the issue of land encroachment case and it was never raised by the petitioner before the Village Council.

6. Being aggrieved by the above decision of the village council in so far as para-4 is concerned, the petitioner preferred an appeal before the Additional Deputy Commissioner (for short ADC), Chiephobozou, Kohima on 18.02.2021. The contention of the petitioner before the ADC was that he had approached the village council for adjudication of the land dispute between the petitioner and the private respondent No.4. However, the Village Council while deciding the land in question in his favour had arbitrarily added para-4 in their decision, the issue which is unconnected with the land dispute and directed the petitioner to use '**Merhieso**' as his surname as opposed to his own surname '**Üsou**'. It was further contended that the decision on use of surname has no relevance to the land dispute issue.

7. The said appeal was filed before the appellate authority ADC, Chiephobozou, Kohima on 18.02.2021. But no any date was fixed nor the petitioner received any summon from the ADC. However, the petitioner received summons from the Dobhasi Court (for short DBs) issued on 08.04.2021 and 11.05.2021. By the said summons, the petitioner and the private respondent No. 4 were asked to give statements. The DBs have also made a spot verification at the disputed land on 12.10.2021. Thereafter, the DBs Court issued another summon to the petitioner directing him to appear before it on 22.10.2021. On the said date, the DBs Court made them to give their statements and after hearing the parties verbally pronounced a decision. However, a copy of the said judgment was

never made available to the petitioner despite of request being made to furnish the same.

8. In the meantime, by an application dated 03.11.2021, the petitioner had requested the ADC to take up the appeal preferred by him on 18.02.2021 against the judgment and order dated 19.10.2019 passed by the Village Council. The petitioner contended that the DBs does not have the jurisdiction to take up the appeal. But the DBs of Choephobozou on 22.10.2021 had compelled the petitioner to give statement and on the same day the DBs verbally announced the decision in the matter without any jurisdiction in violation of the Rules. And since, the copy of the said decision was not furnished to him, the petitioner also requested for certified true copy of the said decision. Accordingly, the copy of the judgement and order dated 22.10.2021 in Pol Case No. 01/2021 was furnished to the petitioner on 30.11.2021. By the said order dated 22.10.2022, the DBs Court exercising the power of appellate authority has not only uphold the order passed by the Village Council on 09.10.2019 in para-4 without any jurisdiction but also interfered with the land dispute issue which was already decided in favour of the petitioner. This was a total deviation from the subject matter that too by an authority having no power and jurisdiction.

9. Being highly aggrieved, the petitioner preferred this revision petition amongst other on the following grounds:

- (i) That the impugned DBs Court decision dated 22.10.2021 was rendered without jurisdiction as the Rules does not provide for appellate jurisdiction to the DBs Court.

(ii) That the impugned judgment and order dated 09.10.2019 so far as para-4 of the said judgment and order is bad in law in as much as the issue of usage of surname is not relevant with the subject matter in the complaint. Hence, the inclusion of para-4 in the decision is arbitrary.

(iii) That the ADC, Chiephobozou before whose Court the appeal has been filed is the competent authority to hear the appeal against the decision of the Village Counsel, but the ADC had deliberately and wilfully refrained himself from taking up the appeal and had endorsed the matter to the DBs Court to hear on the decision of another concurrent court (village council) against the Rules. As such, the impugned order dated 22.10.2021 suffers from illegality.

(iv) That the procedure before the village council in so far as the decision at issue at para 4 is concerned and the DBs judgment are null and void ab-initio because such proceedings are contrary to the provisions established by law.

(v) That the surname "Üsou" is the legitimate surname of the petitioner and his clan members and numerous other clan members also use the said surname as their official surname.

10. For the reasons stated above, the petitioner submits that the

impugned decision rendered by the Village Council in para-4 of the order dated 09.10.2019 and the order of DBs Court dated 22.10.2021 passed in the appeal preferred against the decision of the village council dated 09.10.2019 are null and void. Hence, prays for setting aside and quashing of the same.

