

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL
CRP(CRP Art. 227) No. 39 of 2016**

Shri Ningombam Shashikumar Singh, aged about 54 years, S/O late N. Manihar Singh of Khungman Okram Chuthek, opposite to Mela Lampak High School, P.O. Singjamei, P.S. Irilbung, Imphal, Imphal East District, Manipur.

... Petitioner

-Versus-

Shri Nameirakpam Sanajaoba Singh, aged about 71 years, S/O late N. Ibochouba Singh of Ningomthong Pebia Pandit Leikai, at present Masjid Road, Paona Bazar P.O. Imphal, P.S. City Police, Imphal West District, Manipur.

... Respondent

-AND-

**IN THE MATTER OF:
Judl. Misc. Case No. 108 of 2016
(Ref:- O.S. No. 1 of 2012/T.S. 109 of 2013)**

Shri Nameirakpam Sanajaoba Singh

... Plaintiff/Petitioner

-Versus-

Shri N. Sashikumar Singh

... Defendant/OP

**B E F O R E
HON'BLE MR. JUSTICE KH. NOBIN SINGH**

For the Petitioner	::	Shri T. Rajendra, Advocate
For the Respondent	::	Shri M. Manglem, Advocate
Date of Hearing	::	25.04.2019
Date of Judgment & Order	::	03-05-2019

JUDGMENT AND ORDER

[1] Heard Shri T. Rajendra, learned Advocate appearing for the petitioner and Shri M. Manglem, learned Advocate appearing for the respondent.

[2] The instant civil revision petition is directed against the order dated 16/07/2016 passed by the learned Civil Judge, Junior Division, Imphal East in Judl. Misc. Case No. 108 of 2016 arising out of OS No.1 of 2012/T.S No. 09 of 2013.

[3.1] Facts and circumstances which have led to the filing of the instant civil revision petition, are that the respondent instituted Original Suit No. 1 of 2012/T.S No. 109/2013 before the learned Civil Judge, Junior Division, Imphal East praying for issuance of a decree for a permanent injunction restraining the petitioner, his men, privies and agents from entering into the suit land or from doing any wrongful act and also for issuing a decree for eviction from the suit land and recovery of possession thereof. In the plaint filed by the respondent, it has been stated that he is the owner of the land under Dag No.1173 and Dag No.1167/1216 while the petitioner is the owner of the land under Dag No.1167 which was purchased by him from Shri Waikhom Imo Singh. The respondent acquired the land under Dag No.1216 by way of inheritance from his father late Shri Nameirakpam Ibochouba Singh who died in the year 1989. Both the lands under Dag Nos. 1216 and 1173 were originally paddy lands but the same had been converted into homestead lands.

[3.2] The petitioner encroached upon his land in Schedule 'A' in a triangular shape which is the suit land and described in Schedule 'B' of the plaint by depositing earth in the suit land without the knowledge and consent of the respondent in the month of December, 2009. On 23/12/2011, the petitioner started constructing a permanent structure in the suit land by making/ erecting RCC pillars. On the southern border of the land under Dag Nos.1216 and 1173, there is a drain having a common path beyond it. Although the land of the petitioner is far away, say, about 100 fts., his unauthorized act of encroachment caused the extension of the petitioner's land upto the drain. The petitioner has no right to occupy the land in Schedule 'B' as aforesaid. The application dated 07/06/2011 of the respondent for demarcation of the land at Schedule 'A' has not been carried out till then.

[4] In the written statement filed by the petitioner, it has been stated that the petitioner's father namely Nameirakpam Ibochouba Singh was never the owner of the land at Schedule 'A' and therefore, the respondent has no right to inherit the same. The original land under Dag No.1167 measuring an area of 1.52 acres was recorded in the name of Smt. Nameirakpam (N) Ibemhal Devi as its owner. During her lifetime, she orally gifted the northern half constituting 0.76 acres to one of her near relative namely Waikhom Imo Singh with the delivery of possession, while the remaining was transferred to the respondent. During the survey operation in and around the year 1975, necessary record correction was done by making 2 (two) separate plots and pattas in favour of Shri Waikhom Imo Singh and

the respondent. While making separate pattas, the concerned authority wrongly recorded the total area of Dag No.1167 as 1.22 acres only instead of 1.52 acres and therefore, the said patta prepared in the name of Shri Waikhom Imo Singh was recorded as 0.61 acres by mistake, even though Shri Waikhom Imo Singh possessed an area of 0.76 acres. The necessary correction was made without any objection and with full knowledge of the respondent about 30 (thirty) years ago. Shri Waikhom Imo Singh transferred the said land under Dag No.1167 to the petitioner in the year, 2005 and the said land was mutated in the name of the petitioner and since the petitioner has been in possession of the land under Dag No.1167, the portion of the land which is described in Schedule 'B' of the plaint and referred to as the suit land of the said suit is very much part of the land of the petitioner.

