IN THE HIGH COURT OF MANIPUR

AT IMPHAL

RSA No. 4 of 2015

Shri Yumnam Chaoba Singh, aged about 77 years, S/o late Yumnam Modon Singh of Yumnam Huidrom, P.O. & P.S. Mayang Imphal, District, Imphal West, Manipur.

... Appellant

-Versus-

1. Shri Yumnam Bolai Singh, aged about 73 years, S/o late Yumnam Mukundo Singh of Yumnam Huidrom, P.O. & P.S. Mayang Imphal, District, Imphal West, Manipur.
2. Smt. Yumnam Chandraleikha Devi, aged about 69 years, D/o late Yumnam Mukundo Singh of Yumnam Huidrom, P.O. & P.S. Mayang Imphal, District Imphal West, Manipur.
3. Smt. Yumnam Ningol Ashem Ongbi Apabi Devi, aged about 65 years, W/O late A. Kesho Singh of Thoubal Kiyam Village, P.O. & P.S. Thoubal, Thoubal District, Manipur.

... Principal Respondents

4. Shri Yumnam Tomba Singh, aged about 68 years, D/O late Yumnam Modon Singh of Yumnam Huidrom, A/P Golathon Bazar at Jiribam, District Imphal East, Manipur.
5. Shri Yumnam Khomei Singh, S/O late Yumnam Modon Singh now died by his LRs :-
   (i) Smt. Yumnam Ongbi Ibetombi Devi, aged about 62 years, W/O late Yumnam Khomei Singh of Mayang Imphal, P.O. & P.S. Mayang Imphal, Imphal West District, Manipur;
   (ii) Smt. Yumnam Tamphamani Devi, aged about 44 years, W/O late Sapam Tomba Singh of Yumnam Huidrom Mayai Leikai, P.O. & P.S. Wangoi, Imphal West District, Manipur;
   (iii) Shri Yumnam Ibohal Singh, aged about 21 years, S/O Yumnam Deban Singh of Mayang Imphal, P.O. & P.S. Mayang Imphal, Imphal West District, Manipur;

(iv) Smt. Yumnam Ningol Anjali Devi, aged about 19 years, D/O Yumnam Deban Singh of Mayang Imphal, P.O. & P.S. Mayang Imphal, Imphal West District, Manipur;

(v) Shri Yumnam Bisheshore Singh, aged about 40 years, S/O late Khomei Singh of Mayang Imphal, P.O. & P.S. Mayang Imphal, Imphal West District, Manipur;

(vi) Shri Yumnam Sanjoy Singh, aged about 38 years, S/O late Khomei Singh of Mayang Imphal, P.O. & P.S. Mayang Imphal, Imphal West District, Manipur;

(vii) Shri Yumnam Sanjoy Singh, aged about 38 years, S/O late Khomei Singh of Mayang Imphal, P.O. & P.S. Mayang Imphal, Imphal West District, Manipur;

(viii) Shri Yumnam Tombi Singh, aged about 36 years, S/O late Khomei Singh of Mayang Imphal, P.O. & P.S. Mayang Imphal, Imphal West District, Manipur;

6. Smt. Yumnam Ningol Soibam Ongbi Koijaobi @ Angoubi Devi, now died by her LRs:-

(i) Soibam Sharat Singh, aged about 57 years, S/O late Momon Singh;

(ii) Soibam Yaima Singh, aged about 55 years, S/O late Momon Singh;

(iii) Soibam (N) Padamani Devi, aged about 51 years, D/O late Momon Singh;

(iv) Soibam (N) Ibemcha Devi, aged about 46 years, D/O late Momon Singh;

(v) Soibam Jagat Singh, aged about 42 years, S/O late Momon Singh;

(vi) Soibam Ingocha Singh, aged about 40 years, S/O late Momon Singh;

(vii) Soibam (N) Nungshithoi Devi, aged about 38 years, D/O late Momon Singh;

……. All of Mayang Imphal, P.O. & P.S. Mayang Imphal, Imphal West District, Manipur

… Proforma Respondents

AND

IN THE CIVIL APPEAL NO. 22 OF 2013/76 OF 2013
OF THE LD. DISTRICT JUDGE, MANPUR EAST.

Shri Yumnam Chaoba Singh, aged about 75 years, S/o late Yumnam Modon Singh of Yumnam Huidrom, P.O. & P.S. Mayang Imphal, District, Imphal West, Manipur.

... Appellant

-Versus-

1. Shri Yumnam Bolai Singh, aged about 71 years, S/O late Yumnam Mukundo Singh of Yumnam Huidrom, P.S. Mayang Imphal, District, Imphal West, Manipur.
2. Smt. Yumnam Chandraleikha Devi, aged about 67 years, D/O late Yumnam Mukundo Singh of Yumnam Huidrom, P.S. Mayang Imphal, District Imphal West, Manipur.
3. Smt. Yumnam Ningol Ashem Ongbi Apabi Devi, aged about 62 years, W/O late A. Kesho Singh of Thoubal Kiyam Village, P.O. & P.S. Thoubal, Thoubal District, Manipur.