11. In support of his case, the learned counsel for petitioner has relied upon the decision of the Hon'ble Gauhati High Court in ***Alemtemshi Jamir and Ors Vs. The State of Nagaland and Ors*** reported in ***(2021) 4 GLT 248***. Paragraphs 16, 17, 18, 19, 20 and 21 of the said judgment are relevant which are reproduced below:

" 16. From the literal reading of the provisions of Rule 31 with respect to appeal before the D.C./ADC or his assistants it is clearly discernible that:

1) When appeal is brought before the D.C./ADC or his Assistants the Court shall examine the parties, and if the decision appears to be just, shall affirm and enforce it as one of its own,

2) If the Court sees reasons to doubt the justice of the decision, it will try the case denovo, or

3) Refer it to a Panchayat as above.

Thus, the plain reading of the provisions of Rule 31, does, in anyway give authority to the D.C. or his Assistants to forward cases of appeal to any other Court but to the Panchayat. Therefore, an appeal forwarded to the Court of Dobashis from the decision of the Village Court is dehors the provisions of the appeal Rules of 1937 Act. The Rule 31 is crystal clear that when appeal is preferred from any of the mauzadar, chief, headman of khels, dobhasis or other duly recognized village

authority, it will, if satisfied, enforce it as its own. If it has reasons to doubt – it will either try the matter denovo or endorse it to Panchayat.

The D.C. or his Assistant will either try the appeal petitions denovo by itself or refer the same to a Panchayat, from the decisions of all recognized Courts including the decisions of the Dobashis. The above being the clear provisions, the act of the EAC of referring the appeal of the Diphupar Village Council to the Dobashis Court Chumukedima was violative of the provisions of appeal under Rule 31 of the 1937 Act. Coupled with the above provisions, Rule 24 provides:

“24. Mauzadars, gaonburas, chiefs, headman of Khels, Dobhasis or other village authorities sitting with the village elders in council are empowered to try cases without limit as to amount, but with the following reservations: -

(a) They may not try suits in which a native of the plains or native of another village not resident in their jurisdiction is a party.

(b) All suits be decided in open Darbar, in the presence of the parties and at least three respectable witnesses.”

The above provisions provides that the Dobashis Court and the Village Court including all other Courts below the Assistant to D.C. have concordant jurisdiction.

It could not be the intention of the legislature that an appeal could be preferred from the judgment of a court to another court with concurrent jurisdiction. Meaning of appeal is defeated by such an arrangement.

Should there be any confusion while interpreting the provisions in an Act/Rules it has to be interpreted in a

manner that it should be in conformity with the general law. The controversy being an issue of the civil procedural law, it must be in conformity with the provisions of the CPC. The scheme of the CPC is that appeal is always before Court of superior authority, the provisions of appeal under the 1937 Act must also be interpreted in the same manner.

17. *Rule 23A provides that "the Dobhasis hence forward shall try and decide such civil cases only as may be referred to them by the Deputy Commissioner or Additional Deputy Commissioner or Assistant to the Deputy Commissioner as the case may be".*

It does not speak about cases which come on appeal from the lower courts. Obviously, the Court of the Dobhasis, village Court, Headman of Khel, Mouzadar etc. recognized under Rules are the lowest Courts in the scheme of 1937 Rules. A reading of Rule 55(1) provides:

"(1) The District Customary Court shall be the court of appeal as against decision of the Sub-ordinate District Customary Courts and village Courts in suits and cases both civil and criminal decided by the said courts.

(2) The District Customary Court may also try suits and cases triable by the Sub-ordinate District Customary Court, as and when occasion arises."

Rule 64(2) provides that,

"An appeal shall lie to the District customary Court against the decision of the Subordinate District Customary Court or village Court in suits or cases decided under these rules. All such appeals shall be presented within ninety days from the date of the order appealed against excluding the time taken in obtaining copy of the order.

Provided that the appellate court may condone the delay and admit the appeal presented beyond the delay and admit the appeal presented beyond the prescribed time, on being satisfied that there was sufficient cause for not presenting the appeal in time."

Therefore, the reading of these two Rules also lends support that the court of appeal against the decisions of the Village courts shall be the District Customary" Courts and not the DB's Court.

