



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

Case No. : FA/3/2019

KIYEKHU VILLAGE COUNCIL
REPRESENTED BY ITS CHAIRMAN SHRI. HUKATO ZHIMO,
ZUNHEBOTO, N/L

VERSUS

ZHEKIYE VILLAGE COUNCIL
REPRESENTED BY ITS CHAIRMAN, ZUNHEBOTO, N/L

Advocate for the Petitioner : C. T. JAMIR, SR. ADV, WATI JAMIR,IMKONG
JAMIR,NUKSHINARO,I IMCHEN

Advocate for the Respondent : A. ZHIMOMI, IMTI LONGJEM,JOSHUA
SHEQI,ESTHER,LHOUSINO

BEFORE
HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER

Date of Hearing : 10.03.2025
Date of Judgment : 18.03.2025

JUDGMENT & ORDER (CAV)

Heard Mr. C.T. Jamir, learned senior counsel assisted by Mr.
Imkong Jamir, learned counsel appearing for the appellant and Mr.

Imti Longjem, learned counsel appearing for the respondent.

2. The factual matrix of this case as presented by the appellant is that some time in the 1830s one Khuishe of Kiyekhu village allowed his son Zhekiye to migrate from Kiyekhu Village, and the traditional practice of burning a dog during migration which was the custom among the Sema tribe of Nagaland was performed at a stream which was named as "*Atsukughu Ghoki*". This stream was made as the traditional boundary between the appellant and the respondent village. Both the appellant and the respondent village co-existed peacefully till the year 1992 when a sum of ₹ 1 lakh was sanctioned by the Government to the appellant/Kiyekhu Village for improving the approach road to the village under the Compact Area Development Scheme (CADS for short). It was only during this time that the respondent/Zhekiye Village made a claim that as a major portion of the road fell within the respondent's land they should also be given a part of the sanctioned amount.

3. Thereafter, the matter was taken up at various levels in different courts and finally reached the Hon'ble Apex Court. The Apex Court directed the Additional Deputy Commissioner Judicial {ADC (J) for short}, Dimapur to decide all the contentions raised in the pending appeal by both the parties in accordance with law. The ADC (J), Dimapur, by judgment and order dated 30.09.2002 disposed of the case in favour of the present appellant. Against the said judgment and order dated 30.09.2002, the respondent/Zhekiye Village had preferred an appeal before this Court being FA/9(K)/2002. After hearing the parties, this Court by Judgment and Order dated

30.10.2018 disposed the appeal with the direction that the trial court shall decide the issue of adverse possession and the claims of adverse possession by the respective villagers shall remain confined to the disputed land involved in the proceeding and the same shall not be expanded to any other land beyond the disputed land involved in this proceeding.

4. Based on the aforesaid Judgment and Order dated 30.10.2018, the Trial Court proceeded with the matter and by impugned Judgment and Order dated 30.07.2019, the learned District Judge, Zunheboto disposed of the Civil Appeal 1/1995 with the finding that the adverse possession of the disputed area of land was not made out. The learned Senior counsel states that the Trial Court, therefore, failed to consider the question of adverse possession in its proper perspective and has ignored the evidence on record on the issue of adverse possession. The appellant being aggrieved by the impugned Judgment and Order dated 30.10.2018 is before this Court in the present appeal.

5. Learned senior counsel, Mr. C.T. Jamir, assisted by Mr. Imkong Jamir has argued that the traditional boundary between the appellant/Kiyekhu Village and the respondent/Zhekiye Village is the stream known as the "*Atsukughu Ghoki*". He contends that there was peaceful co-existence between the two villages till 1992 and it was only when the CADS came to the village that the respondent village started objecting to the said boundary. He submits that 40 plots had been sold to the respondent/Zhekiye Village beyond the traditional boundary which is the stream as mentioned above; however, the

traditional boundary remains the same. The respondent/Zhekiye Village had made a claim that a major portion of the road falls within the respondent's land and that they should also be given a part of the sanctioned amount. The SDO(C) of Satakha Sub-division directed the appellant village to give 40% of the fund to the respondent village but this was objected by the appellant village before the Deputy Commissioner, Zunheboto who allowed the appellant village to execute the work and draw the bill accordingly.

