GAHC020002062025

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

Case No. : I.A.(Civil)/56/2025

THILIXU B VILLAGE
REPRESENTED BY ITS VILLAGE HEAD GB P. VIYIHO SEMA, R/O THILIX B VILLAGE, DIMAPUR NAGALAND

VERSUS

STATE OF NAGALAND AND 5 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF NAGALAND

Advocate for the Petitioner : I LIMATOSHI, P CHAKRABORTY,A C SARMA SR ADVOCATE,B C TALUKDAR

Advocate for the Respondent : GOVT ADV NL,

Linked Case : FA/1/2016

THILIXU 'B' VILLAGE
DIMAPUR

VERSUS

THE STATE OF NAGALAND AND 5 OTHERS
KOHIMA

2:THE COMMISSIONER AND SECRETARY
DEPARTMENT OF FOREST
GOVERNMENT OF NAGALAND
KOHIMA

NAGALAND.
KOHIMA

3:THE DEPUTY COMMISSIONER
DIMAPUR
NAGALAND.
DIMAPUR

4:4. THE DIVISIONAL FOREST OFFICER
DIMAPUR
NAGALAND.
DIMAPUR

5:5.THE CHIEF WILDLIFE WARDEN
RANGAPAHAR WILDLIFE SANCTUARY
DIMAPUR
NAGALAND.
DIMAPUR

Advocate for : A.C. SHARMA
Advocate for : GOVT ADV NL appearing for THE STATE OF NAGALAND AND 5 OTHERS

BEFORE
HON'BLE MR. JUSTICE PRANJAL DAS

ORDER

Date : 25.08.2025

Heard Mr. A.C. Sarma, learned Senior counsel assisted by Mr. B.C. Talukdar, learned counsel for the applicant. Also heard Mr. Imti Imsong, learned Additional Advocate General for the respondents.

2. The First Appeal being FA/01(K)/2016, which is connected with the instant interlocutory application has arisen out of Civil Suit No. 03/2009 which was decided by the learned Principal District Judge, Kohima vide judgment and decree dated 22.01.2019, whereby the suit of the plaintiff was dismissed.

3. It is submitted that the issue pertains to recognition of one village Thilixu 'B'. The aggrieved plaintiff preferred First Appeal being above vide FA/01(K)/2016. In the course of hearing of the appeal, this Court invoking the provisions of Order 41 Rule 2 of CPC, framed an additional issue, being issue no. X which is reproduced below-

> "10. Whether the plaintiff village, namely "Thilixu "B" village was formed as per the prevailing customary laws and recognized as per the norms as applicable in the State of Nagaland."

4. The learned Principal District Judge, Kohima was directed to record its finding on the aforesaid issue. Accordingly, evidence was adduced by the parties and learned trial court recorded its finding on the said issue (issue No. X) and that the same went against the plaintiff/appellant. In this backdrop, the interlocutory application has been filed by the applicant invoking the provisions of Order 41 Rule 2 of CPC which enables the party to incorporate the grounds in the memo of appeal. The statutory provision may be reproduced herein below –

> "*Grounds which may be taken in appeal.- The appellant shall not, except by leave of the Court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal, but the Appellate Court, in deciding the appeal, shall not be confined to the grounds of objections set forth in the memorandum of appeal or taken by leave of the Court under this rule:*
>
> *Provided that the Court shall not rest its decision on any other*

grounds unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground."

5. The learned Additional Advocate General for the State/respondents submits that during the trial regarding the additional issue, the applicant/plaintiff had enough opportunity to adduce evidence and they are seeking to raise the same grounds again in the present appeal and that State/respondents objected to prayer made in the interlocutory application. The learned Additional Advocate General also submits that they may be given the copies of depositions of both sides which they have not received.

6. Upon perusing the aforesaid statutory provision, it clearly allows for incorporating the additional grounds in the memo of appeal but only with leave of the court. As the additional issue, being issue no. X underwent trial pursuant to the direction of this Court and the findings recorded went against the present appellant/applicant; therefore, it would be fair and just to enable and allow the appellant to have their say with regard to the said finding and give them an opportunity to assail the said finding, if so advised. As I understand that is also the spirit of the provision incorporated in Order 41 Rule 2 of CPC.

7. Accordingly, in the facts and circumstances, the interlocutory application is allowed and the applicant/appellant is hereby permitted to incorporate grounds with regard to the finding of the learned trial court vide order 22.01.2019 on the additional issue (issue No. X), narrated in para 3 above.

8. The Registry shall furnish the copy of the deposition of both sides to the learned Additional Advocate General, appearing for the respondents.

9. The Interlocutory Application stands **allowed** and disposed of on the aforesaid terms.

Sd/-

JUDGE

Comparing Assistant