18. *The provisions relating to appeals under the Rules of 1937 may thus be summarized as:*

(1) Appeals from any court of Dobashis, Village Court, or other recognized courts is brought before the D.C. or ADC or his assistants. It may be tried denovo if doubt arises or it may be referred to the Panchayat, not to any other authority (Rule 31).

(2) Appellate Court from the decision of the Village Court will be the District Customary Courts. (Rule 55(1), Rule 64(2)).

19. *Under Rule 31 the word used is "Shall", which indicates that the rules must be meticulously followed. There is no other room for any other procedure. Anything beyond which is provided under Rule 31 in case of appeal from the Village Courts and other authorities is prohibited. Therefore, D.C., ADC or his assistants cannot refer cases which come on appeal to them, save to the Panchayat.*

Provisions under Rule 55(1) and Rule 64(2) also clearly provides that the appeal from the decisions of the Village Court shall lie to the District Customary Court. Therefore, provisions of Rule 23A could not be read as a scope to empower the DB's Court as an appellate court

from the Village on reference by the DC/ADC or his assistants.

What is, then, the use of Rule 23A? the only answer emanating from the reading of the various rules under the 1937 Act is that it is a provision inserted for enforcing DC/ADC and his assistants to exercise supervisory authority in matters relating to cases of original jurisdiction in the DB's Courts. There is nothing further expandable.

20. *From the above discussion we hold that Rule 31 of the Rules of Administration of Justice and Police, 1937 does not provide for appeal against the decision of the Village Court before the DB's Court.*

Apparently, there are three windows opened for preferring an appeal against the decision of the Village court, that is under Rule 31 or under Rule 55(1) and Rule 64(2).

Multiplicity of the provisions of the appeal from the decisions of the Village Court vis-AfA- vis the Rule 31, Rule 55(1) and Rule 64(2) has to be dealt with by proper legislative steps to avoid confusion. We hope that the existence of overlapping and contradictory provisions in the Rules is a good reason for the State to set up a Law Commission in the State to examine such issues for greater public benefit. However, we are clear that there are sufficient provisions for appeal under the Rules of 1937. There is no further need to include additional provisions under Rule 23A as a door for appeal from the Village Courts to cause more complication.

21. *What can be understood is that Rule 23A is just a supervisory power invested upon the DC/AC and his assistants and is not referable to matters of appeal.*

12. The petitioner has also relied on the decision of the Gauhati High

Court in the case of **C. Revn/1/2023 (Shri. Kevisenyu Zatsu and Anr Vs. N. Lao Solo)**. The relevant Paragraphs No. 13, 16, 17 and 21 of the said judgment are reproduced herein below:

*"13. The Hon'ble Supreme Court in deciding on the validity of a decree/order passed by a court without jurisdiction has in the case of **Sarup Singh & Another—versus Union of India & Another**, reported in (2011) 11 SCC 198 held that;*

*"23. In **Balvant N. Viswamitra v. Yadav Sadashiv Mule** this Court stated thus: (SCC p. 712, para 9)*

"9. The main question which arises for our consideration is whether the decree passed by the trial court can be said to be 'null and void'. In our opinion, the law on the point is well settled. The distinction between a decree which is void and a decree which is wrong, incorrect, irregular or not in accordance with law cannot be overlooked or ignored. Where a court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such court would be without jurisdiction, non-est and void ab initio. A defect of jurisdiction of the court goes to the root of the matter and strikes at the very authority of the court to pass a decree or make an order. Such defect has always been treated as basic and fundamental and a decree or order passed by a court or an authority having no jurisdiction is a nullity. Validity of such decree or order can be challenged at any stage, even in execution or collateral proceedings."

*24. In **Chiranjilal Shrilal Goenka v. Jasjit Singh** this Court stated thus: (SCC pp.517-18,*

para 18)

"18. It is settled law that a decree passed by a court without jurisdiction on the subject-matter or on the grounds on which the decree made which goes to the root of its jurisdiction or lacks inherent jurisdiction is a coram non judice. A decree passed by such a court is a nullity and is non est. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings. The defect of jurisdiction strikes at the very authority of the court to pass decree which cannot be cured by consent or waiver of the party..."