... Principal Respondents

4. Shri Yumnam Tomba Singh, aged about 65 years, D/O late Yumnam Modon Singh of Yumnam Huidrom, A/P Golathon Bazar at Jiribam, District Imphal East. Manipur.
5. Shri Yumnam Khomei Singh, aged about 62 years, D/O late Yumnam Modon Singh of Yumnam Huidrom, P.S. Mayang Imphal District, Imphal West, Manipur.
6. Smt. Yumnam Ningol Soibam Ongbi Koijaobi @ Angoubi Devi, aged about 60 years, W/O late S. Momon Singh of Mayang Imphal, P.O. & P.S. Mayang Imphal, Imphal West District, Manipur (Dead) [represented by her children as LRs vide order dated 16/3/2013 in Judl. Misc. Case No. 26 of 2013.
    (i) Soibam Sharat Singh (55 years);
    (ii) Soibam Yaima Singh (53 years);
    (iii) Soibam (N) Padamani Devi (49 years);
    (iv) Soibam (N) Ibemcha Devi (44 years);

(v) Soibam Jagat Singh (40 years);
(vi) Soibam Ingocha Singh (38 years);
(vii) Soibam (N) Nungshithoi Devi (36 years).

... Proforma Respondents

B E F O R E
HON'BLE MR. JUSTICE KH. NOBIN SINGH

For the appellant	::	Shri T. Rajendra, Advocate
For the respondents	::	Shri Y. Daljeet Singh, Advocate
Date of Hearing	::	**16-09-2020**
Date of Judgment & Order	::	**06-10-2020**

JUDGMENT AND ORDER

Heard Shri T. Ranjendra, learned Advocate for the appellant and Shri Y. Daljeet Singh for the respondents.

[1] The present second appeal is directed against the judgment and decree dated 14-05-2015 passed by the learned District Judge, Manipur East (hereafter referred to as "**the District Judge**") in Civil Appeal No.22 of 2013/76 of 2012 which was dismissed by it.

[2] The subject matter in issue relates to a homestead land under Patta No.748 (New) corresponding to old Patta No.6 covered by Dag No.484 measuring an area of 1.89 acres of village No.84-Laku Huidrom (hereinafter referred to as "**the suit land**") described in Schedule-A of the plaint.

[3.1] Facts and circumstances as narrated in the memo of appeal, are that the suit land was acquired by Shri (L) Yumnam Amu Singh, by way of

inheritance from his father, who died intestate leaving behind him his two sons namely Shri Yumnam Modon Singh and Shri Yumnam Mukundo Singh who inherited the suit land after his death.

[3.2] Shri Y. Modon Singh had one son and one daughter from his first wife namely Shri Yumnam Chaoba Singh, the appellant and Smt. Yumnam Ningol Koijaobi Devi @ Angoubi Devi, the respondent No.6; two sons from his second wife namely Shri Yumnam Tomba Singh, the respondent No.4 and Shri Yumnam Khomei Singh, the respondent No.5.

[3.3] Shri Y. Mukundo Singh had one daughter from his first wife namely Smt. Yumnam Apabi Devi, the respondent No.3; one son and one daughter from his second wife namely Shri Yumnam Bolai Singh, the respondent No.1 and Smt. Yumnam Chandraleikha Devi, the respondent No. 2.

[3.4] Shri Y. Modon Singh and Shri Y. Mukundo Singh, being the real brothers and owners of the suit land, were living together in a dwelling house. The suit land was owned and possessed by both of them who died leaving behind them movable and immovable properties. After the death of his father, Shri Y. Modon Singh, the appellant and his family members have been living together for the last many years by constructing a kutcha dwelling house which is in the south middle portion of the suit land as described in Schedule 'B' of the plaint. The respondent Nos.1 to 3 and their family members are also living inside the suit land in an old house

constructed by their forefathers in the middle portion of the suit land which is described in Schedule 'C'. The respondent No.5 and his family were also living together in an outhouse just near to the house of the appellant which is described in Schedule ‘D’. However, the respondent No. 5 had constructed dwelling house on the north eastern side of the suit land which is described in Schedule 'E' of the plaint. The respondent Nos.1 to 3 have now constructed a dwelling pucca house on the north western portion of the suit land which is described in Schedule ‘F’ of the plaint. There are two ponds on the south western portion of the suit land commonly and jointly possessed/ used by the parties for more than 60 years which are described in Schedules ‘G’ and ‘H’ of the plaint. The respondent No. 4 is now living at Golathon Bazar, Jiribam, Imphal East District and he usually comes to the appellant’s house.

[3.5] Thus, the southern half of the suit land is owned and possessed jointly by the appellant, the respondent Nos. 4, 5 and 6 who are the legal heirs of Shri (L) Y. Modon Singh, while the legal heirs of Shri L) Y. Mukundo Singh have been possessing the northern half of the same. The possession of the southern half of the suit land by the appellant and the respondent Nos. 4, 5 and 6 is from their birth as the owners by living there, constructing their dwelling houses and also by growing seasonal crops without any interference from any angle whatsoever and have been continuing so. The appellant also did pay land revenue of the suit land sometimes.