6. It is further stated that the respondent village having failed to lay claim on the land started disturbing the appellant's ownership and possession thereby compelling the appellant to file a complaint dated 13.10.1992 (Annexure-1 to the Appeal memo) before the SDO(C) Satakha who endorsed the complaint to the Dobashi's Court at Satakha.

7. Before the DB's Court at Satakha, two Gaonburas of the respondent village made a statement that there is a boundary settlement order between the appellant and the respondent village by the British Government which was kept at the Deputy Commissioner's Office, Kohima. The DB's Court directed the appellant and the respondent village to search for the records in the Office of the Deputy Commissioner, Kohima.

8. Upon searching for the records, the boundary settlement order between the appellant and the respondent village purported to have been made by J.H. Hutton, the then Deputy Commissioner of Naga Hills on 13.07.2029 in Pol. Case No. 16 of 1929 along with another Order dated 10.12.1935 passed by N.L. Bor, DC of Naga Hills was

traced out at the Deputy Commissioner's Office, Kohima (Annexures 2 and 3 to the Appeal Memo). The DB's Court, therefore, reaffirmed the two orders dated 13.07.1929 and 10.12.1935 by an Order dated 25.02.1993 and the other issues raised by the appellant was left undecided. The appellant village filed an appeal before the Deputy Commissioner, Zunheboto against the Order dated 25.02.1993 which was endorsed to the Political Assistant to D.C who disposed the same by an Order dated 04.07.1995. This Order of 04.07.1995 revealed that during the course of the proceedings, the appellant village desired to undertake the customary oath. However, this was not only objected by the respondent village but the latter also refused to take oath when asked to do so. The order of the PA to DC also established the fact that the boundary settlement of 13.07.1929 was arrived at without consulting both the appellant and the respondent village as confirmed from the Gaonburas of the two villages. The PA to DC, however, by the said order proceeded to divide the disputed land giving one half of the disputed land to the respondent Zhekiye Village (Order dated 04.07.1995 at Annexure-5 to the Appeal Memo)

9. Against the Order of the PA to DC dated 04.07.1995, the respondent Zhekiye village preferred an appeal before the D.C, Zunheboto which was registered as Civil Appeal 1/1995 and the said appeal was subsequently endorsed to the Court of ADC (J), Zunheboto. However, the Office of the ADC (J), Zunheboto fell vacant due to suspension of the incumbent and the appeal was transferred to the Court of ADC (J), Dimapur on the application made by the parties.

10. The ADC (J), Dimapur heard the parties and by Judgment dated 09.09.1996, ordered the parties to adduce additional evidence to prove the Judgment and Order of J.H. Hutton dated 13.07.1929 and its probative value. By the said Order, the ADC (J), Dimapur also ordered the parties to prove their respective possession of the suit land (Judgment dated 09.09.1996 is Annexure-6 to the Appeal Memo).

11. Against the Judgment dated 09.09.1996 passed by the ADC (J), Dimapur the respondent Zhekiye village filed a writ petition before this Court registered as Civil Rule 174 (K) 1996. By Judgment and Order dated 24.07.1997, this Court in Civil Rule 174 (K)/1996 set aside the order passed by the ADC (J), Dimapur (The Judgment and Order dated 24.07.1997 is Annexure-7 to the Appeal Memo).

12. Being aggrieved by the Judgment and Order dated 24.07.1997, the appellant village preferred a Special Leave Petition registered as SLP No. 19834/97. This Special Leave Petition was disposed by an Order dated 06.01.1999 wherein the Hon'ble Apex Court, while observing that the genuineness of the British Settlement Record of 1929 and 1935 need not be disturbed, directed the ADC (J), Dimapur to decide all other issues including the legal effect of the Order of 1929 and 1935 in accordance with law. The Apex Court further directed the ADC (J), Dimapur to decide all the contentions raised in the pending appeal by both the parties (Order dated 06.01.1999 is Annexure-8 in the Appeal Memo).

