

(1998) 06 GAU CK 0025

Gauhati High Court

Case No: Civil Revision No. 40/96

Sang Dakpu alias Shri Sangra

APPELLANT

Vs

Smt. Netan Wangmu and Others

RESPONDENT

Date of Decision: June 19, 1998**Acts Referred:**

- Assam Frontier (Administration of Justice) Regulations, 1945 - Regulation 50
- Constitution of India, 1950 - Article 14

Citation: AIR 1998 Guw 117 : (1998) 2 GLT 503**Hon'ble Judges:** V.D. Gyani, Acting C.J.; B. Biswas, J**Bench:** Division Bench**Advocate:** G.N. Sahewalla, A.K. Goswami, P. Bora and S. Murarka, for the Appellant; G.K. Bhattacharjee and B. Chakravorty, for the Respondent**Final Decision:** Dismissed

Judgement

D. Biswas, J.

This is an application u/s 50 of the Assam Frontier (Administration of Justice) Regulation, 1945 read with Article 227 of the Constitution of India, whereby the judgment and order dated 22-11-95 passed by the Deputy Commissioner, Tawang in Civil Case No. T J/90/95 has been challenged.

2. We have heard Shri G.N. Sahewalla, learned counsel for the petitioner and Shri O.K. Bhattacharjee, learned counsel for the opposite party.

3. At the very outset it is considered necessary to spell out the powers of this Court u/s 50 of the Regulation, 1945. Here we may refer to an earlier decision of this Court in Sang Phuntso, Gaon Bura of Jang Village v. Darjee Mindu in (1983) 1 GLR 36, the learned single Judge while interpreting the Rules 37, 38 of the Regulation 1945 observed that the village authorities have certain limited jurisdiction to try some specific cases and no village authority has been conferred powers to decide right, title and interest of immovable property involving determination of complex

disputes including Customary Laws. In addition, this Court in the aforesaid judgment also held that if the subject-matter of the suit is not less than Rs. 500/- or if the suit involves a question of tribal rights or customs or the right to or possession of immovable property, an appeal lies to the High Court. An appeal which lies to the Deputy Commissioner or High Court may be presented to the Asstt. Commissioner who shall, if it is in order and presented in due time, transmit it with records to the appropriate authority. Under Rule 50 of the Regulation, the High Court has also the powers to call for the proceedings of any original case or appeal decided by the Deputy Commissioner and not appealable under the Regulation and may pass such order as may be considered necessary.

4. It was further held that in the Regulation, there is no restriction or check imposed upon an appellate authority to review a decision of the inferior Court or authority. Therefore, it must be assumed that the appellate Courts constituted under the Regulation have co-extensive powers with those of the trial Courts or authorities and that they have powers also to review the decision appealed against.

5. After going through the provisions under Rules 37, 38, 40, 49 and 50 and while endorsing the above views expressed by the learned single Judge in Sang Phuntso, Gaon Bura of Jung Village v. Darjee Mindu (supra), this Court is of the opinion that while this petition u/s 50 empowers the High Court to exercise the powers to act as a Court of review only and its powers are co-extensive with those of the trial Courts or the appellate Courts, i.e. the Court of the Deputy Commissioner.

6. The impugned judgment and order passed by the Deputy Commissioner has been challenged on the ground that the decision given by the village council on the basis of village custom has been reversed by the Deputy Commissioner and the case was decided in favour of the claimant/ respondent applying the principles of natural justice. According to the learned counsel for the petitioner, a dispute relating to immovable property is to be resolved on the basis of Customary Laws and, as such, the impugned order cannot be sustained.

7. The learned counsel for the respondent, however, mentioned that where there is a conflict between Customary Laws and the Principles of Natural Justice, the latter will prevail and, from this point of view the judgment impugned in this petition cannot be denounced.

8. To appreciate the above contention of the parties, it is necessary to look into the nature of dispute which is as follows ;--

One late Monlam Norbu belonging to Monpa community of Arunachal Pradesh died leaving five sons, namely (1) Late Lobsang Rinchin, (2) Shri Tsering Tashi, (3) Shri Leki Phuntso, (4) Late Dhondup and (5) Sang Dakpu alias Shri Sangra, the petitioner.

9. According to village custom, the immovable property (Khrai land) is to be apportioned into five equal shares amongst the sons provided they continue to stay

with their parents after their marriage" Further, the sons who abandon their parents and join the family of the wife after marriage are not entitled to any share of Khrai land. The custom further provides, in case the son join the family of his wife after his marriage, he is entitled to a share in the family of his in-laws in lieu of his share in his father's property. Here one of the sons, namely Dhondup, since deceased, joined the family of his wife Smt Netan Wangmu, the respondent, after his marriage and, therefore, according to village custom he is not entitled to the share of his father's property. However, on his death Smt. Netar Wangmu claimed that since Dhondup expired, the share he received from his in-laws according to Customary Laws, has devolved upon her and this share eventually, on her death, will devolve upon their daughters. Her two sons will be deprived of any share on the land of their father both from paternal and maternal side.

10. The village council after hearing both the parties rejected her claim and decided the case in favour of the opposite party Shri Sang Dakpu alias Shri Sangra who was holding over the one-fifth share of Dhondup.

11. The learned Deputy Commissioner, on consideration of the respective pleadings and after hearing the parties, found that great injustice was being caused to the two sons of Dhondup who will eventually become landless and reversed the decision of the village council and allowed the claim of Smt. Nctan Wangmu, the wife of late Dhondup. Further the Deputy Commissioner has also taken into consideration of the fact that Shri Tsering Tashi, another son of late Monlam Norbu who also-joined the family of his wife after marriage was given one-fifth share of his parents property and, as such the village Customary Law cannot be invoked in respect of the property of late Monlam Norbu simply to exclude late Dhondup or his heirs from his share. It is true that a dispute relating to immovable property concerning the Monpas of Arunachal Pradesh is normally to be decided relying on village Customary Laws. But in a family where there has been a departure from the village Customary Laws in respect of one of the co-sharers, in the opinion of this Court, such village Customary Laws cannot be applied to deprive other co-sharers. In our considered opinion the Customary Laws of a particular community should normally get preference to all other systems of jurisprudence, but in a given case where the custom is not being followed in toto and a departure is made in respect of some co-sharers, it cannot be applied with rigidity in respect of others. In such a situation the Principle of Natural Justice will have to be followed in order to ensure justice. In the instant case the order passed by the Deputy Commissioner allowing the claim of the wife of late Dhondup to the extent of one-fifth of Khrai land is in keeping with the Principle of Natural Justice and, therefore, we find no reason to interfere with the impugned judgment.

12. In the result the petition u/s 50 of the Regulation, 1945 is dismissed.

13. The parties are to bear their respective costs.