[3.6] In the month of December, 1999, the appellant hired some labourers for extension of his dwelling house as one of his sons was getting married in the month of February, 2000. The respondent Nos.1 to 3 and their family members told the appellant and his family members to vacate the suit land as described in Schedule-B. Again on 18-12-1989, the respondent Nos. 1 to 3 and their family members told them to vacate the suit land as described in Schedule-B stating that the entire suit land is recorded in the name of the respondent No.1. Thereafter, the appellant asked the respondent Nos.1 for partition of the suit land, which he avoided in collusion with or in connivance with the respondent No.2. In view of the conduct of the respondent Nos. 1 to 3, the appellant enquired about the records of the suit land at the Revenue Offices at Lamphelpat and Wangoi. The relevant records were not yet found but only on 12-01-2000 he could receive a certified copy of the Dag Chitha from the office of the Directorate of Settlement with the name of Shri (L) Y. Mukundo Singh only being recorded therein. On 11-01-2000, the appellant had received a certified copy of the Jamabandi from the SDC, Wangoi wherein the entire suit land was found recorded in the name of respondent No.1 pursuant to an order dated 07-10-1981 passed by the SDC, Wangoi in Mutation Case No.212 of 1981 behind the back and knowledge of the appellant which compelled him to file a revenue revision petition before the Deputy Commissioner, Imphal West who passed an order dated 06-04-2000 staying the operation of the order passed by the SDC, Wangoi till the disposal of the petition.

[3.7] On 17-05-2000, the respondent No.1 to 3 started breaking the walls of the appellant's house by using axe, spade, sticks etc. A written complaint was lodged with the Mayang Imphal Police Station, on the basis of which they were arrested by the police and when they were produced before the Judicial Magistrate Ist Class, Imphal West at Lamphelpat later on, they were released on personal bonds with surety of the like amount of Rs.5000/-

[3.8] The legal heirs of Shri (L) Y. Modon Singh have been continuously in possession of their share portion of the suit land since their birth by living there and constructing dwelling houses. But as the respondent Nos.1 to 3 claimed the suit land to be their sole property, the appellant instituted the Original Suit No.14 of 2000 before the learned Civil Judge, Junior Division, Imphal West (hereinafter referred to as "**the Civil Judge**") praying for the reliefs sought for in the plaint.

[4.1] The respondent Nos.1 to 3 contested the suit by filing their joint written statement with counter claim and their case was that the suit land is the self acquired property of their father, Shri (L) Y. Mukundo Singh who purchased the same from Shri Y. Gandhar Singh in the year, 1957 by executing a registered sale deed No.2606 of 1957-58 and accordingly, his name was entered in the record of rights in the year, 1962. The name of the respondent No.1 was mutated in the year, 1981 during the lifetime of his father, Shri (L) Y. Mukundo Singh.

[4.2] Shri (L) Y. Modon Singh died leaving behind him his second wife, Smt. Ibemcha Devi and sons at the Mamang Sangoi in and around the year, 1968. After about 12 years from the death of Shri (L) Y.Modon Singh, his second wife called the appellant to live with her at the said Mamang Sangoi. The appellant with seven other family members came and requested Shri (L) Y. Mukundo Singh to live at a separate piece of land inside the suit land, for which the permission was granted to him to live only for few years and since then, the appellant has been living in the south eastern portion of the suit land. In the year 1994-95, when the appellant tired to extend his hut, the respondent Nos.1 to 3 told him not to do so and asked them to vacate the suit land. They filed their counter claim as their rights had been clouded.

[5] The appellant filed his written statement/ rejoinder to the counter claim of the respondent Nos.1 to 3 by denying the averments made in the written statement and counter claim and it has been reiterated by him that since the appellant acquired the suit land by way of inheritance from his father, he has been possessing the same by constructing dwelling house inside the suit land.

[6] On the basis of the aforesaid pleadings of the parties, the Civil Judge framed the following six issues on 18-05-2001:

i. *Whether the suit land is the ancestral property of the plaintiff's forefather? If so, whether the plaintiff inherited the suit land from his father? or*

Whether the suit land is the self acquired properly of late Yumnam Mukundo Singh, father of the principal defendant or not?

ii. *Whether the plaintiff and his family members are the real possessor of the suit land being owners thereof? or*
Whether the plaintiff and his family members are the permissive possessor in a portion of the suit land by the principal defendants?

iii. *Is there any cause of action of the plaintiffs suit?*

iv. *Is there any cause of action of the counter claim?*

v. *Is the plaintiff entitled to the reliefs claimed?*

vi. *Are the principal defendants entitled to the reliefs claimed?*

[7] During the course of the trial, the appellant produced four witnesses including himself and produced his documents while the respondent Nos.1 to 3 produced three witnesses and their documents. The Civil Judge disposed of the O.S No.4 of 2000 vide its judgment and decree dated 16-11-2007 holding that the appellant had failed to prove that the suit land is the ancestral property of their forefathers, while the respondent Nos.1 to 3 had proved that the suit land is the self- acquired property of their father, Shri (L) Y. Mukundo Singh and that the appellant and his family members are the permissive possessors. The Civil Judge declared that the respondent Nos.1 to 3 are the owners of the suit land and that the appellant and his family members be evicted from it with demolition of their respective structures.