*In the case of **Jagmittar Sain Bhagat & Others** -versus- **Director, Health Services, Haryana & Others**, reported in **(2013) 10 SCC 136**, the Hon'ble Supreme Court held as follows;*

"9. Indisputably, it is a settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior Court, and if the Court passes a decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the roots of the cause. Such an issue can be raised at any stage of the proceedings. The finding of a Court or Tribunal becomes irrelevant and unenforceable/inexecutable once the forum is found to have no jurisdiction. Similarly, if a Court/Tribunal inherently lacks jurisdiction, acquiescence of party equally should not be permitted to perpetrate and perpetuate defeating of the legislative animation. The Court cannot derive jurisdiction apart from the Statute. In such eventuality the doctrine of waiver also

does not apply. (Vide: United Commercial Bank Ltd. v. Workmen¹ , Nai Bahu v. Lala Ramnarayan² , Natraj Studios (P) Ltd. v. Navrang Studios³ and KondibaDagadu Kadam v. Savitribai Sopan Gujar⁴ .)

10. In Sushil Kumar Mehta v. Gobind Ram Bohra
this Court, after placing reliance on a large number of its earlier judgments particularly in Premier Automobiles Ltd. v. KamlekarShantaram Wadke, Kiran Singh v. Chaman Paswan and Chandrika Misir v. Bhaiya Lal held, that a decree without jurisdiction is a nullity. It is a coram non judice; when a special statute gives a right and also provides for a forum for adjudication of rights, remedy has to be sought only under the provisions of that Act and the Common Law Court has no jurisdiction; where an Act creates an obligation and enforces the performance in specified manner, "performance cannot be forced in any other manner."

11. Law does not permit any court/tribunal/authority/forum to usurp jurisdiction on any ground whatsoever, in case, such an authority does not have jurisdiction on the subject matter. For the reason that it is not an objection as to the place of suing; "It is an objection going to the nullity of the order on the ground of want of jurisdiction". Thus, for assumption of jurisdiction by a court or a tribunal, existence of jurisdictional fact is a condition precedent. But once such jurisdictional fact is found to exist, the court or tribunal has power to decide on the adjudicatory facts or facts in issue. (Vide: SetrucharluRamabhadraraju v. Maharaja of Jeypore , State of Gujarat v. Rajesh Kumar Chimanlal Barot , Harshad Chiman Lal Modi v. D.L.F. Universal Ltd.¹¹ and Carona Ltd. v. Parvathy Swaminathan & Sons."

*In the case of **Ritesh Tewari & Another** -versus- **State of Uttar Pradesh & Others**, reported in (2010) 10 SCC 677, the Hon'ble Supreme Court has held as follows;*

"32. It is settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironical to permit a person to rely upon a law, in violation of which he has obtained the benefits. (Vide Upen Chandra Gogoi Vs. State of Assam; Satchidananda Misra Vs. State of Orissa and SBI v. Rakesh Kumar Tewari.)

*33. In **C. Albert Morris Vs. K. Chandrasekaran** this Court held that a right in law exists only and only when it has a lawful origin.*

*34. In **Mangal Prasad Tamoli Vs. Narvadeshwar Mishra** this Court held that if an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non-est and have to be necessarily set aside."*

*In the case of **Rajasthan State Industrial Development & Investment Corporation** -versus- **Subhash Sindhi Cooperative Housing Society, Jaipur & Others**, reported in (2013) 5 SCC 427, the Hon'ble Supreme Court has also held that;*

"18. The word "void" is used in the sense of incapable of ratification. A thing which is found non-est and not required to be set aside though, it is sometimes convenient to do so. There would be no need for an

order to quash it. It would be automatically null and void without more ado. The continuation orders would be nullities too, because no one can continue a nullity. (Vide: Behram Khurshid Pesikaka v. State of Bombay¹², Pankaj Mehra v. State of Maharashtra¹³, Dhurandhar Prasad Singh v. Jai Prakash University¹⁴ and Government of Orissa v. Ashok Transport Agency.)"