13. As per the direction of the Apex Court, both the appellant and the respondent village appeared before the ADC (J), Dimapur and

filed their list of documents and witnesses before the Trial Court. Although an appeal was filed against the Order dated 04.07.1995 passed by the Political Assistant to DC, the case was adjudicated as an original suit. Moreover, during the course of the trial, the respondent village had also made a prayer for proceeding with the trial under Rule 31 of the Rules for Administration of Justice and Police, 1937 which provides for *de novo* trial. The prayer was allowed and the case proceeded as an original suit. During the course of the trial, the Trial Court framed nine issues, which are reproduced as under:

- i) Whether Zhekiye village migrated from Kiyekhu village.*
- ii) Whether Atsukughu Ghoki is the traditional boundary between Keyikhu and Zhekiye village.*
- iii) Whether boundary dispute was taken up between the village by the British Govt. on 13-7-29 and 10-12-35 and registered as political case no. 19/29 and political case 82/35.*
- iv) Whether the boundary was demarcated between Zhekiye and Keyikhu village.*
- v) Whether the order dated 13-07-29 and 10-12-35 can be considered as a judgement and can be enforced as Res Judicata to the parties.*
- vi) Whether the appellant village has been in continuous and peaceful possession and enjoyment of the disputed land.*
- vii) Whether Keyikhu village has been disposing of various plots of land by way of sale to Zhekiye villagers and others within the disputed area.*

viii) Whether the decision of 13-07-29 is executable in view of the law of limitation and the law of adverse possession.

ix) Whether as the land owner Zhekeyi village or Keyikhu village has been carrying out various developmental works within their respective traditional boundary."

To prove these issues the appellant examined 14 (fourteen) witnesses and the respondent examined 15 (fifteen) witnesses. The Civil Suit 1/1995 was disposed of on 30.09.2002 with the observation that as per evidence adduced by each party, "Atsukughu Ghoki" is the traditional boundary between the appellant and the respondent village (Judgment and Order dated 30.09.2002 is Annexure-10 of the Appeal Memo).

14. Against this Judgment and Order dated 30.09.2002 passed in Civil Suit 1/1995, the respondent village filed an appeal before this Court which was registered as F.A 9 (K) 2002. This Court, after hearing the parties disposed the Appeal on 30.10.2018 with a direction to the trial court to decide on the issue of adverse possession and that the claim of adverse possession by the respective villages shall remain confined to the disputed land involved in the proceeding and the same shall not be expanded to any other land beyond the disputed area involved in this proceeding (Judgment and Order dated 30.10.2018 is Annexure-11 of the Appeal Memo).

15. As directed by this Court the case was taken up before the District Judge Zunheboto and after hearing the parties the court disposed of the same by an Order dated 30.07.2019. The learned

Trial Court came to the conclusion that the adverse possession of the disputed area of land is not made out (The Judgment dated 30.07.2019 is at Annexure-12 of the Appeal Memo).

16. Being aggrieved by the Judgment dated 30.07.2019, the appellant village has preferred this appeal and basing on the records of the trial court the learned senior counsel, Mr. C.T. Jamir has stated that the finding of the Trial Court is totally erroneous as there is clear evidence regarding the adverse possession of the disputed land. Learned senior counsel has stated that the dispute involved in the present case is between the two villages regarding traditional boundary and not individual land. Both the Kiyekhu and Zhekiye Villages are cultivating beyond the traditional boundary stream and there was enough evidence before the learned Trial Court to decide on adverse possession. He has stated that the respondent village has purchased about 40 plots of land from the Kiyekhu Village but the appellant/Kiyekhu Village has never purchased any land from the respondent village. The learned senior counsel has referred to Paragraph-8 of the impugned Judgment where the learned Trial Court has discussed all the evidence exhaustively in favour of the appellant regarding adverse possession but finally came to an erroneous conclusion that the adverse possession of the disputed area is not made out, and also made a wrong observation that if any individual land owners are aggrieved they are at liberty to file for adverse possession.

17. The learned senior counsel has submitted that the present case may be remanded back to the learned Trial Court to take up the case

afresh in accordance with the directions of this Court in FA 9(K) 2002. The learned senior counsel has further submitted that the Kiyekhu Village/appellant is the father village and the respondent village is the son village who has migrated from the appellant village and "Atsukughu Ghoki" is the traditional boundary between the two villages since the 1830s. He has also argued that the alleged judgment dated 13.07.1929 and 10.12.1935 were passed in the absence of both the parties and they had never participated in the proceeding; and therefore, the alleged boundary settlement by Order dated 13.07.1929 and 10.12.1935 cannot be taken as final and binding, nor can it be treated as *res judicata* between the parties.