[8] The appellant preferred appeals being CA Nos.6 & 7 of 2008 before the District Judge, Manipur East against the judgment and decree

dated 16-11-2007 of the Civil Judge. After having heard the counsel appearing for the parties, the District Judge vide its judgment and decree dated 31-07-2010, set aside the judgment and decree dated 16-11-2007 of the Civil Judge holding that the Trial Court/ Civil Judge had failed to frame any issue regarding the theory of adverse possession over the southern half of the suit land. The District Judge ordered that the OS No.14 of 2000 was remanded to the Trial Court/Civil Judge for fresh trial with the direction to frame an additional issue on the plea of adverse possession over the southern half of the suit land.

[9] As per the said judgment and decree dated 31-07-2010 of the District Judge, the Civil Judge was to conduct a fresh trial but instead of doing that, it framed an additional issue only as Issue No.7 which is reproduced below:-

> *"Whether the possession of the southern half of the suit land "A" by the plaintiff, has been perfected by adverse possession or not?"*

[10] According to the appellant, the Civil Judge came to an erroneous conclusion that the direction of the District Judge was merely to frame an additional issue and to give a finding thereon and accordingly, it held that it would not express any opinion on the other issues but would confine to Issue No.7 only. This was in fact a clear error and was against the direction of the District Judge contained in its judgment and decree dated 31-07-2010 whereby the Civil Judge was clearly directed to hold a fresh trial. It was a

simple logic that if the Civil Judge pre-decided the issue that the respondent Nos.1 to 3 are the owners of the suit land being the self-acquired property of Shri (L) Y. Mukundo Singh and that the appellant and his family members are the permissive possessors, there was nothing left to be decided in Issue No.7. By proceeding in such an erroneous manner, the Civil Judge passed the judgment and decree dated 12-09-2012 holding that the Issue No.7 was answered in the negative and the earlier directions contained in the judgment and decree dated 16-11-2007, passed by his predecessor, should remain unaltered and accordingly, it declared the respondent Nos.1 and 2 as the owners of the suit land directing for eviction of the appellant from the suit land as described in Schedule 'B' and the respondent Nos.4,5 & 6 from the suit land as described in Schedule 'C' with demolition of their respective structures. It may here be mentioned that the respondent No.6, Smt. Yumnam (N) Soibam (O) Khoijaobi Devi died on 23-01-2011 during the pendency of the suit and without her LRs being brought on record, the judgment and decree dated 12-09-2012 was passed by the Civil Judge against a dead person.

[11] The appellant being aggrieved by the manner in which the judgment and decree dated 12-09-2012 was passed by the Civil Judge, preferred an appeal being CA No.22 of 2013/76 of 2013 before the District Judge who was clearly appraised that the Civil Judge while passing the judgment and decree dated 12-09-2012 had committed an error as it failed

to conduct a fresh trial. However, the District Judge, instead of remanding the matter to the Civil Judge, commenced hearing of the appeal on all the issues on merit as a Trial Court denying the appellant a forum for appeal to the 1st Appellate Court. The District Judge finally heard the parties on 17-09-2014 with the direction that the order be pronounced on 17-10-2014 but the judgment and decree was pronounced only on 14-05-2015 dismissing the appeal with a cost of Rs.10,000/- (Rupees ten thousand) only to be paid to the respondent Nos.1 and 2. It is pertinent to mention that the LRs of the Respondent No.6 were brought on record only during the pendency of the CA No. 22 of 2013/76 of 2013 before the District Judge.

[12] The appellant being deeply aggrieved by the judgment and decree of the District Judge impugned herein, preferred the present second appeal before this Court for quashing/setting aside it raising the following substantial questions of law:

A. *Whether the First Appellate Court was right in deciding the appeal of the Appellant as a (a) Trial Court instead of remanding the suit for fresh trial in passing the impugned judgment and decree dated 14/5/2015?*
B. *Whether the decree of the Trial Court dated 12/9/2012 being a joint and indivisible one is a nullity having been passed against a dead person, the defendant no.6?*
C. *Whether a plea of adverse possession is not complete if not supported by relevant land records or can it be do so by oral and other evidence?*
D. *Whether a plaintiff can present a plaint by taking alternative pleas*

of inheritance and adverse possession over the suit land?