*In the case of **Chief Engineer, Hydel Project & Others** (supra), the Hon'ble Supreme Court has held that once the original decree itself had been held to be without jurisdiction and hit by the doctrine of coram non judice, there would be no question of upholding the same merely on the ground that the objection to the jurisdiction was not taken at the initial, first appellate or the second appellate stage.*

*In **Kanwar Singh Saini** (supra), the Hon'ble Supreme Court has held that the finding of a Court or Tribunal becomes irrelevant and unenforceable/in-executable once the forum is found to have no jurisdiction.*

16. *It is also relevant to refer Rule -23A of the Rules for Administration of Justice and Police in Nagaland (Second Amendment) Act, 1982 (Nagaland Act No.4 of 1983) which reads as follows;*

"23A- The Dobhasis hence forward shall try and decide such civil cases only as may be referred to them by the Deputy Commissioner or Additional Deputy Commissioner or Assistant to the Deputy Commissioner as the case may be."

What Rule-23A postulates is that the Dobhasis (D B) shall try and decide only such civil cases as it is referred by the Deputy Commissioner, Additional Deputy

*Commissioner or Assistant to the Deputy Commissioner as the case may be. In other words, the Dobhasis, now cannot try any civil case on its own except those referred by the authorities prescribed in the rule. It is further important to note that **Rule-23A has not given any power to the Deputy Commissioner, Additional Deputy Commissioner or the Assistant to the Deputy Commissioner to empower the Dobhasis to act as an appellate court/authority. Therefore, the Dobhasis while adjudicating a case on reference cannot exercise the power of an appellate court.***

17. *In the case of **Alemtemshi Jamir** (supra), the Hon'ble Division Bench of this Court while deliberating Rule-23A and Rule-31 of the rules has held as follows;*

"20. From the above discussion we hold that Rule-31 of the Rules for Administration of Justice and Police, 1937 does not provide for appeal against the decision of the village court before the D B's Court.

23. Having discussed the point of reference, we now answer the issues of reference as under:

(1) Dobhasis cannot be empowered as appellate court by the exercise of the powers under Rule-23A. Rule-31 debars DC/ADCs and his Assistant from such authority.

(2)"

*In the case of **Ghokishe Chophi** (supra), the learned co-ordinate Bench of this Court has also held that;*

"6. Rule 31 of the Rules for Administration of justice and Police in Naga Hills district provides that, Appeal shall lie from the decision of the G.Bs Chief and Headman of Khel or any other duly recognised Village authorities to the Deputy Commissioner or his

Assistants. There is no provision for preferring an appeal to the D.Bs Court against the decision of the Village Council/Village Court. The appeal lies with the Deputy Commissioner or his Assistants. There is also no provision under the Rules that appeal against the D.Bs Court shall lie with the Political Assistant to Deputy Commissioner of the district. The Political Assistant, in fact, is not the Court and has no authority to exercise a judicial power in the State. Therefore, the order passed by the D.Bs Court as well as Political Assistant to Deputy Commissioner are without jurisdiction and not tenable in law.

21. *In the light of the discussion made above and having held that the DB's Court, under the rules, has no power to review and/or to sit in an appeal over the decision of the G B's Court, the judgment & order dated 10/06/2022 passed by the learned Asst. to Deputy Commissioner, Kohima, in Civil Appeal No. 02/2019, quashing and setting aside the order dated 12/09/2019 passed by the D B's Court in Pol. Case No. 07/2019, is upheld."*

13. The respondent Nos. 1, 2 and 3 filed their affidavit-in-opposition. Mr. E. Thiba Phom, learned Government Advocate for state respondent submits that since the petitioner is aggrieved by the judgment dated 09.10.2019 passed in connection with Pol Case no. 01/2021 by the Village Council especially in para-4, the petitioner ought to have filed review petition before the same court, but instead he had filed an appeal before the respondent No. 3 (ADC, Chiephobozou) who after thorough examination had endorsed the matter to the DBs court, Chiephobozou under Rule 23A to settle as the issue was related to the usage of surname, Üsou and Merhieso. Thus, the matter was not endorsed to the

DBs court, as per rule 31 to hear the matter as appeal case. However, the learned counsel could not show any order passed by the ADC converting and treating the Appeal as an application under rule 31 of the rules.

