

**(2004) 03 GAU CK 0026**

**Gauhati High Court**

**Case No:** Second Appeal No. 1 of 1993

Smt. Sapam Ongbi Loidang Devi  
and Another

APPELLANT

Vs

Smt. Takhelkumbam Ongbi  
Rajkumari Monosana Devi and  
Others

RESPONDENT

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**Date of Decision:** March 5, 2004

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 100
- Evidence Act, 1872 - Section 32, 64, 65, 71, 76
- Hindu Womens Right to Property Act, 1937 - Section 3, 70, 85, 85A
- Limitation Act, 1963 - Article 65
- Manipur Land Revenue and Land Reforms Act, 1960 - Section 119, 125, 152, 154, 159

**Citation:** AIR 2005 Guw 101

**Hon'ble Judges:** S.K. Kar, J

**Bench:** Single Bench

**Advocate:** K. Bipinchandra Sharma, for the Appellant; T. Nandakumar Singh and Sachikumar Singh, for the Respondent

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**Judgement**

S.K. Kar, J.

It is really sad but is a fact that after consuming an unusual period of more than 10 yrs., this second appeal, registered on 7-1-1993, came up for hearing. On 17-7-95, this Court made an observation that the appeal was being dragged for nothing with further observation that none of the counsel engaged for the parties were either appearing or taking any appropriate steps towards the progress of the appeal. The matter continued to get adjourned on this or that grounds on request from the parties. It appears that the matter was left totally uncared for since 17-12-98 till 27-5-2003. Further prayer for adjournment was, however, refused and matter was heard on 19-2-2004.

2. This appeal initially registered on 29-8-85 as C.A. No. 6/85 before this High Court was send down on ground of pecuniary jurisdiction to lower Court vide order dated 10-11-89. However, on admission, stay of execution of impugned decree was allowed by this Court vide order dated 12-1-1993 (Misc. Appln. No. 8/93).

3. Late Sapam Kunjo Singh, who was the defendant No. 7 before the Court of first instance and principal respondent No. 7 before the first appellate Court, preferred this second appeal against the judgment and decree dated 4-8-92 passed by the Addl. District Judge, Manipur East, in Civil Appeal No.1/90/2/90/13/90/1/92 of this Court. The first appellate Court decreed the suit by setting aside the judgment and decree dated 31-5-85 passed by the Court of subordinate Judge No. 11, Manipur, in original Suit No. 29/75 dismissing the suit.

4. The facts, in brief, giving rise to the presentation of the suit in question are as follows as per the plaint :-

One late Takhellambam Damodor Singh s/o late Kriti Singh of Keisamthong Laisom Leirak, Imphal, died intestate in the year 1952 leaving behind one widow (pltf. No. 1) and 4 sons (pits. Nos. 2, 3, 4 and defdt. No. 1) and 5 daughters(defd Nos. 2 to 6) and the parties were governed by the Dayabhaga School of the Hindu Law and the Customs prevalent amongst the Manipuri Hindus. The said Damodor Singh owned and possessed immovable properties described in Schedules A.A/1 and B appended to the plaint and continued to do so till his death and they are comprised of homestead (ingkhoh) and arable land (lou), and hereinafter, for the sake of convenience, to be referred as the "suit property". Damodor Singh had his house constructed upon the land of Schedule-A and lived therein till his death. On his death, plaintiffs and defendants No. 2, 4, 5 and 6 are residing thereupon, plaintiff No. 1 claiming the share as per the provisions of Section 3 of the Hindu Woman's Right to Property Act, 1937 as limited owner and her such right is converted to exclusive ownership on the coming into force of the Hindu Succession Act, 1956 w.e.f. 17-6-1956. That, the unmarried daughters of Damodor Singh, defdts. No. 2, 4 to 6, on the death of Damodor Singh will be entitled to a share in the suit property for their maintenance and marriage (defdt. 3 got married in the meantime) and after taking out their shares, the remaining suit property is to be divided amongst the plaintiffs and the defdt. No. 1 in equal shares of 1/5 each and that the co-sharers excluding defdt. No. 1 are in joint possession of the suit property though it was managed by the defdt. Nos. 2 and 3. After the death of Damodor Singh, although no partition was effected, the suit property was recorded in the revenue department in the names of different heirs of Damodor and the plaintiffs and the defdts. No. 2 to 6 were residing in the original homestead part of the suit property, i.e., Schedule-A land, whereas the defdt. No. 1 started living in a separate house constructed in the southern portion of the homestead land. That only on 30-12-67, the plaintiffs could learn that defdt. No. 1 without the consent of the other co-sharers transferred illegally part of the homestead land under old patta No. 17/94 I.E.T. (corresponding

to new patta No. 17/ 133 I.E.T.) covered by C.S. Dag No. 234 measuring 1.21. acres to one Sapam Kunjo Singh, i.e. defdt. No. 7. That the defdt. No. 7 was in possession of some paddy land under (i) patta No. 17/166 and (ii) patta No. 17/97 corresponding to new patta No. 17/ 193 I.E.T. covered by C.S. Dag No. 171 having an area of 3.56 acres described in item No. VII of Schedule-B of the plaint as the tenant of the plaintiffs on payment of annual "lousal" (rent in the form of paddy) and he continued to do so as tenant till 1976 and thereafter, taking advantage of the family dispute, refused to pay the annual rent either to plaintiffs or to defendant No. 1 and continued to reside upon the Schedule-A/1 land of the plaint setting out hostile title against the plaintiffs in respect of arable land described in items Nos. VI and VII of Schedule-B of the plaint and accordingly, is liable to be evicted.