E. *Whether the delay of more than 8 (eight) months in announcing the judgment and decree after its hearing materially affects the same?*

[13] The grounds on the basis of which the appeal was preferred are inter-alia that the District Judge failed to appreciate that the appellant had clearly proved his continuous position of the suit land for more than 60 (sixty) years and also his right for inheritance. A civil suit is decided on the preponderance of evidence and not on the principle of strict proof as in criminal trial. The manner of exercising the power and jurisdiction of the Trial Court by the District Judge was improper, even though an appeal is a continuation of the original suit. Since the Civil Judge completely ignored the direction of the District Judge as contained in its judgment and decree dated 31-07-2010 for conducting a fresh trial by framing an additional issue relating to adverse possession over the southern half of the suit land, the appropriate course of the District Judge would have been to remand the matter back to the Civil Judge instead of passing the judgment and decree dated 14-05-2015 itself. The District Judge usurped the power and jurisdiction of the Civil Judge to give fresh findings on the Issue Nos.1 to 6 and acted as the Appellate Court in respect of the Issue No. 7 which is an unusual mode of exercising jurisdiction. The District Judge passed the judgment and decree dated 14-05-2015 depriving the appellant a forum of appeal resulting in a failure and miscarriage of justice. It is very much permissible in law for a

plaintiff in a suit to take alternative pleas while presenting a plaint and therefore, there was no irregularity or bar under the law to the appellant to take the plea of inheritance and that of adverse possession in filing the suit. The judgment and decree dated 14-05-2015 was passed by wrongly appreciating the principle underlying the doctrine of adverse possession. The District Judge while passing the judgment and decree dated 14-05-2015 failed to see that the respondent Nos.1 to 3 could not prove that Shri Gandhar Singh had a saleable right of the suit land. The respondent Nos.1 to 3 never proved that the appellant was a permissive possessor of the suit land by tangible evidence. The District Judge heard the appeal finally on 17-09-2014 but passed the judgment and decree dated 14-05-2015 after a gap of more than 8 (eight) months which was a serious lapse on the part of the District Judge.

[14] After having heard the learned counsels appearing for the parties and having perused the materials on record, this Court vide its order dated 03-05-2017 framed the following substantial questions of law for consideration by this Court.

(a) *Whether the first Appellate Court was right in deciding the appeal of the appellant as the Trial Court instead of remanding the suit for fresh trial in passing the impugned judgment and decree dated 14-05-2015* ?

(b) *Whether the Appellate Court was right in upholding the decree of the Trial Court dated 12-09-2012 when the decree itself being a*

joint and indivisible one, is nullity having been passed against the dead person, the present Defendant No.6 ?

(c) *Whether a plaintiff can present a plaint by taking alternative pleas of inheritance and adverse possession over the suit land?*

In Re: Issue (a):

[15.1] It is not in dispute that the suit being OS No.14 of 2000 was filed by the appellant for the declaration of title and partition contending inter-alia that Shri (L) Y. Amu Singh inherited the suit land from his father. The fathers of the appellant and the respondent No.1 namely Shri (L) Y. Modon Singh and Shri (L) Y. Mukundo Singh are brothers who jointly inherited the suit land. The appellant and his family have been living in the south middle portion of the suit land which is referred to as suit land "B" while the respondent Nos.1 to 3 have been living in the middle portion of the suit land which is referred to as the suit land "C". The suit was contested by the respondent Nos.1 to 3 contending that the suit land is the self-acquired property of their father, Shri (L) Y. Mukundo Singh and during his life time, the suit land stood mutated in the name of the respondent No.1. The appellant and his family are on permissive possession, as they were allowed by him to live at Mamang Sangoi. The Civil Judge framed as many as six issues which were decided by it vide its judgment and order dated 16-11-2007 holding that the appellant failed to prove that the suit land is the ancestral property while the respondent No.1 to 3 proved that the suit land is

the self-acquired property of Shri (L) Y. Mukundo Singh who is their father. The appellant and his family members are the permissive possessors in a portion of the suit land given by the respondent No.1 to 3. Being aggrieved by it, the appellant preferred two appeals being CA No.6 & 7 of 2008 before the District Judge. After hearing the learned counsels appearing for the parties, the District Judge vide its judgment and decree found merit in the appeals and set aside the judgment and order dated 16-11-2007 with the following direction:

> *"It is further ordered that the OS No.14 of 2000 is remanded to the lower court for fresh trial with a direction to frame additional issue on the plea of adverse possession of the plaintiff/ appellant* over the southern half of the suit land "A" described in plaint schedule."

After the suit being remanded, the Civil Judge framed an additional issue namely the issue No.7. As regards the issue No.1 to 6, the Civil Judge vide its judgment and order dated 12-09-2012 did not give any finding on the ground that his predecessor vide its judgment and order dated 16-11-2007 had answered them in favour of the respondent Nos.1 to 3 and that the District Judge vide its judgment dated 31-07-2010 had not entered into any discussion on the findings of the Civil Judge. The Civil Judge ordered that the same order and directions passed by his predecessor earlier should remain unaltered. So far as the issue No.7 is concerned, the Civil Judge had answered in the negative with the declaration that the respondent Nos.1 & 2 are the owners of the suit land. The order passed by the Civil Judge with

respect to issue No.1 to 6 as stated hereinabove, appears to be incorrect for the reason that the judgment and order dated 16-11-2007 passed by his predecessor had already been set aside by the District Judge at the time of remanding the suit and that the suit was directed to be tried afresh. In other words, the judgment and decree dated 16-11-2007 of the Civil Judge was not in operation and not in existence after it being set aside by the District Judge and therefore, it was improper on the part of the Civil Judge to direct that the judgment and decree dated 16-11-2007 would remain unaltered, thereby interfering with and misinterpreting the judgment and decree of the District Judge. The Civil Judge ought to have tried the suit afresh on Issues No.1 to 6 as directed by the District Judge and given its own findings.