14. The learned counsel for the respondents further submitted that the subject matter placed before the Nerhema Village council is pertaining to ancestral property at Tephriebe and the matter was heard and decided as per the earlier agreement dated 29.11.2002. It was decided to give the disputed land to the petitioner on the condition that he use the surname Merhieso to which the petitioner had agreed. But after 2 years of the decision of the village council, the petitioner while expressing disagreement with the use of title Merhieso had filed a Appeal before the ADC, Chiephobozou. It is further submitted that as observed by the respondent No.3, the use of title is connected to the land in dispute because the land in question is an ancestral property of Merhieso. However, the petitioner is using the surname Üsou which is the name of his great grandfather and he did not want to use the surname Merhieso, therefore the option was given to the petitioner either to use the surname Merhieso and inherit the landed property at Tephriebe or to choose his present surname Üsou and give up his right to inherit the Merhieso's property. Thus, under the fact circumstance of the case, it was endorsed to the DBs Court for settlement.

15. The learned counsel for the respondents, however, fairly admitted that as per rule 23A of the Rules for Administration of

Justice and Police in Nagaland, 1937, the DB is not the appellate authority to decide the matter decided by the village council. For better understanding the rule 23A of the Rules is quoted herein below:

"23A- The Dobhasis hence forward shall try and decide such cases only as may be referred to them by the Deputy Commissioner or Additional Deputy Commissioner or Assistant to Deputy Commissioner as the case may be".

16. The respondent No. 4 also filed affidavit-in-opposition. The learned counsel for the respondent No.4 relying upon the affidavit submits that the present dispute is not only on account of the partition of ancestral property at Tephriebe but it is inclusive of the issue of family name/ Clan name-'Merhieso' wherein, the petitioner refused to use the Clan surname as 'Merhieso'. The learned counsel further submits that the fact to be considered pertaining to the partition of ancestral property situated at Tephriebe is that the property falls under the purview of ancestral property of Merhieso since time immemorial and even to this day. Thus, the partition of ancestral property covers the subject matter of family name/ clan name Merhieso and such subject matter plays a very significant role in the law of inheritance since time immemorial. The learned counsel for the respondent No. 4 while defending the impugned judgment further submits that since the ancestral property belonged to the Merhieso clan, as such the impugned judgment and order dated has been rightly decided.

17. For the reasons stated above, the learned counsel for the private respondent No. 4, submits that the order passed by the Village council dated 09.10.2019 was rightly decided and that even in similarly situated case in Pol Case no. 6/2010 the same subject matter and family name/ clan name/last name was raised and decided, therefore, submits that there is no infirmity in the impugned order and prays for the dismissal of the petition.

18. However, the learned counsel for the respondent no.4 also fairly admitted that as per rule 23A of the Rules for Administration of Justice and Police in Nagaland, 1937, the DB is not the appellate authority to decide the matter decided by the village council.

19. Heard and considered the submission advanced by the learned counsel for the parties. Having considered the pleadings and the submission of the parties, the sole issue emerges for decision of this court is "***whether the DBs has the power to decide the appeal filed against the decision of the village counsel***".

20. It is not disputed that the DB and the village council both are the lowest rung of the decision maker in the administration of justice in the state of Nagaland. They have a concomitant power with regard to the civil and criminal case in the village/district. The appellate forum from the decision of DBs and village council is the DC/ADC and their Assistant. There is no any provision for delegation of such appellate power to the subordinate forum having no jurisdiction to decide the appeal.

Admittedly, the Dobhasi Court being placed under same category of court with the Village Council has no power and jurisdiction to decide the appeal filed against the decision of the Village Council.

21. In the instant case the petitioner lodged a complaint before the Village Council of Nerhema village against the private respondent No.4 for assault on his wife and encroachment over his land. After hearing the parties, the Village Council decided the case declaring the title of the land in question in favour of the petitioner. However, while deciding the land dispute, the Village Council has added paragraph-4 in their decision whereby the parties has been directed to collectively used "Merhieso" as their surname. This was a new issue which was not raised by the petitioner in his complaint. And since the surname of the petitioner is "Üsou", being aggrieved he filed appeal before the Additional Deputy Commissioner, Chiephobozou, Kohima against para-4 of the said decision.