5. Plaintiff No. 1 instituted a Misc. case No. 164/74, in the Court of A.S.O./Hqs. Praying for recording her name in respect of the homestead land as co-pattadar along with her sons and the prayer was allowed on 13-3-75 but defd. No. 1 preferred an appeal to that effect, numbered as Misc. Appln. No. I(IW)/75, and Survey and Settlement Officer erroneously allowed the appeal vide his order dated 27-6-75. That the conduct of the defendant No. 1 has created an apprehension in the mind of the heirs of Damodor Singh and occasion had arisen to go for partition of the suit property by metes and bounds amongst the co-sharers.

5-A. That cause of action for the suit arose in the month of March, 1975 when defd. No. 1 refused to recognize plaintiff No. 1 as co-sharers of the suit property etc. etc.

6. That out of the paddy land under patta No. 17/193 (new) I.E.T., the land covered by C.S. Dag No. 172 measuring 0.53 acres is the absolute property of late Khumbong-mayum Shamu Singh predecessor-in-interest of Khombongmayum Pishak Singh (proforma defd. No. 8), who transferred the same by registered sale deed on 4-5-76 to one Laishram Babu Singh (proforma Respondent No. 9) and the plaintiffs have no claim over this land under C.S. Dag No. 172.

7. Accordingly, the plaintiffs prayed for :

(a) a preliminary decree for partition of the suit property between the plaintiffs and defendant No. 1 after setting apart a portion of it as the Court thinks fit for maintenance and marriage expenses of the daughters of Damodar Singh, if needed by removing the structures/house constructed by defd. No. 1 upon the joint ownership of the co-sharers as plaintiffs are not claiming acquisition of any right to the house of defendant No. 1 :

(b) declaration that the sale deed in favour of Sapam Kunjo Singh is illegal, void and not binding on the plaintiffs :

(c) final decree on the basis of the report of Commissioner appointed by the preliminary decree and for the costs, etc.:

(d) a decree for recovery of possession by evicting the defd. No. 7 from the suit property described in Schedule-A/1 and items Nos. VI and VII of the Schedule-B of the plaint:

(e) a decree for declaration that Damodor Singh was the absolute owner of the land described in items VI and VII of the Schedule-B of the plaint etc.

8. Defendant No. 1 (T. Dwijendra, Principal respondent No. 4 herein) and defdt. No. 7 (appellant herein) initially contested the suit before the trial Court by presenting their respective written statements. In addition to general denials of the allegations on the plaint it was pleaded, inter alia, that it is a fact that pltf. No. 1 instituted Misc. Case No. 164/74, got an order in her favour but same was set aside on appeal. That late Damodor Singh died on 14-2-1954 and on his death only plaintiffs No. 2 to 4 and the defdt. No. 1 inherited the property left by Damodor Singh. That pltf. No. 1 had no right to inherit the property of Damodor and when the Hindu Succession Act came into force, pltf. No. 1 was not in possession of the suit property/land either jointly or as on her own share. That the share of defdt. No. 1 was duly partitioned in respect of the homestead (ingkhola) by mutual consent amongst the heirs and within the knowledge of them all including pltf. No. 1 in the year 1957 and defdt. No. 1 started occupying his share of land since then by constructing a semi-pucca house and starting separate mess and following such activities the names of heirs of Damodor Singh was recorded in the connected land records during survey operation without objection from any corner. Long thereafter with mala fide intention, pltf. No. 1 approached the A.S. & S.O. for recording her name which was waived/relinquished by her own conduct earlier and thus principle of estoppel will apply. That homestead under patta No. 17/94 I.E.T. (corresponding to new patta No. 17/153) never belonged to late Damodor Singh and he never had agricultural land covered by patta No. 24/59 I.E.T. (corresponding to 25/160 I.E.T.) and patta No. 30/753 (corresponding to new patta No. 30/153 I.E.T.) as described in Schedule-B(ii) and B(iv) respectively in the plaint. That land under patta No. 17/97 I.E.T. (corresponding to new patta No. 17/ 193 I.E.T.) as described in Schedule-B (vii) has two dag standing jointly in the names of pltf. No. 3 and one Khumbongmayum Shamu Singh and as such, that land cannot be the subject matter of the suit unless and until the respective share therein of the co-pattadars are determined and co-pattadars being made a party in the suit (done later it appears). That the answering defendant being in possession of his share exclusively beyond 12 years the suit is barred by principle of adverse possession. That suit is not maintainable being hit by Sections 152 and 154 of the MLR & LR Act, 1960 and suffers from misjoinder of parties defdts. No. 2 to 7 and principle of bad partition for including only some properties of late Damodor Singh.