18. The learned senior counsel further submits that a specific stand had been taken by the appellant village that they have been in continuous and uninterrupted possession over the disputed land for over 60 (sixty) years, and therefore, even assuming that the Orders dated 13.07.1929 and 10.12.1935 are valid, still the appellant village had acquired a right over the disputed land under the law of adverse possession. In view of this stand of the appellant village, this Court in F.A 9(K)/2002 had directed the District Judge, Zunheboto to decide the issue of adverse possession and also allow any additional evidence if required to be adduced by the parties. Learned counsel also states that no additional evidence was adduced as most of the witnesses had passed away. In fact, the learned Trial Court had discussed all the evidence in favour of the appellant village but came to a conclusion that there is no evidence. In view of the above submissions, learned senior counsel, Mr. C.T. Jamir prays that this

appeal may be allowed and the impugned Judgment and Order dated 30.07.2019 passed by the District Judge, Zunheboto in Civil Appeal 1/1995 should be set aside and quashed and the matter may be remanded back to the trial court for deciding afresh on the issue of adverse possession as per the direction of this Court in F.A 9(K) 2002.

19. The learned counsel for the respondent, Mr. Imti Longjem appearing for the respondent/Zhekiye village has also admitted that Zhekiye, son of Late Khuishe of Kiyekhu Village migrated with his followers sometime in the 1830s. Khuishe allowed Zhekiye and his followers to migrate with their respective lands and out of 12 areas of Jhum land, Zhekiye and his followers took away 3, i.e., the land that belonged to them. According to the learned counsel for the respondents the Zhekiye/respondent village thus came into existence. Consequent thereupon, the Late Khuishe along with the elders demarcated the area settled on Zhekiye and his followers as under:

"From Khachekighe Kita to Kutuaghulou to half of Kutuakijeu on one side and again from Khachekighe Kita to Chozoto Ghoki upto the Chetaghoki (being the boundary between Yemeshe and Kiyekhu). On the order of late Khuishe a stone pillar was erected at Khache Kighe Kita by Mulho, son of Sukhashe."

20. After about 100 years of peaceful existence, a dispute arose between the two villages and Mr. J.H. Hutton, the then D.C of Naga Hills registered the dispute as Pol. Case No. 16/1929 and decided the same on 13.07.1929 along with the Dobashis Kuhoto, Khakhu and Khezheto. The Order of Mr. J.H. Hutton dated 13.07.1929 was affirmed by Order dated 10.12.1935 in Pol. Case No. 82/1935 issued

by J.H Hutton's successor Mr. N.L. Bor, D.C of the Naga Hills (Page 17 and 18 of the Appeal Memo). Thereafter, the two villages lived in peaceful co-existence till the year 1992. In 1992 a sum of ₹1 lakh was sanctioned to the appellant village for the construction of a road. 80% of the road fell within the respondent village, and therefore, they raised objections and the SDO(C), Satakha directed that 40% of the amount be given to the respondent village. Learned counsel, Mr. Imti Longjem submits that the boundary between the two villages has been demarcated by the Judgment of 1929 and the same is proper and valid. However, the Political Assistant to DC, by his Order dated 04.07.1995 had given half of the disputed area to the appellant village. Therefore, the respondent village had filed the Civil Appeal 1/1995. The ADC (J), Dimapur on 09.09.1996 issued an order calling for additional evidence in respect of the Judgment of 1929 and 1935 and their probative value. The respondent village, being aggrieved, filed a writ petition before this Court being Civil Rule 174 (K) 1996 which was allowed by the Judgment dated 24.07.1997. Against the judgment of this Court, a Special Leave Petition had been filed by the appellant village. The Hon'ble Apex Court upheld the Order of this Court with regard to the existence of the Judgments of 1929 and 1935. However, the Apex Court directed that the ADC (J) shall decide the legal effect of these documents and the other issues raised by the parties. Consequently, the trial was conducted by the learned ADC (J), Dimapur and by an Order dated 30.09.2002, the ADC (J), Dimapur ignored the Orders of 1929 and 1935 and the boundary between the two villages was reset. Being aggrieved, the respondent

village preferred an appeal before this Court being F.A 9(K)/2002. By Judgment dated 30.10.2018, this Court set aside the Judgment and Order dated 30.09.2002 passed by the ADC (J), Dimapur in Civil Appeal 1/1995. This Court categorically held that the Orders dated 13.07.1929 and 10.12.1935 are valid.