[15.2] Being aggrieved by the judgment and order dated 12-09-2012, the appellant preferred an appeal being CA No.22 of 2013 and during the course of hearing, it was submitted by the counsel appearing for the appellant that the Civil Judge did not conduct a fresh trial of the suit as directed by the District Judge vide its judgment and decree dated 31-07-2010. On the other hand, it was submitted by the counsel appearing for the respondent Nos.1 to 3 that the District Judge was competent to hear on the findings of all issues and that remanding the matter again would cause delay in the adjudication. Accepting the contention of the learned counsel appearing for the respondent Nos.1 to 3, the District Judge observed that since the case records were before him and that no new evidence was required to be

recorded, the appeal could be heard on all issues and accordingly, the appeal was heard by it on all issues. In view of this observation of the District Judge, the instant issue arose for consideration by this Court. While making the said observation, the District Judge did not specify the provision of law by which it could act as the trial court/ Civil Judge. It has been submitted by Shri T. Rajendra, learned counsel appearing for the appellant that the manner of exercise of jurisdiction by the Appellate Court is different from that of the Trail Court, even though an appeal is a continuation of the suit. It has further been submitted by him that in the instant case, the fact that the District Judge decided the suit as a Trial Court, has deprived the appellant a forum for an appeal and that the appellant was left with only the option of preferring a second appeal before this Court. No decision has been cited by him in support of his contention. But Shri Y. Daljeet Singh, learned counsel appearing for the respondent No.1 to 3 has submitted that the Appellate Court is competent to pronounce judgment on merit under the provisions of Order XLI Rule 24 of the CPC without the case being remanded to the trial court. In support of his contention, Shri Daljeet, learned Advocate has relied upon the decision rendered by the Hon'ble Supreme Court in **Arumungam (Dead) by LRs & ors Vs. Sundarambal & anr, AIR 1999 SC 2216**. Further reliance has been made on the decisions rendered by the Karnataka High Court in **H.M Krishna Reddy Vs. H.C Narayana Reddy, AIR 2001 Kar 442** and by the Gauhati High Court in **Arbinda Sharma Sidantha Vs. Lutfun Nissa, 2016 (3) Civil LJ 346**.

[15.3] In view of the rival contentions, this Court deems it appropriate to examine the provisions of Order XLI Rule 24 CPC which reads as under:

> *"24. Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds".*

On perusal of this provision, it is seen that the Appellate Court is entitled to determine the suit, if the evidence on records is sufficient to do so without remanding the case to the Trial Court. If necessary, the issues may be resettled by it. This power conferred upon the Appellate Court is not mandatory but discretionary. This power can be exercised by the Appellate Court even though the judgment of the trial court has proceeded upon some grounds other than on which the Appellate Court proceeds. Since this power conferred upon the Appellate Court can, in a way, be said to be an exception to its general power, it shall be used sparingly, otherwise either of the parties may definitely lose the right to prefer a first appeal.

[15.4] The power and jurisdiction of the appellate Court as provided under Order XLI Rule 24 CPC is clear and undeniable but the instant case does have peculiar facts and circumstances which require consideration by this Court for the end of justice. From the pleadings as aforesaid, it is seen that the case of the appellant is that Shri (L) Y. Amu Singh inherited the suit

land from his father. The fathers of the appellant and the respondent No.1 namely Shri (L) Y. Modon Singh and Shri (L) Y. Mukundo Singh are brothers who jointly inherited the suit land. The appellant and his family have been living in the suit land since their birth. On the other hand, the case of the respondent Nos.1 to 3 is that the suit land is the self-acquired property of their father, Shri (L) Y. Mukundo Singh for which they relied upon the sale deed No.1606 of 1957-58 and during his life time, the suit land stood mutated in the name of the respondent No.1. The appellant and his family are only the permissive possessors, as they were allowed by him to live in the suit land. Considering the stances of the parties, this Court is of the view that the main issue which ought to have been resolved by the Civil Judge, boils down towards the validity and correctness of the sale deed. In order to decide the issue, one aspect which needs to be considered by the Civil Judge, is that the parties are admittedly and closely related, as they are the children of two brothers. The age of the appellant as on the date of filing the suit was 62 years while that of the respondent No.1 was 58 years and therefore, the year in which the appellant would have been born, was the year,1938 while that of the respondent No.1 would have been the year,1942. As contended by the respondent No.1, the suit land was purchased by his father vide a sale deed No.2606 of 1957-58 and by that time, the appellant was about 20 years old while the respondent No.1 was about 16 years old, out of which some corollary issues may arise in the present case. The first one is whether Shri (L) Y. Amu Singh who is the father of Shri (L) Y. Modon