9. By the supplementary written statements, defdt. No. 1 pleaded further that even if the transfer of land in share of answering defendant was not done without the consent of the co-sharers that cannot be void and illegal but only voidable as the

interest of the transferor is admitted. That the transfer was made within the knowledge of all co-sharers and provisions of Section 152 of the MLR & LR Act, 1960 will not apply to "suit land" which is homestead (ingkhoh). That the defendant No. 1 has no knowledge that out of the paddy land under dag No. 17/193 (New) I.E.T. the land covered by C.S. Dag No. 172, measuring 0.53 acre is absolute property of late Kh. Shamu Singh, etc.

10. Defdt. No. 7 (appellant herein) by his separate w.s. (written statement) pleaded that he has nothing to say in so far the land described in Schedule-A and items No. 1 to V of the Schedule-B of the plaint and is presenting his w.s. in so far properties/land described in Schedule-A/1 and items/Serial Nos. VI and VII of the Schedule-B to the plaint. He denied the fact that late Damodor Singh ever held the immovable properties described in Schedule-A/1 and items VI and VII of Schedule-B or that he was in possession of the same till his death as alleged. That the agricultural land under patta No. 17/97 I.E.T. (Imphal East Tehsil) stood in the names of Sapam Pajao Singh and Chakra Singh, who were co-pattadars and Pajao Singh had interests to the extent of 1 Pari 3 Sangams (1.87 acre) and during survey new patta No. 17/193 I.E.T. was made for his share and this land has been mentioned in item VII of Schedule-B to the plaint but with incorrect boundaries. That Pajao Singh was the owner of the homestead land under old patta No. 17/94 I.E.T, but the original land pertaining to the old patta No. 17/94 I.E.T. as stood in Pajao Singh's time does not wholly correspond to the land under New Patta No. 17/153 I.E.T. covering C.S. Dag No. 234 having an area of 1.21 acres and as such the description given in Schedule A-1 of the plaint is incorrect. That the land which appertains to New patta No. 17/153 I.E.T. comprises of northern portion of the patta land of Old patta No. 17/94 I.E.T. and the Ingkhoh under Old Patta No. 17/6 I.E.T. belonged to one Sapam Tomba Singh. That Sapam Pajao Singh was the absolute owner of the "Ingkhoh" under Old Patta No. 17/94 I.E.T. and the agricultural land measuring one "pari" three "sangams" out of the agricultural land under Old patta No. 17/97 I.E.T. and he possessed both the "Ingkhoh" and the agricultural land by dwelling in and by cultivating the said lands respectively till his death which took place more than 40 years ago. That he was survived by his two sons, namely, Sapam Thoiba Singh and Sapam Mani Singh who inherited the said properties on the death of Sapam Pajao Singh. That about 1942, the said Sapam Mani Singh relinquished all his interests rights and title in respect of his share of the said properties in favour of his brother Sapam Thoiba Singh with delivery of exclusive possession and since then, Sapam Thoiba Singh possessed the said "Ingkhoh" and the agricultural land exclusively till his death in 1957. That the answering defendant No. 7 is the only son and sole heir of the said Sapam Thoiba Singh and he inherited the same on the death of his father and enjoying the land till date as owner. That, in 1962 he had sold the southern portion of the said "Ingkhoh" in favour of one Laishram Musukundo Singh of Moirang Kampu. This southern portion so sold away was brought under new Dag No. 236 having an area of "70 acres of New patta No. 17/ 131 I.E.T. in the name of

Laishram Musukundo Singh in the course of the recent survey operation. That the answering defendant No. 7 inherited the adjacent eastern "Ingkhol" under Old Patta No. 17/6 I.E.T. from his uncle Sapam Tomba Singh, and the said remaining patta land of Old Patta No. 17/94 I.E.T. and the patta land of Old Patta No. 17/6 I.E.T. were amalgamated under a New Patta being No. 17/153 I.E.T. new comprising of the New Dag No. 234 with an area of 1.21 acres, during the recent survey operation. Thus, the area appertaining to the New Patta No. 17/153 I.E.T. does not wholly correspond to the patta land of Old patta No. 17/94 I.E.T. That the answering defendant No. 7 has been possessing the lands referred to in schedule A-I and Sl No. VII of Schedule "B" of the plaint as owner absolutely, continuously, openly and peacefully and hostile to the whole world from the time of the death of his father Thoiba Singh. That the land referred to in Sl. No. VI of Schedule "B" of the plaint originally belonged to a Sapam Mani Singh, uncle of the answering defendant No. 7. That said Mani Singh gifted the said land to the answering defendant No. 7 with delivery of possession in 1948 and the answering defendant No. 7 accepted the gift and entered possession thereon and since then he has been possessing the same by doing cultivation thereon every year as owner absolutely and late T. Damodor Singh was never the owner of the properties referred to in Schedule, "A-1, Sl. No. VI and VII of Schedule "B" of the plaint. That suit is not framed properly, suffering from defect of non-joinders and mis-joinder of parties like Muskandar Singh, vagueness of identify of the suit property, for want of cause of action against this defendant. That in view of defdt. holding the land adversely to the interests of the pltf's. it is also barred under Article 65 of the Limitation Act etc.

11. A demand of defdt. No. 7 for better particulars on the strength of Order VI, Rule 5 was declined by the plaintiffs as unwarranted and vexatious.