21. Learned counsel for the respondent, therefore, submits that this Court has already held that the Order dated 13.07.1929 demarcated the boundary between the appellant village and the respondent village and the order has attained finality. Any re-determination at this stage of the boundary between the two villages, contrary to the demarcation laid down by Order dated 13.07.1929, is impermissible and would be hit by the law of *res judicata*. However, since the appellant village had raised the issue of adverse possession, this Court remanded the matter back only to adjudicate on the claim of adverse possession by the appellant village.

22. Learned counsel further submits that this Court in the Judgment dated 30.10.2018 also found that there was no complete and comprehensive evidence available on record to enable the court to determine the issue of adverse possession. As such, this Court held that if evidence on record is inadequate to determine the claims of adverse possession, additional evidence may also be taken. Before the learned District Judge, Zunheboto, the present appellant was given opportunity to adduce additional evidence in support of his claim for adverse possession. However, the present appellant declined to adduce additional evidence and the same is reflected in the Judgment and Order dated 30.07.2019. Therefore, the learned

District Judge, Zunheboto had to decide the claim of adverse possession by the appellant village on the basis of available evidence. The learned counsel submits that adverse possession means hostile possession in denial of the title of the true owner and such possession must be adequate in continuity, in publicity, and in extent so as to show that it is adverse to the true owner. The present appellant village in order to succeed in its claim of adverse possession must specifically plead and prove how it came into possession of the land and since when. Furthermore, the appellant village must plead and prove that its possession over the land in question is hostile to the present respondent village and must plead and prove that it has been in possession continually over a period of more than 12 (twelve) years with the knowledge of the respondent village. The present appellant village in order to succeed in the claim of adverse possession must plead and prove that it is in continuous possession of the suit land or portion of land claimed on the basis of law on adverse possession. It is the further submission of the learned counsel that the boundary between the two villages has already been settled by the Order dated 13.07.1929 passed by J.H. Hutton. The present appellant village has vaguely made a plea in Paragraph-13(f) of its written submission before the Trial Court stating that the appellant village being in continuous and uninterrupted possession over the suit land which falls within its traditional boundary for over 60 (sixty) years acquires the title and ownership of the suit land under the law of adverse possession. However, there is no evidence whatsoever to support the claim of adverse possession. In the case

before the ADC (J), Dimapur, as also held by this Court in F.A 9(K) 2022, there is no evidence to support the claim of adverse possession by the appellant village, and therefore, this Court had allowed the appellant village to adduce the additional evidence in support of its claim.

23. Learned counsel further contends that in order to succeed in the claim of adverse possession, the present appellant village must first establish that it is still in possession of the land claimed by it. The fact that the respondent village has been in continuous and peaceful possession of the disputed area can be ascertained from the Judgment of the PA to DC dated 04.07.1995 who has divided the disputed area into 2 halves with the steps leading up to "*Atsukughu Ghoki*" as the boundary. The appellant village has gladly accepted this settlement and this fact alone negates the statements of all their witnesses that they have owned and possessed land up to the "*Atsukughu Ghoki*". Moreover, apart from witnesses belonging to the two villages, witnesses from their neighboring villages also deposed whose statements are categorical and leave no doubt that the entire disputed area is owned and cultivated by the respondent village. The evidence of the witnesses from the respondent village with regard to possession of the suit land is uncontroverted. Learned counsel for the respondent village has drawn the attention of this Court to the evidence before the learned Trial Court. He has referred to the evidence of PWs- 2, 3, 4, 5, 6, 8 and 17 and also DWs- 5, 8, 11 and 12. Basing on the above evidence, the learned counsel for the respondent village states that the appellants have failed to establish

possession of the suit land and there is absolutely no question that the present appellant village can claim on the basis of adverse possession. The learned counsel has relied on the following cases in support of his contention that the appellant village has not been able to prove the issue of adverse possession:

i) ***Balkrishnan Versus Satyaprakash*** reported in ***(2001) 2 SCC 498*** at Paragraph-7.

