

2012 SCC OnLine Gau 397 : (2012) 116 AIC 676

Gauhati High Court  
Shilong Bench  
(BEFORE INDIRA SHAH, J.)

Between

Binod Kumar Bawri

*Versus*

Walley Marbaniang and others

Civil Rev. (P.) No. 11 (SH) of 2012

Decided on June 22, 2012

The Judgment of the Court was delivered by

MRS. INDIRA SHAH, J.:— I have heard Mr. S. Jindal, learned Counsel for the petitioner and Mr. H.S. Thangkiew, learned Senior Counsel assisted by Mr. N. Mozika, learned Counsel for the respondents/defendants.

2. This revision is against the order dated 2.6.2011 passed by the learned Assistant to the Deputy Commissioner, Ri-Bhoi District in Misc. Case No. 9 (T) 2007. The petitioner herein as plaintiff filed the Title Suit for declaration that the defendants have no right to disturb the ownership and peaceful possession of the suit land belonging to plaintiff and for permanent injunction. A petition for *ad-interim* injunction was also filed. As the Trial Court refused to grant *ad-interim* injunction, the petitioner challenged the order before the Court and this Court *vide* order dated 4.11.2010 directed the Trial Court to hear the parties on the basis of their pleadings and other materials. Learned Trial Court, after hearing both the parties, rejected the prayer for grant of *ad-interim* injunction. The petitioner has challenged the order under Rule 36-A of the Rules for the Administration of Justice and Police in the Khasi and Jaintia Hills, 1937.

3. The respondents in their affidavit-in-opposition have raised the preliminary objection against the maintainability of the revision petition. The proper remedy, according to the respondents, is to file an appeal before the Additional Deputy Commissioner, which is the Appellate Court. Moreover, one of the plaintiffs *i.e.*, plaintiff No. 2 has preferred an appeal/revision being Civil Revision No. 2/2011 in the Court of Additional Deputy Commissioner, Nongpoh against the same order



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alongwith the application (or condonation of delay. Further more, the instant revision application is barred by delay as the impugned order was passed on 2.6.2011 and the revision is filed in the month of April, 2012 without any application for condonation of delay. The contention of the petitioner that the certified copy of the order after 7-½ months is absolutely untenable. The petitioner plaintiff is a non-tribal and in case disputes between persons not belonging to non-tribal, the principles of Limitation Act should be followed as per provision of Rule 41 of Rules for Administration of Justice and Police in Khasi and Jaintia Hills, 1937.

4. It is submitted by the learned Counsel for the petitioner that though Rule 36-A provides a remedy of appeal, this unlike 115 C.P.C., is not a bar to exercise the

remedy of revision. Moreover, earlier, the respondent himself preferred revision application before this Court impugning the order passed by the Assistant to the Deputy Commissioner. In the revision filed by another plaintiff, the petitioner has not been made party. The said revision before Deputy Commissioner is not yet admitted and it may be admitted only after the delay is condoned. As such, no appeal or revision, as on date, is pending. Multiple challenges by different litigants against the same impugned order are permissible. The provisions of the Law of Limitations are not applicable under Rule 36A of the Rules. Furthermore, even if it is conceded that Law of Limitations is applicable, the petition filed by the petitioner is not barred by limitation.

5. Learned Counsel for the petitioner has cited the case of *Shri Medenkaba v. R. Tekaternjen Ao*<sup>1</sup>, wherein, it was held that while an appeal has to be filed within 30 days from the date of decision, excluding the time required for obtaining a copy of the decision, no limitation is prescribed for revision. In computing the period of limitation for an appeal, the following periods the period begins to run; (b) the day on which the judgment was pronounced; (c) the time requisite for obtaining a copy of the decree, sentence or order; (d) the time requisite for obtaining a copy of the judgment and the same judgment in para-15, it has been observed that 'though the High Court can be approached against any decision of any subordinate, officers, it would be within the discretion of the Court whether to entertain the same or not, if an appeal, where lies, has not been preferred. While deciding this aspect, the Court may have to consider the status of the parties, the point involved, the importance of the subject-matter, the time taken in approaching, the reason for not preferring appeal and such other relevant factors.

6. Citing the case of *National Institute of Mental Health & Neuro Sciences v. Parameshwara*<sup>2</sup>, the learned Counsel for the petitioner has submitted that multiple challenges against the same impugned order are permissible. In the cited case being aggrieved by the order of dismissal, the respondent move the labour Court and the Labour Court passed an award setting aside the order of removal. Being aggrieved, the appellant instituted writ petition and also instituted civil suit for recovery of the loss suffered by it. It was held that both the proceedings operated in different spheres. The subject-matter of the two proceedings is entirely distinct and different. In the circumstances, section 10 of the C.P.C. has no application to the facts of the case.

7. The ground preferred in the appeal before the Deputy Commissioner and the ground for preferring the revision petition before this Court are similar. The petitioner, herein; in this revision petition and the appellant before the Deputy Commissioner are brothers of the



members of a joint Hindu families. They have challenged the order of the learned Trial Court and the subject-matter of appeal before the Deputy Commissioner and the revision petition are same. Although, under the Rules, High Court as well as the Deputy Commissioner can be approached against any decision or any subordinate officers as per the observations made in *Shri Medenkaba* (supra). It is within the discretion of the Court whether to entertain the same or not, if an appeal, where lies, has not been preferred. In this case, undoubtedly, an appeal lies against the order. An appeal has been preferred by one of the plaintiffs and simultaneously, revision petition has also been filed by another plaintiff. The revision petition, in view of the circumstances, cannot be entertained.

8. Rule 36-A of the Administration of Justice and Police in the Khasi and Jaintia Hills, 1937 empowered the High Court or Deputy Commissioner to call for the

proceedings of any case decided by any officer subordinate to him and pass such orders as he may deem fit. It appears from the Rule 36-A that the High Court and the Deputy Commissioner had the concurrence jurisdiction to entertain the revision petition. However, under section 115 of the Code of Civil Procedure, only the High Court has the jurisdiction to entertain revision petition and as per section 115 of the C.P.C., a petition may be entertained against any order where any appeal lies.

9. Admittedly, in this case, one of the plaintiffs has preferred an appeal against the impugned order before the Deputy Commissioner. An appeal lies against the order of injunction. Under section 115 of the C.P.C., the High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies when it appears- (a) to have exercised a jurisdiction not vested in it by law; or (b) to have failed to exercise a jurisdiction so vested or; (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity.

10. It is not the case of the petitioner that the learned Trial Court has exercised his jurisdiction not vested in it by law or has failed to exercised a jurisdiction so vested, the learned Trial Court has elaborately discussed the pleadings of both the parties and it has been observed by the learned Trial Court that it is difficult for the Court to come to a conclusion about the possession where there are rival claims and counter claims with regard to the possession, which requires to be decided by evidence. It has also been observed that the suit land is a vacant land, no irreparable loss or injury shall be caused to the plaintiff, if injunction is refused and accordingly, the prayer for *ad-interim* injunction was rejected.

11. From the impugned order, no illegality or infirmity has been committed by the learned Trial Court while rejecting the prayer of *ad-interim* injunction.

12. Accordingly, this revision petition is devoid of merit and the same is dismissed.

13. *Revision Dismissed.*

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<sup>1</sup>: (1987) 1 GLR 156.

<sup>2</sup>: 2005 (25) AIC 35 (SC) : (2005) 2 SCC 256 : AIR 2005 SC 242.