12. As many as 18 (eighteen) issues were framed by the trial Court in the suit.

13. 7 (seven) P.Ws. and 7 (seven) D.Ws. were examined by the contesting parties. Documentary evidence produced are exhibits A/1 to A/36 by plaintiffs and Exts. B/1 to B/14 by defendants.

14. I have heard learned counsel appearing for the sole appellant (only defdt. No. 7 of the original suit preferred this appeal) and the respondents, considered the submissions made and perused materials on record including the oral and documentary evidence adduced in support of the issues framed in the suit. I have also gone through impugned judgment, etc.

15. Out of the four plaintiffs, pltf. No. 2 (T. Prafulla Kr. Singh) died during the pendency of the suit and the appeal was presented before Addl. District Judge by the remaining three plaintiffs.

16. The suit property/land described in the plaint excluding the four boundaries are as follows for the sake of clarification and easy comprehension--

Schedule "A"- Homestead under Patta No. 42/92(Old)/218(New) covered by C.S. Dag No. 1347 measuring 0.56 acre at Keisham-thong Village.

Schedule "A-1"- Homestead under Patta No. 17/94 (Old)/153(New) covered by C.S. Dag No. 234 measuring 1.21 acres.

Schedule "B" - (i) Agricultural land under Patta No. 24/31(Old)/68 (New) covered by C.S. Dag No. 383 measuring 1.54 acres at Balaram Village & standing in the name of late T. Damodor Singh.

(ii) Agricultural land under Patta No. 25/ 59 (Old)/ 160(New) B.T. covered by C.S. Dag No. 1868 measuring 1.68 acres situate at Kabowakhing Village standing in the name of late T. Damodor Singh.

(iii) Agricultural land under Patta No. 38/ 647(Old)/233 (New) I.E.T. covered by C.S. Dag No. 1233 measuring 0.60 acre of Top Dusara village & standing in the name of late T. Prafulla Singh.

(iv) Agricultural land under Patta No. 30/ 753(Old)/153 (New) covered by C.S. Dag No. 458 measuring 0.82 acre at Pourabi Village & standing in the name of late T. Damodor Singh.

(v) Agricultural land under patta No. 38/ 647(Old)/232 (New) covered by C.S. Dag No. 1151 measuring 0.30 acre at Top Dusara Village & standing in the name of late T. Damodor Singh.

(vi) Agricultural land under Patta No. 17/ 166(Old)/57 (New) covered by C.S. Dag No. 232 measuring 0.26 acre at Moirang Kampu & standing in the name of T. Galendra @ Khollendro Singh.

(vii) Agricultural land under Patta No. 17/97(Old)/193 (New) covered by C.S. Dag No. 171 measuring 3.56 acres and Dag No. 172 measuring 0.53 acre at Moirang Kampu Village.

17. The substantial question of law drafted in the memo of appeal and accepted by Court while formulating the same may be precisely as follows--

(a) Whether Exts. A/26 and A/36 which are certified/true copies of sale deeds have been illegally and wrongly accepted as "proved" by the first appellate Court in glaring disregard to the law reported in AIR 1979 (Gau) 68 and (1991) 1 GLR 197, Ref. (i) and (ii) of memo of appeal.

(b) Whether the first appellate Court decided the issue of eviction of tenant without jurisdiction in view of provisions of law given by Sections 119, 125 and 159 of the M.L.R. & L.R. Act, 1960 and in disregard to law reported in AIR 1979 SC 653.

(c) Whether a time-barred relief was incorporated in the plaint by any illegal order of the Court of first appeal.

(d) Whether Court below proceeded with the suit without impleading necessary party in whose absence no effective order could be passed.

18. Notwithstanding the fact that the scope of judicial scrutiny has been narrowed down here due to the fact that the only contestant now in the suit is defdt. No. 7 (appellant herein), the other contesting defdt. No. 1 in spite of presenting his w.s. in the suit is not joining the present Second Appeal, I have narrated all the relevant facts already in the foregoing paras of this judgment for easy comprehension and convenient references as and when required. The suit property/land described in the Schedule "A" and "B(i)" to "B(v)" are not being contested by the present appellant/defendant No. 7 of the suit. The portion of the suit property described in Schedule-A-1 and items VI and VII of Schedule-B only are in dispute

19. Question (a) :- Respondents 1-3/ pltfs. relied upon the oral testimonies of P.Ws. 2, 3 and 5 in addition to the contents of Exts. A/26 and A/36 to trace out the title in favour of their predecessor-in-interest late T. Damodor Singh in respect of land under Schedule-A/1, B(VI) and B(VII) of the plaint. Ext.A/26 was admitted into evidence through P.W. No. 2 without objection from defence and by production of case records of Mutation Case No. 44 of 1947-48 I.E.T. containing the original (internal page 3 of the original deposition). Save and except a suggestion that there was no such Sale deed, which the witness denied, there is nothing from the cross-examination of P.W. No. 2 in rebuttal thereof. P.W. 2 was further corroborated by P.W. 5, Registrar Kanoongo of the Office of Deputy Commissioner and in charge of the revenue records of office of Deputy Commissioner. P.W. 5 stated (page 2 of his original deposition)-

"As per entries in the old Jamabandi of village No. 17 Moirang Kampu the land under Old Patta No. 166 having an area of 3K. 14L. was originally recorded in the name of Sapam Mani Singh S/o Pajao Singh of Moirang Kampu. His name was cancelled vide order passed in Mut.Case No. 44 of 1947-48 and in his place the name of Takhellambam Damudor Singh S/o Kriti Singh of Keisamthong Laisom Leirak was recorded. Ext.A/11 is the certified copy of the said Jamabando".