A person claiming title by adverse possession must show that his possession is adequate in continuity, in publicity and in extent. It is also required to show when possession became adverse to the true owner.

ii) ***Dagadabai Versus Abbas, (2017) 13 SCC 705*** at Paragraph Nos. 15 to 18.

The plea of adverse possession has to be proved by the party raising it on the basis of proper pleadings and evidence. The party raising the plea of ownership through adverse possession must first admit ownership of the true owner. Thereafter, prove by adequate evidence the issue of actual, peaceful and uninterrupted continuous possession of the property for more than 12 years to the exclusion of the true owner with the element of hostility.

iii) ***Narendra Versus Ajabrao*** reported in ***(2018) 11 SCC 564*** at Paragraph Nos. 21 to 29

The principle of adverse possession explained.

iv) ***Ratanlal Versus Sundrabai Govardhandas Samsuka*** reported in ***(2018) 11 SCC 119*** at paragraph- 19.

Any amount of evidence or proof adduced without there being proper pleadings is of no consequence and will not come to the rescue of the parties.

v) ***Abdul Kasem Versus Asmat Ali*** reported in **2004 (Suppl.) GLT 439** at Paragraph Nos. 12 and 13.

Party claiming adverse possession must plead and establish title by adverse possession. There cannot be any variance between pleading and proof.

24. In conclusion, the learned counsel for the respondent village reiterates that this Court by Judgment and Order dated 30.10.2018 in F.A/9(K)/2002 has already held that the boundary between the two villages has been settled by the Order dated 13.07.1929 by the Deputy Commissioner, Naga Hills. Further, this Court also held that there is lack of adequate evidence to determine the claim of adverse possession by the appellant village. Therefore, the matter was remanded back to the Trial Court to adjudicate only on the claim of adverse possession by the appellant village over the disputed land. Further, since there was no appropriate and adequate evidence to determine the claim of adverse possession by the appellant village, liberty was granted to adduce additional evidence. However, the present appellant village declined to adduce additional evidence before the Trial Court and argued the matter on the basis of evidence which was already on record and which had already been examined by this Court in F.A/9(K)/2002. The learned Court below, therefore, concluded that there is no adequate evidence on record to support the claim of adverse possession over the disputed land by the

appellant village. In view of the above submissions, the learned counsel for the respondent prays that the present appeal may be dismissed by this Court.

25. In the light of the submissions advanced before this Court, I am called upon to answer two questions concerning the boundary between the appellant village and the respondent village and the claim of adverse possession by the appellant Kiyekhu village. Hence the following issues arise for consideration before this Court:

(i) *Whether the orders dated 13-07-29 and 10-12-35 can be considered as valid and binding on the parties and can be enforced as Res Judicata between the parties.*

(ii) *Whether the evidence adduced before the trial court Zunheboto in Civil Appeal 1/1995 has proved the adverse possession as claimed by the appellant village.*

26. With regard to the first issue it is seen that the orders of 13.07.29 and 10.12.35 have been the subject of contention between the parties ever since the orders were produced before the DBs Court at Satakha in 1992-93. When the dispute reached this Court in Civil Rule 174 (K) 1996, this Court by judgment & Order dated 24.07.1997 held that the orders dated 13.07.1929 and 10.12.1935 are valid and in existence and directed the ADC (J) Dimapur to decide as to whether the ongoing dispute between the parties would be hit by the principle of res judicata. However, the matter was laid to rest when the present appellant village approached the Hon'ble Supreme Court by way of an SLP against the judgment dated 24.07.1997. The Hon'ble Apex Court vide order dated 06.01.1999 in Civil

Appeal 57 of 1999 (arising out of SLP No. 19834/97) held that, "....since the High Court took the trouble of actually obtaining the old registers in which the said two orders are recorded, that part of the High Court's order which records that these two orders are genuine documents as recorded in the original register produced before the High Court need not be disturbed. The Additional Deputy Commissioner, however, will decide all other questions including the legal effect of these documents in accordance with law in the pending appeal..."