Singh and Shri (L) Y. Mukundo Singh, had ever been residing in the suit land. If the answer is in the affirmative, was he the owner or whether he was residing in the suit land on rent. If the answer is in the negative, where was he residing along with his aforesaid two sons. Were the appellant and the respondent No.1 born in the suit land? If the answer is in the negative, where were they born? Where were they residing, when they were minor? Further the question is as to where were the appellant and the respondent No.1 to 3 residing prior to the purchase of the suit land by the father of the respondent Nos.1 to 3 in the year 1957-58, as alleged by the respondent Nos.1 to 3. The answers to these questions may throw a light as regards the validity of the said sale deed. It is the case of the appellant that the fact that he himself and respondent No.4, 5 & 6 were born and brought up in the suit land, has been admitted by the respondent No.3 in his cross-examination. Moreover, the case of the respondent No.1 to 3 that the suit land was purchased by his father vide sale deed No.2606 of 1957-58, has been denied by the appellant. Therefore, the issue relating to the validity and correctness of the sale deed No.2606 of 1957-58 is quite relevant & important and needs to be considered by the Civil Judge. Whatever the finding given by the Civil Judge, based on the evidence available on record, on the issue relating to the validity of the sale deed will decide the fate of the parties. But no issue was framed in respect thereof either by the Civil Judge or by the District Judge, although the District Judge had purportedly exercised the power conferred upon it under the provisions of Order XLI

Rule 24 CPC whereby it could have resettled the issues including the one relating to validity of the sale deed No.2606 of 1957-58 but it failed to do so. In fact, the District Judge had acted as the Trial Court in respect of the issue Nos.1 to 6 while it had acted as the Appellate Court in respect of the issue No.7. On perusal of the decisions relied upon by the counsel appearing for the respondent Nos.1 to 3, this Court is of the view that none of them except the one namely Arbinda Sarma Sidhanta case, has any application as the facts and circumstances of those cases are not similar to that of the present case. In **Aumugham (dead) by LRs** case (supra), all that the Hon'ble Supreme Court had held, is that the second appellate Court cannot interfere with the judgment of the first appellate Court on the ground that the first appellate Court had not come to close grips with reasoning of the trial Court. In **H.M Krishna** case (supra), the Karnataka High Court held that the first appellate Court has the power or jurisdiction to re-appreciate the evidence and come to its own conclusion on the basis of materials. There can be no dispute as regards the law laid down in the said cases but they will no application to the issue involved herein. It is true that the Gauhati High Court, in **Arbinda Sarma Sidhanta** case (supra) and after having examined the scope of the provisions of Order XLI Rule 24 CPC, held that it was incumbent upon the appellate Court to discuss all findings given by the trial Court and that since the appellate Court failed to discharge the responsibility and jurisdiction vested on it, the appellate Court was directed to decide the appeal afresh on the basis of the materials on record. The Gauhati High

Court appears to have proceeded on the footing that if the appellate Court finds that the evidence is sufficient to pronounce judgment, it ought to decide the appeal without it being remanded to the trial Court. In other words, the Gauhati High Court's view appears to be that in such circumstances, it is incumbent upon the appellate Court to pronounce its judgment. This Court has a reservation on its opinion and moreover, this Court is not bound by the decision of any other High Court except its persuasive value. As has been observed hereinabove, the power and jurisdiction of the appellate Court under the provisions of Order XLI Rule 24 CPC is not mandatory. It depends upon the wisdom of the appellate Court keeping in mind the facts and circumstances of each case. In this regard, a decision of the Supreme Court which is relevant for the present case, is the one rendered in **M/S Divya Exports Vs. M/S Shalimar Video Company & ors, AIR 2011 SC 3063** wherein the Hon'ble Supreme Court held:

> ***"17.*** *In our view, in the peculiar facts of this case, the learned Single Judge was not at all justified in invoking Order XLI Rule 24 CPC. If at all the learned Single Judge felt that the Trial Court could have framed specific issue on the validity of agreement Exhibit B-I, then he should have remanded the matter to the trail Courtwith a direction to frame such an issue and decide te suit afresh. The omission on the part of the learned Single Judge to adopt that course has resulted manifest injustice to the appellant.*
>
> ***18.*** *In the result, the appeal is allowed. The impugned judgment is set aside and the case is remitted to the trial Court with the direction that it shall, after considering the pleadings of the parties, frame an*

additional issue on the validity of agreement Exhibit B-I executed between respondent No.1 and respondent No.3, give opportunity to the parties to produce evidence and decide the suit afresh without being influenced by any of the observations made by the High Court and this Court."