Ext.A/26, on perusal, appears to be certified copy duly issued. P.W.2 stated that the original of this sale deed is available in Mut.Case No. 44 of 1947- 48 I.E.T. and record of the aforesaid case was produced before the Court below before marking the sale deed as Ext. A/26.

20. It is mentioned therein upon Ext.A/ 26 that Sapam Mani Singh transferred the land under patta No. 17/166 Imphal Pana standing in his name to T. Damodor Singh on a consideration of Rs. 50/-. This contains the endorsement of officers and the order of granting of mutation on 7-9-48 after making due inquiry (Ext.28). Ext.A/26 is consolidated by the statement of the vendor Mani Singh, made before the authority during mutation which is also produced as Ext. A/27. In his statement the vendor Mani Singh, admitting execution of the sale deed. Both Ext.A/26 and Ext.A/27 are



certified copies. Therefore, these two documents are the official records before the Court of Settlement Officer and are thus public documents, certified copies of which are admissible in evidence as per the provisions of Sections 76/77 of the Evidence Act and their genuineness may be presumed on the strength of Section 79 of the Evidence Act. However, Section 71 of the Evidence Act also provides that when direct evidence is not available to prove execution or when the attesting witnesses do not support such execution, the execution may be proved by "other evidence". Therefore, it is not that "other evidence" cannot be adduced to prove execution of a deed when natural evidence of execution is either not available or is beyond the means of the person trying to prove such execution. Here, the P.W. 2, one of the plaintiff, has clearly stated that he had exhausted all means to get a copy of the registered sale deed and therefore, he had to depend on the collateral evidence from the case record of the said Mutation Case to prove existence of the sale deed in favour of his father by the said Sapam Mani Singh. As against this evidence, there is only denial by the present appellant and by principle of preponderance of evidence, the evidence as given by the respondents/plaintiffs may be accepted.

21. Coming to the question of Ext.A/36, however, it appears to be only a copy not signed/issued by any competent authority but stated to be a "true copy" by a person whose status has not been mentioned therein. P.W. 6 tried to introduce this document but during her cross-examination she has stated that she is an illiterate person and due to objection from the opponent, this document could not be formally marked as an exhibit. However, vide order of the trial Court dated 11-9 80, it was made admissible and marked as Ext.A/36. I find, after giving my consideration to these connected facts, that Ext .A/36 has no legal entity, and may be treated as an inadmissible private document, if not only as a scrap of paper without any legal value. In any case, Ext.A/ 36 was not issued in the letters and spirits of law given by Section 76 of the Evidence Act to make it admissible u/s 77 of the same Act irrespective of its evidential value.

21A. Be that as it may, it will be interesting to note that Ext. A/36 and A/26, as per endorsement made therein, are documents registered before the sub-registrar as sale deeds No. 94 dated 5-3-47 and No. 95 dated 5-3-47 respectively. Whatever may be the evidential value of Ext. A/36, as stated before hand, Ext. A/15 and other "jamabandis" filed will show that lands mentioned by Ext. A/36 have been duly mutated in the name of late Damodor Singh and P.W. No. 5 has deposed to prove such mutation (to be discussed later on at appropriate place). It has been rightly submitted by the learned counsel appearing for the respondents/plaintiffs that these documents read with relevant "jamabandi" Exts. A/12, A/13, B/11, B/12 along with oral testimony of P.W. No. 5 can be safely taken as collateral evidence for title in favour of late Damodor Singh. It was contended that consequent to sale deed dated 30-12-67, the appellant/ defendant surreptitiously got his name mutated in some of the corresponding pattas giving rise to the dispute. There is no dispute that such mutation continued undisturbed till 1970.

22. It will be significant to note that the contesting defdt. No. 7/the appellant herein has simply stated that a portion of the land in question was owned and possessed by his paternal uncle Mani Singh and the remaining by his father Thoiba Singh. That in the year 1947, it was gifted by the said Mani Singh in favour of Thoiba Singh. There is absolutely no documentary evidence like gift deed, etc. to support this contention of the appellant defdt. No. 7. The claim of defdt. No. 7 is that he has become the owner of the suit property including this part of the land by right of inheritance on the death of his father, Thoiba Singh, Depositing as D.W. 2, the appellant has stated very categorically that save and except two agricultural lands and one homestead land situated at Moirang Kampu, he has no connection with other lands mentioned in the plaint as the suit land and that six (6) sangams of land under patta No. 17/97 IET stood in the names of Sapam Pajao Singh and one Chakra Singh as co-pattadars and Pajao Singh died about 44 years back leaving behind his two sons Thoiba Singh and Mani Singh.

23. Next, coming to the legal aspects of the matter, it is true that a document is to be proved by primary evidence, i.e. by the production of document itself for perusal of the Court except in cases mentioned in Section 64 of the Evidence Act. Section 65 of the Evidence Act provides where, how and when secondary evidence relating to documents may be given and one of such situation is contemplated by Section 65(c) which goes as follows :-

"65...