27. The ADC (J) Dimapur in pursuance of the direction of the Hon'ble Apex court proceeded to decide the matter in Civil Appeal 01 of 1995. Appellants examined 15 witnesses and respondents examined 14 witnesses. The learned ADC (J) Dimapur was only required to decide the issues in the light of the legal effect of the orders dated 13.07.1929 and 10.12.1935, and whether the ongoing dispute between the parties would be hit by the principle of res judicata as the orders dated 13.07.1929 and 10.12.1935 were already held to be valid and in existence as the Hon'ble Apex Court had already upheld the Order of this Court with regard to the existence of the Judgments of 1929 and 1935. However, by the Order dated 30.09.2002, in Civil Appeal 01/1995 the ADC (J), Dimapur ignored the Orders of 1929 and 1935 and the boundary between the two villages was demarcated again. The respondent village again approached this Court against the judgment dated 30.09.2002 by filing F.A/9(K)/2002. By Judgment dated 30.10.2018, this Court set aside the Judgment and Order dated 30.09.2002 and this Court categorically held that the Orders dated 13.07.1929 and 10.12.1935 are valid. The relevant paragraph of the judgment dated 30.10.2018 in F.A/9(K)/2002 is reproduced below:

"19. The Court is of the considered view that such a conclusion should not have been arrived at by the Additional Deputy Commissioner (J), Dimapur inasmuch as, the earlier order dated 13.07.1929 was also passed by a co-ordinate Court and therefore, while examining its legal effect upon the dispute raised by the parties, the Additional Deputy Commissioner (J), Dimapur could not have been gone to the extent of determining the validity and sustainability of the said Order dated 13.07.1929. Such a position, if accepted, would led to disastrous consequence wherein it would be an acceptable proposition that a co-ordinate Court would have the jurisdiction to determine the legality and validity of an order passed by another co-ordinate Court between the same parties involving the same issues, which had been in the mean time finally decided. Such a concept if accepted would also be contrary to the principles of res-judicata".

In view of the above settled position regarding the Orders dated 13.07.1929 and 10.12.1935 by a coordinate bench of this court and also by the Hon'ble Apex court, this court cannot arrive at a finding contrary to the one passed by a coordinate bench in F.A/9(K)/2002 and the Apex Court in Civil Appeal 57 of 1999 (arising out of SLP No. 19834/97). It is therefore held that the orders dated 13-07-29 and 10-12-35 are valid and binding on the parties and can be enforced as Res Judicata between the parties.

28. In respect of the second point for consideration, this court has taken note of the fact that this Court in F.A/9(K)/2002 had come to a finding that there was no complete and comprehensive evidence available on record taken by the ADC (J) Dimapur to determine the claim of adverse possession made by the Kiyekhu village. Consequently, the matter was remanded back for proper adjudication as regard the claim of adverse possession over the disputed land. While disposing the said Appeal this Court also stated that if the evidence on record is inadequate to determine the claim of adverse possession additional evidence as may be necessary

may be taken.

29. It is an admitted position that no additional evidence was taken. The only evidence available before the learned trial court was therefore the same evidence which was before the ADC (J) Dimapur in Civil Appeal 1/1995. I have perused the available evidence in detail, specifically the depositions of PW-2, 3, 4, 5, 12, 13, 16, 18 and DWs 3, 4 and 10. The depositions do not help the case of the appellant to prove his claim of adverse possession as the proposition that emerges from the evidence is that the disputed land is possessed and being cultivated by the respondent/Zhekiye village. When the appellant village cannot prove its possession of the suit land, the principle of adverse possession cannot be invoked by the appellant. The law on this subject is no longer res integra that only when the party is in possession the question of adverse possession arises and the principle can be invoked. Therefore, the second point for consideration is also decided against the appellant.

30. The findings and discussion herein above makes it clear that the appellant has failed to satisfy this Court that any infirmity or illegality is present in the impugned judgment & order dated 30.07.2019 in Civil Appeal/1/1995 which warrant interference of this Court. I see no reason to interfere with the judgment dated 30.07.2019 of the learned District Judge Zunheboto.

31. Accordingly, this appeal is dismissed. Interim order, if any stands vacated. There shall be no orders as to costs.

The Registry is directed to send back the trial court records.

JUDGE

Comparing Assistant