In Re: Issue No.2:

[16] It is also not in dispute that the respondent No.6, Smt. Yumnam (N) Soibam (O) Khoijaobi Devi died on 23-01-2011 while the suit was pending before the Civil Judge. No her legal representative was brought on record which is evident from the fact that her legal representatives were brought on record, when the appeal preferred by the appellant, was pending before the District Judge. The Civil Judge passed the judgment and decree dated 12-09-2012 without her LRs being brought on record and in other words, the judgment and decree was passed against a dead person ordering her for eviction with demolition of structures. It has been submitted by the counsel appearing for the appellant that the judgment and decree dated 12-09-2012 was a joint and indivisible one as it ordered for eviction of the appellant and the respondent No.6 jointly from the suit land with demolition of their respective structures and that the same was illegal for the reason that the suit in respect of the respondent No.6 stood abated on 23-01-2011 itself. In support of his contention, he has relied upon the decision of the Hon'ble Supreme Court rendered in **Bakshish Singh (dead) by LRs Vs. Arjan Singh and ors, (1996) 8 SCC 323** and **Jaladi Suguna (deceased)**

by LRs Vs. Satya Sai Central Trust & ors, (2008) 8 SCC 521. In Bakshish Singh case, the Hon'ble Supreme Court held:

> ***"4.*** *It is well settled law that when the decree is single and indivisible, there cannot be inconsistent decrees as against the deceased respondents and the contesting surviving respondents. It is seen that two respondent-partners died pending second appeal. Therefore, there cannot be inconsistent decree as against the dead persons and against whom the decree dismissing the suit had become final and other contesting respondents whose rights are to be adjudicated in the second appeal".*

In Jaladi Suguna case (supra), the Supreme Court held:

> ***"14.*** *When a respondent in an appeal dies, and the right to sue survives, the legal representatives of the deceased respondent have to be brought on record before the Court can proceed further in the appeal. Where the respondent-plaintiff who has succeeded in a suit, dies during the pendency of the appeal, any judgment rendered on hearing the appeal filed by defendant, without bringing the legal representatives of the deceased respondent-plaintiff on record, will be a nullity. In the appeal before the High Court, the first respondent therein (Suguna) was the contesting respondent and the second respondent (the tenant) was only a proforma respondent. When the first respondent in the appeal died, the right to prosecute the appeal survived against her estate. Therefore, it was necessary to bring the legal representative (s) of the deceased Suguna on record to proced with the appeal".*

On perusal of the above judgment, his contention appears to be correct in law to that extent but in view of the peculiar facts and

circumstances of the present case as mentioned hereinabove, it has no merit. It is not in dispute that the judgment and decree dated 12-09-2012 was passed by the Civil Judge without the LRs of the respondent No.6 being brought on record and that too, after the suit in respect of the respondent No.6 being abated. But when the appeal was preferred and pending, the District Judge felt that the appeal could be decided and the judgment be pronounced by itself as the evidence was sufficient for doing that and during the pendency of the appeal, the LRs of the respondent No.6 were brought on record. Moreover, since this Court feels that an issue relating to the validity of the sale deed may be required to be framed and considered by the trail Court afresh, the instant issue needs no answer from this Court. In other words, no observation need be made by this Court in respect of this issue in the present case.

In Re: Issue No.3:

[17] The instant issue has become infructuous for the simple reason that it has become academic. It may be noted that the appeals being CA No.6 & 7 being preferred before the District Judge by the appellant, the District Judge, in the first round of litigation, felt that an issue relating to adverse possession ought to be farmed and accordingly, the District Judge vide its judgment and decree dated 31-07-2010 remanded the case to Civil Judge to frame an addition issue and decide it. This judgment and decree dated 31-07-2010 of the District Judge was not challenged by the

respondent Nos.1 to 3 before the appropriate forum, as a result it had attained its finality. In compliance with the judgment dated 31-07-2010 of the District Judge, the Civil Judge did frame an additional issue being Issue No.7 which was also not challenged by the respondent Nos.1 to 3. Therefore, the instant issue needs no consideration by this Court in the present case and it is left open for consideration in an appropriate case in future.

[18] In view of the observations made hereinabove and in particular, the observation made in respect the issue No.1 with the law laid down by the Hon'ble Supreme Court as shown hereinabove and the pleadings of the present case, this Court is of the view that in order to resolve the disputes once and for all between the parties, the issue relating to the validity and correctness of the sale deed No.2606 of 1957-58 needs to be framed and considered decided by the Civil Judge. Accordingly, the instant second appeal is allowed and consequently, the impugned judgment and decree dated 14-05-2015 passed by the District Judge is set aside with the direction that the case be remitted to the Civil Judge with the further direction that the Civil Judge shall, after considering the pleadings of the parties, frame an additional issue on the validity of the sale deed No.2606 of 1957-58; give opportunity to the parties to produce evidence thereof and decide the suit afresh without being influenced by any of the observations made by its predecessor; the District Judge and this Court.

The registry of this Court is directed to return the original records, if any in its possession, to the Civil Judge, Junior Division, Imphal West within a week from today. A copy of this judgment and order shall be sent to the Civil Judge for doing the needful. Since the matter has been pending before the Courts for about two decades, the Civil Judge is requested to complete the trial of the suit as quickly as possible, preferably within six months from the date of receipt of a copy of this judgment and order.

JUDGE

FR / NFR

Victoria

Yumkham Rother

Digitally signed by Yumkham Rother
Date: 2020.10.06 14:38:33 +05'30'