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;"

Therefore, Ext.A/26 and Ext.A/36 although truly speaking, may not be the certified copies of the original sale deeds but are pieces of collateral evidence adduced to prove the sale in the connected mutation cases which are admissible in so far as the question of existence of such sale deeds are concerned even by way of probability also read with the statement Ext. A/127 of the vendor who is no more alive, on the strength of Section 32 of the Evidence Act. Incidental acts of registration, etc. are public records sans contents of the document.

24. In view of the discussion aforesaid, I find the submission on the application of AIR 1979 Gau 68 and (1991) 1 GLR 17 is redundant. AIR 1979 Gau 68 is in connection with certified copy of a document and the law says that mere registration is not the proof of the execution and that execution of document is to be proved in the ordinary way and admission of execution before the Registrar is not enough. There is nothing to dispute the law but the learned first Appellate Court has rightly held that this law is not applicable under the present facts and circumstance of the case. Equally in (1991) 1 GLR 197 it was held overruling the earlier decision of this Court in AIR 1979 Gau 14 on this subject that private sale deed registered under the

Registration Act is not a public document and that being so, certified copy of such sale deed is not admissible in evidence on the strength of Section 77 of the Evidence Act. Therefore, in view of the discussion aforesaid. I find that no error was committed by the first appellate Court in accepting Ext.A/26 as evidence, under the particular facts and circumstance of the case, although position of Ext.A/36 may be slightly different due to technical flaws etc. as discussed.

25. Question (b) :- [Gundaji Satwaji Shinde Vs. Ramchandra Bhikaji Joshi](#), was in connection with Bombay Tenancy and Agricultural Lands Act, 1948 where the issue whether the plaintiff is an agriculturist was involved. It was held in that context that the matter is within the jurisdiction of the Revenue Court and jurisdiction of the civil Court is ousted as per provision in that Act. The succinct point of law pronounced therein as noted in the editorial note goes as follows :-

"The combined effect of Sections 70, 85 and 85-A of the Act is that where in a suit properly constituted and cognizable by the Civil Court upon a contest an issue arises which is required to be settled, decided or dealt with by a competent authority under the Tenancy Act, the jurisdiction of the Civil Court to settle, decide or deal with the same is not only ousted but the Civil Court is under a statutory obligation to refer the issue to the competent authority under the Tenancy Act to decide the same and upon the reference being answered back to dispose of the suit in accordance with the decision of the competent authority under the Tenancy Act".

In the instant case, the suit is for a preliminary decree for partition consequent to holding that the suit property belonged to one late T. Damodor Singh and the deftd. No. 7/appellant herein is only a tenant liable to be evicted from the part of the suit land and for recovery of possession, etc. Therefore, this is not a suit purely between the landlord and the tenant. Sections 119, 125 and 159 of the Manipur Land Revenue and Land Reforms Act, 1960 (hereinafter for short, "The Act of 1960") go as follows :-

"119. Eviction of tenant. (1) No person shall be evicted from any land held by him as tenant except under the order of the competent authority made on any of the following grounds, namely.

(a) that the tenant has intentionally and willfully committed such acts of waste as are calculated to impair materially or permanently the value or utility of the land for agricultural purposes;

(b) that the tenant has failed to pay rent within a period of three months after it falls due :

Provided that the competent authority may, if it thinks fit, grant further time not exceeding one year for payment of the rent;

(b) that the tenant, not being a person under disability, has after the commencement of this Act, sub-let the land without the consent in writing of

landowner.

(2) No order for eviction of a tenant shall be executed till the standing crops, if any, on the land are harvested.

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"Section 125 Relief against termination of tenancy for act of waste. Where a tenancy is sought to be terminated on the ground that the tenant has materially impaired the value or utility of the land for agricultural purposes, if the. damages to the land admits of being repaired or if pecuniary compensation would afford adequate relief, no proceeding for eviction shall lie against the tenant unless and until the land owner has served on the tenant a notice in writing specifying the damage complained of and the tenant has failed within a period of one year from the service of such notice to repair the damage or to pay compensation thereof."

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"Section 159 Jurisdiction of Civil Courts excluded. No suit or proceeding shall, unless otherwise expressly provided for in this Act or any other law for the time being in force, lie or be instituted in any Civil Court with respect to any matter arising under and provided for by this Act :

Provided that if in a dispute between parties a question of titles involved a civil suit may be brought for the adjudication of such question;

Provided further that the Civil Court shall have jurisdiction to decide any dispute to which the Government is not a party relating to any right of entry which is recorded in the record of rights."