22. The appellate forum from the decision of DBs and Village Council is the DC/ADC and their Assistant. However, instead of taking up the appeal, the ADC Chiephobozou, Kohima had endorsed the said appeal to the DBs Chiephobozou for decision. Thereafter, the DB issued notice and decided the appeal affirming the impugned decision of the Village Council without any jurisdiction.

23. I have also carefully perused the clan property partition agreement dated 29.11.2002. Perusal of the said document goes to show that at the time of partition of the clan property there

was no any pre condition for use of common surname for inheritance of clan property; however, after about 20 years of the said partition, the dispute arose due to encroachment attempt made by the private respondent No.4 over the land of the petitioner for which the petitioner had lodged complaint before the Village Council. On receipt of such complaint, the duty of the Nerhema Village Council was to settle the assault and land encroachment case brought before them based on the documentary and other evidences produced by the parties. And in fact, the Village Council has rightly decided the land dispute by declaring the title of the disputed land in favour of the petitioner. But while deciding the land dispute case, the DBs has added para-4, whereby it has also decided that both parties should use '**Merhieso**' as their common surname. This issue, 'the use of surname 'is totally unconnected to the complaint and it was not before the DBs Court for decision in the assault and land dispute case. The petitioner claims that his surname is "Üsou" and he along with his clan members have inherited the said surname from their forefather and they have been using 'Üsou' as their surname since time immemorial. Under the fact and circumstances of the case, compelling the petitioner and his clan members to change their surname by adopting another surname would amounts to infringement on their right to liberty and use of their personal identity. Change of surname;unless it is voluntarily adopted, in fact, would affect their family trees of descendent in which case their present identity of a person

adopting the new surname would change; thereby, they would also lose their past identity.

24. Be that as it may, since the question of link between the possession of the property in dispute is projected to be connected with the use of common surname as submitted by the learned counsel for the respondents; the said question involved with the dispute of fact; and this Court, while deciding the petition under Article 227 of the constitution in this case would refrain itself to delve into the same. However, the aggrieved party is at liberty to approach the appropriate forum for appropriate relief, if so advised.

25. Coming back to the main issue that we are concerned with in this case, it is settled position of law that appeal is the judicial examination of the decision by a higher court of the decision of an inferior court. The DBs being placed amongst the lowest rung of the local authority exercising the judicial power in the state of Nagaland does not have the appellate power. In the instance case, the DBs Court, Chiephobozou has decided the appeal filed against the decision of the Village Council who has a similar power with Dobhasi and de hors the established rule.

26. There is no any disagreement to the observation made by the division bench of this Hon'ble Court in above referred case ***Alemtemshi Jamir and Ors Vs. The State of Nagaland and Ors*** (Supra) and the decision in the case ***Shri. Kevisenyu Zatsu and Anr Vs. N. Lao Solo*** (Supra). In view of the decision in the above referred cases and the admission of the learned

counsel for the respondents conceding that the DB's Court does not have the appellate jurisdiction, no further discussion is called for on the submission made by the learned counsels on behalf of the respondents.

27. In view of the above, prima facie it appears that the Additional Deputy Commissioner, Chiephobozou, Kohima failed to exercise a jurisdiction so vested in it and he has acted in the exercise of its jurisdiction illegally with material irregularity by endorsing the appeal filed before it to the DBs Court for decision who is not been vested with appellate jurisdiction; and the DBs Court, Chiephobozou have decided the appeal filed by the petitioner in exercise of a jurisdiction not vested in it by law.

28. For the discussion and reason stated above, and having held that the DB's Court under the rule, has no power to sit in appeal over the decision of the Village Council, the impugned decision dated 22.10.2021 passed by the DBs Court is hereby set aside and quashed.

29. The matter is remanded back to the court of Additional Deputy Commissioner, Chiephobozou, Kohima to decide the issue raised by the appellant in the appeal filed before it dated 18.02.2021 on merit in accordance with law.

30. The writ petition stand disposed of. No cost.

JUDGE