



Serial No.01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

MA(S). No. 1 of 2025

Date of Decision: 29.07.2025

1. Smti. Streamlet Khongwir,
D/o (L) Prensibon Khongwir,
R/o Nongthymmai, Umsning,
Ri-Bhoi District, Meghalaya.

...Petitioners

-Versus-

1. Smti. Miraculous Jyrwa,
D/o (L) Persilla Jyrwa,
R/o Mawkhar, Shillong,
East Khasi Hills District,
Meghalaya.
2. Smti. Kyntiewlin Barimai Jyrwa,
D/o Smti. Miraculous Jyrwa,
R/o Mawkhar, Shillong,
East Khasi Hills District,
Meghalaya.

...Respondents

Coram:

Hon'ble Mr. Justice H.S.Thangkhiew, Judge

Appearance:

For the Petitioner/Applicant(s) : Mr. H.Nongkhlaw, Adv.

For the Respondent(s) : Mr. S.R.Lyngdoh, Adv.
Ms. I.S.Lyngdoh, Adv.



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| i) | Whether approved for reporting in Law journals etc: | Yes/No |
| ii) | Whether approved for publication in press: | Yes/No |
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JUDGMENT AND ORDER (ORAL)

1. Heard Mr. H.Nongkhlaw, learned counsel for the appellant and also Mr. S.R.Lyngdoh, learned counsel for the respondents.

2. This Misc. Appeal (Second) has been preferred against a judgment and order dated 29-01-2025, passed by the Judge, District Council Court in Misc. Civil Appeal No. 10 of 2023, arising from Misc. Case No. 77 of 2022 in T.S. No. 84 of 2022. It is noted at the outset that the instant Misc. Appeal (Second) has been preferred against concurrent findings of the two Subordinate Courts, whereby the suit filed by the appellant had been dismissed on the ground of res judicata.

3. Mr. H.Nongkhlaw, learned counsel for the appellant has submitted that though it is a fact that the Predecessor-in-Interest of the appellant was arrayed as the defendant No. 4 in the earlier suit, she did not contest the same and the same had proceeded ex parte against the said defendant (Late) Prensibon Khongwir. It is also fairly submitted by the learned counsel for



the appellant that against the judgment and decree that was passed in T.S. No. 19 of 1982, no appeal or revision was ever preferred. The limited ground of the appeal which has been canvassed by the learned counsel for the appellant is that the reason for non-participation of the Predecessor-in-Interest of the appellant was that there existed a Mortgage Deed which had been executed on 05-12-1987, in favour of the earlier defendant No. 4 (Late) Presibon Khongwir, which allowed 10 years for the said loan amount to be liquidated and as such, at that point of time, he submits, the 10 years period having not elapsed, the Predecessor-in-Interest choose not to participate in the proceedings. The cause of action of the appellant, he submits, arose only in the year 2022, when the respondents questioned her title. He submits that both the lower Courts below having not appreciated this fact, had thus committed an error in law and fact in dismissing the Title Suit on the ground of res judicata.

4. Mr. S.R.Lyngdoh, learned counsel for the respondents, in reply, has submitted that the appeal is unsustainable, inasmuch as, firstly as admitted, no appeal or revision was preferred against the decree passed in 1982 with regard to the same suit property, and further, the appellant having chosen not to participate in the earlier proceedings has waived any further rights to agitate for the same. It is further submitted that even the grounds advanced in the appeal, was never raised in the plaint or in the memo of appeal before



the lower Courts. He closes his arguments by submitting that no case has been made out, nor is there any question of law involved for admitting this instant appeal.

5. Heard the learned counsels for the parties and also examined the records that have since been requisitioned. A perusal of the memo of appeal reflects that the grounds stated therein is of two fold, firstly, that one (Late) Linsila Jyrwa, who was arrayed as defendant No. 1 in T.S. No. 19 of 1982, could not pay the loan amount to the mother of the appellant (Late) Prensibon Khongwir within a period of 10 years w.e.f. 05-12-1987, and as such, the suit land or shop would be owned and possessed by the mother of the appellant. The other ground taken is that in the earlier Title Suit being T.S. No. 19 of 1982, was decreed on 03-11-1992, before the expiry of the said 10 years and that the same is related only to the paddy field but not to the shop houses which formed part of the suit land. On these two grounds, it appears, T.S. No. 84 of 2022 had been instituted.

6. Subsequently, on an application filed by the respondents under Order VII Rule 11 of the CPC, the Trial Court by an order dated 06-09-2023, on a minute perusal of the entire facts and circumstances of the case, had come to a finding that the plaintiff i.e. (Late) Presibon Khongwir had not contested the earlier T.S. No. 19 of 1982 and that the suit was barred by limitation and



the subject matter in controversy was the same as the former suit which has since been decreed. The fact that no appeal or revision had been preferred was also noted by the Trial Court while allowing the application under Order VII Rule 11. On an appeal from the said order, the Court of the Judge, District Council Court, by an order dated 29-01-2025, passed in Misc. Civil Appeal No. 10 of 2023, has upheld the findings of the learned Trial Court and had also observed that the contention of the appellant that the suit land was different was incorrect, inasmuch as, in the order of the learned Trial Court in T.S. No. 19 of 1982, mention was specifically made with regard to the paddy field and also the shop in question, as such, on the ground of res judicata, the appeal was dismissed.

7. As noted earlier, this appeal has been preferred against the concurrent findings rendered by the two lower Courts. This Court has given due consideration to the entire facts and circumstances, but however, notes that the main submission that has been advanced before this Court that the ground for non-participation of the Predecessor-in-Interest of the appellant was on account of the Mortgage Deed whose term was still subsisting, does not find place either in the plaint, nor in the pleadings, nor was the point ever addressed before the two lower Courts. Looking into the records and also on the other facts, it is noted that the fresh suit instituted by the appellant in 2022, relates to the same subject matter and dispute which was the subject



matter in T.S. 19 of 1982. Further, the contention that the earlier suit only referred to the paddy field also is incorrect as a perusal of the plaint of T.S. No. 19 of 1982 clearly shows that a decree was sought for paddy field and shop houses.

8. There being no error in the findings of both the Subordinate Courts, the appeal therefore also being incompetent for not raising grounds which are now sought to be raised before this Court, the appeal is devoid of merit and is accordingly dismissed.

9. Lower Court records to be returned.

Judge