26. A simple reading of the sections quoted above will show that Section 125 would have no application here and the suit being mainly of partition suit, the provision of Section 159 will not be attracted. In the view admission in the plaint that defdt. No. 7 was, the tenant in so far as the land under item No. VII of Schedule "B" of the plaint, the question of application of Section 119 of the Act of 1960 may require consideration of this Court. Section 119 will not oust the jurisdiction of the Civil Court. It only mentions the grounds under which a tenant may be evicted and such order can be passed only by the competent authority. It is not clear who is the competent authority as per the Act of 1960. Moreover, the bar imposed by Section 159 is with respect to any matter arising under and provided for by that Act and it has never ousted the inherent jurisdiction of Civil Court in deciding the rights and title and eviction suit consequent to the declaration of title will, therefore, be competent to be entertained by Civil Court. Accordingly, this question also has no application in the present facts and circumstance of the case. Over and above, it will be vital and significant to observe that appellant is neither admitting nor claiming any tenancy under the pltfs/respondents. The clear plea of appellant as defdt. No. 7 is that he inherited the "suit land" (part of it as claimed by him) from his father. So,

there is no issue of tenancy whatsoever in spite of pleading by the pltfs. The fact that appellant is in physical possession of land under Schedule A-1 and item VI/VII of Schedule B is not at all in dispute. It is to be decided on the basis of actual evidence on record whether the appellant/defdt. No. 7 is a tenant as claimed by pltfs or owner on his own rights of inheritance as claimed by him. Therefore, onus is on both sides to establish their respective claim. If the respondents/pltfs. failed to establish that appellant/defdt. No. 7 is tenant on the suit land, the appellant/defdt. No. 7 is to establish that he is holding the land as of his own right. Since physical possession of the appellant is never disputed at least w.e.f. 1967 on which year it is alleged that defdt. No. 1 sold his joint interest in the suit property in favour of the appellant/defdt. No. 7 by executing a registered sale deed dated 30-12-1967. However, the existence of any such sale deed in favour of the contesting defdt. No. 7 (appellant herein) is denied by him and in spite of notice to produce, no such sale deed was produced and certified copy was filed (Ext. 25) by the respondents/ pltfs. It was suggested that defdt. No. 1 and defdt. No. 7 were in collusion which was, however, denied by defdt. No. 7. In any case, even if there is any sale deed since the property was not partitioned legally, defendant No. 7 can claim only to the extent of interest of his vendor. At present, no decision on this point is required as the contesting appellant/defdt. No. 7 is not claiming any interest through any sale deed dated 30-12-1967 from the defdt. No. 1 and is contesting his right only on the basis of inheritance. Although there is some inconsistencies here and there in the oral testimonies of PW1 and PW 2. (both of whom are plaintiffs) their depositions along with the cross examination part of them will show in substance that Damodor Singh died in 1954 and on his death the properties left by him were mutated in the names of his sons, sometimes separately, but the claim of defdt. No. 1 of amicable partition was not admitted by them. PW 2 during his cross-examination has clearly stated as follows (deposing on 7-9-1978):-

"The paddy lands left by my father were let out to different persons, I personally cultivated 2 sangams of paddy land situate at Moirang Kampu for about 5 years about 2 years from today. Thereafter, I have not cultivated the said paddy land. At present, defdt. No. 7 Kunjo Singh is cultivating the said 2 sangams of paddy land. I do not know how Kunjo Singh cultivated the said 2 sangams of paddy land but when I went to the field defdt. No. 7 stated to me that he would cultivate the paddy land as there was litigation going on. We are getting "lousals" in respect of other paddy land regularly. The residential "ingkhoh" situate at Moirang Kampu is in possession of defdt. No. 7 for about 10 years on the strength of sale made by defdt. No. 1 in his favour".

27. Therefore, the contesting defdt. No. 7 if cannot establish his right to possess as owner, he will be either a trespassers or a tenant, as the case may be. Independent witness PW 3, by profession a cultivator, also stated (deposing on 19-12-1978) that after he relinquished his possession, the cultivable portion of the suit land was being possessed by Kunjo Singh, i.e. defdt. No. 7 thereafter. PW 4 also deposed on

possession but from his cross examination, he was shown as a partisan witness and accordingly, his evidence is of no use to the pltdfs.

28. As against this, if we examined the evidence adduced for and on behalf of the present appellant, we find that he examined himself as DW No. 2 on 21-9-1981 and most of the remaining witnesses examined by him as DWS 3 to 7 are only deposing on the question of possession of the suit land in his favour. The relevant portion of his deposition goes as follows :-

"I am defendant No. 7 .... I know two agricultural land and one homestead land situate at Moirang Kampu and I do not know other suit lands. One of the agricultural lands measures about 6 sangams while the other measures about 1 loukhai. The agricultural land measuring about 6 sangams was covered by Patta No. 17/97 1. E. T."

He deposed further to say that this (to reiterate) land belonged to late Pajao Singh and Chakra Singh as co-pattadars. Pajao Singh holding 7 sangams and Chakra Singh holding one sangam. Pajao Singh died leaving two sons Thoiba Singh and Mani Singh and the contesting defdt. No. 7 is the sole son of said Thoiba Singh. It is further stated that in 1942, Mani Singh gifted his share of the land in favour of his father, Thoiba Singh and left the place giving delivery of possession thereupon and thus Thoiba Singh became owner of the entire land. On the death of his father, he inherited the said agricultural land and subsequently, he sold a part of it to Laishram Muskundo Singh. Though he paid land revenue till 1956 but in 1973, when he went to pay the land revenue in the office of S.D.C., Sawombung, it was not accepted on the ground that the land does not stand in his name. In the context of homestead land, he stated that on the death of Pajao Singh, land was inherited by his sons, Mani Singh and Thoiba Singh which similarly devolved to him, as stated earlier, and in 1962, he transferred the southern portion of "ingkhoh" in favour of L. Muskundo Singh. Muskundo Singh deposing as D.W. 3 stated that part of land is given to him and he is living at the land contiguous to the homestead of Kunjo Singh, defdt. No. 7. No documentary evidence, whatsoever, was adduced to substantiate any such transfer in favour of Muskundo Singh.