[5] On the basis of the pleadings of the parties, the learned Civil Judge, Junior Division, Imphal East framed the following issues:

1. *Whether the plaintiff is the owner and possessor of the suit land 'Schedule A' under patta No. 50/136(Old)/147/375/(New) covered by C.S. Dag No. 1173 and whether plaintiff inherited the said suit land 'Schedule A' from his deceased father N. Ibochouba Singh?*
2. *Whether the land covered under C.S. Dag No.1167 under Patta No. 50/136(Old)/146(New) measuring 1.52 acres was recorded in the name of Nameirakpam Ningol Ibemhal Devi as pattadarini. If so, whether she has transferred the northern half portion measuring .76 acre to Waikhom Imo Singh by way of oral gift?*

3. *Whether the survey operation was conducted on the suit land in the year 1975? Whether the concerned authority divided the map of C.S. Dag No. 1167 into two separate plots and pattas one in favour of Waikhom Imo Singh and another in the name of Nameirakpam Sanajaoba Singh?*
4. *Whether there had been any correction made by concerned authority with regard to Dag No. 1167 in the name of Waikhom Imo Singh from the area measuring 0.61 acre to 0.76 acres?*
5. *Whether the defendant purchased the said land measuring 0.76 acre of Dag No. 1167 from the said Waikhom Imo Singh in the year 2005?*
6. *Is there any cause of action of the suit?*
7. *Whether the plaintiff is entitled to the reliefs claimed?*

[6] After the said issues having been framed, the trial was commenced by recording the evidences of the parties. The respondent was examined as the sole witness, while the petitioner and 4 (four) other witnesses were examined as DW Nos.1 to 5 to support his claim. Both the petitioner and the respondent filed certified copies of the trace maps along with the documents while filing the plaint and written statement respectively and both the maps were exhibited as Exhibit A/2 and Exhibit B/5. While the trial of the suit was at the stage of final arguments, the respondent filed an application being Judl. Misc. Case No.106 of 2016, by citing the provisions of Order VI Rules 6 and 7 and Section 151 of CPC, for issuing summons to

the Registrar/ Kanango of the Director of Settlement and Land Records and also to Shri Ch. Tombi Singh, a retired SK of the SDC, Porompat to adduce the evidences. Since the said application being a vague and absurd one lacking clarity and filed with an ill motive at the last stage of the suit, the petitioner contested the same by filing a written objection. However, the learned Civil Judge, Junior Division, Imphal East disposed of the said application vide its order dated 16/07/2016 allowing the prayer made therein.

[7] Being aggrieved by the said order dated 16-07-2016, the instant civil revision petition has been filed on the inter-alia grounds that the said order dated 16-07-2016 was not a speaking and reasoned one; that since the suit was to be decided on the basis of preponderance of evidence as produced by the parties, the impugned order would create doubt and confusion in the trial of the suit; that as the respondent, in his cross-examination, had stated that there was no boundary dispute in respect of lands under Dag Nos. 1167 and 1216, the passing of the impugned order was not called for and that the application was nothing but a dishonest and malafide intention of the respondent to somehow fill up the lacuna of his evidence which would cause a serious prejudice to the petitioner. An affidavit-in-opposition was filed by the respondent contending that the application was filed by him to ascertain the correctness of the areas mentioned in the land records in respect of Dag No.1166 and 1167, as the maps filed them were not similar. There is nothing wrong in the impugned order, when the same was passed with a view to determine as to which one

of the maps, was the correct one. Denying the allegations and assertions made in the affidavit-in-opposition, the petitioner filed a reply stating therein that the application was intended to abuse the process of law. The provisions of law cited in the application were nothing to do with the summoning of witnesses and moreover, the averments made in the application did not form part of the pleadings. Had the same been made part of the pleadings, the petitioner could have been afforded an opportunity to rebut them.

[8] It is not in dispute that in the trial of the suit, the recoding of evidences stood closed sometime back and the suit was at the stage of final argument. According to the respondent, the application was filed for summoning some witnesses to ascertain the correctness of the maps filed by the parties. It may be noted that the certified copies of the maps were filed by the parties along with their plaint and written statement. At that point of time itself, the respondent knew about the similarity or dissimilarity of the maps but nothing had been mentioned about it in his pleadings as contended by the learned counsel appearing for the petitioner. It has further been submitted by the counsel appearing for the petitioner that if the averments made in the application were pleaded in the replication, the petitioner could have got the opportunity to answer it or to file a sur-rejoinder. Even the allegation that the respondent has stated in his cross-examination that there is no boundary dispute in respect of the lands under Dag Nos.1173, 1176 and 1216, has not been categorically or specifically denied by him in the affidavit-in-opposition. If that be the case

[8]

and in the absence of any dispute as regards the boundary, there was no need for summoning the said witnesses at that belated stage. The contention of the learned counsel appearing for the petitioner appears to be correct for the reason that no issue as regards the correctness of the maps, was framed by the Civil Judge, Junior Division which is required to decide only the issues framed by it. Moreover, it may further be noted that it is the bounden duty of the learned Civil Judge, Junior Division to decide the issues framed by it within the bounds of the pleadings unlike the exercise of discretionary power by the High Court or the Hon'ble Supreme Court under the provisions of the Constitution of India for the ends of justice.

[9] In view of the above, the instant civil revision petition is allowed and consequently, the impugned order dated 16-07-2016 passed by the learned Civil Judge, Junior Division, Imphal East in Judl. Misc. Case No.108 of 2016 [Ref: OS No.1 of 2012/ T.S.109 of 2013] is quashed and set aside with no order as to costs.

JUDGE

FR/ NFR

Victoria