29. Reverting to the deposition of P.W. No. 5, an official from the Revenue Department, he has proved from the official records the existence of "jamabandi" and "chithas", i.e. records of rights (Exhibits A/11 onwards) to show that from the "jamabandi" of 1921-22 onwards with respect to Village No. 17 Moirang Kampu, land under Patta No. 166 Dag No. 398 measuring 3.4 acres standing in the name of Sapam Mani Singh was mutated in the name of Damodor Singh on the strength of Mutation case No. 44/1947-48. Subsequently, the said land was mutated in the year 1965 in the name of Golendro Singh and Kholendro Singh who are the sons of Damodor Singh. Similarly, with respect to patta No. 97/120 the original pattadars were Pajao Singh and Chakra Singh. Thereafter, the name of Damodor Singh was mutated with respect to mutation case No. 1278/52-53 dated 2-4-1953 and 134/55

dated 5-5-1955. P. W. No. 5 also deposed that Old Patta No. 6 of village 17 Moirang Kampu originally stood in the name of Sapam Ahen Singh S/o Thabal Singh which was cancelled vide sale case No. 19 of 1946-47 dated 15-1-1947 and name of Sapam Tomba Singh was recorded and it was originally having three dags of 31 /32/33 respectively measuring 1K 12L, 2K-6L and 4K 11L and entire land is homestead land ("ingkhoh"). There is nothing from his cross-examination to shake his veracity. P.W. No. 7 deposed in his official capacity to say that case record of mutation case record of 1278 of 1952-53 was not traceable and he certified this on requisition by party vide his certificate issued on 14-2-1980 (Ext. A/35). Therefore, the question No. (b) raised is extraneous to the main issues and redundant for just decision in the suit. Thus no case of perversion in appreciation of evidence by the first appellate Court is made out requiring intervention of High Court in Second appeal.

30. Question (c): this question appears to be somewhat vague to record any finding. Even then, let me try to answer it. It is not stated what specific relief claimed in the suit is time barred relief. The amendment of the pleading is generally done by giving notice to the opponent and after hearing both sides. So this objection cannot be raised at this stage of second appeal. Moreover, the question being not specific and clear, it is very difficult to answer the same. However, if it is directed towards the question of adverse possession, then, my answer will be that, in the instant case, there is no distinct and clear pleading to assert in case of adverse possession. Law is well settled that adverse possession is to be claimed from a definite point of time (starting point) and is to be shown to have been run out the limited period of 12 years from the date of inception to ripening into a title by prescription on the strength of possession. Furthermore, there should be specific evidence by setting a hostile title to the knowledge of the real owner, on the facts and circumstance of the case. As we learn that around 1970, the dispute started as claimed by the appellant, if not in the year 1967 when the defdt. No. 1 claimed to have sold out his interest and separate possession in the joint property in favour of the present appellant /defdt. No. 7. If it is so, the relief of evicting a trespasser/tenant based on title is to be sought within 12 years from the date when the possession of the defendant becomes adverse to the plaintiff. The suit being presented on 10-11-1975, here the bar of Article 65 of Limitation Act will not apply, requiring any decision.

31. Question (d) :- It is true that the learned trial Court proceeded without impleading Muskundo Singh as a party to the suit. But what had happened during the proceeding of the suit is that this very Muskundo Singh appeared as D.W. No. 3 to depose in favour of the present appellant/ defdt. No. 7 of the suit. Moreover, although it is claimed by the appellant/defdt. No. 7 that the portion of the land under his possession and ownership was transferred in favour of Muskundo Singh, no such document of transfer was forthcoming nor any reliable evidence was led to prove any such transfer. Therefore, it cannot be said that Muskundo Singh is a necessary party under the facts and circumstance of the case or that in his absence, no effective order could be passed. Question is decided accordingly.

32. Before parting with the case, I would like to observe that the plaint is not properly drafted and there are some formal defects for not citing dates of accrual of different causes of actions against the different defendants. It is nowhere stated in the plaint in what manner or at what point of time, appellant denied title of the plaintiffs and claimed hostile title, etc. As per relief claimed in the suit a decree for recovery of possession by evicting the defdt. No. 7 may necessitate payment of ad-valorem, Court-fees, etc. etc.

33. However, for the defects, appropriate reliefs may be claimed before appropriate forums, if so advised, in accordance with law. Any such technical defects will not come as an impediment to decide this second appeal. Learned counsel for the respondents/ plaintiffs has referred me to [Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar and Others](#), to submit that hearing of the second appeal is circumscribed by Section 100 of the Code of Civil Procedure. A remand of this case, as suggested by the appellant, in my opinion, will not serve any useful purpose because all means were exhausted to search the original of Ext. A/36 but to no avail.

34. In the result, I find there is hardly any merit in the appeal which stands dismissed. Parties to bear their own costs. Stay order granted earlier stands vacated. Send down LCR without delay.