

**IN THE HIGH COURT OF MANIPUR  
AT IMPHAL**

**RSA No. 1 of 2018**

Michael Zimik, aged about 53 years, son of Late Z. Philip Siluiwung of Luiyainatong Village, P.O. & P.S. Ukhurul, District Ukhurul, Manipur.

**..... Appellant**

- Versus -

1. Ngathinkhui Shingnaisui, aged about 38 years, s/o Late Ramnam Shingnaisui, by profession, business, resident of Awungtang Village, P.O. & P.S Ukhurul, District Ukhurul, Manipur.
2. Thuingacham Shingnaisui, aged about 30 years, s/o Late Ramnam Shingnaisui, by profession, business, resident of Awungtang Village, P.O. & P.S. Ukhurul, District Ukhurul, Manipur.

**.... Respondents**

**B E F O R E**

**HON'BLE THE CHIEF JUSTICE MR. SANJAY KUMAR**

For the appellant	:	Ms. I. Lenibala, Advocate.
For the respondents	:	Mr. Mark Khapai, Advocate.
<b>Date of Hearing</b>	:	<b>10.05.2022</b>
<b>Date of Judgment &amp; Order</b>	:	<b>17.05.2022</b>

**JUDGMENT AND ORDER**

**[1]** This second appeal, under Section 100 CPC, arises out of the concurring judgment dated 06.09.2017 of the Ld. District Judge, Imphal East, in Civil Appeal No. 1 of 2017, confirming the judgment dated 09.12.2016 of the Ld. Civil Judge (Junior Division), Imphal East, in Original Suit No. 1 of 2015/O.S.(Dcl.) No. 19 of 2015.

Twice unsuccessful, the plaintiff in the suit is the appellant. He filed the said suit for a declaration that he was the owner of the land described in Suit

Schedule B and seeking a permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment thereof.

**[2]** The plaintiff's case was as follows: Ngazek Zimik, his grandfather, was the owner and possessor of the Suit Schedule A hill land situated at Awungtang Village. Suit Schedule B land is a portion of Suit Schedule A hill land, lying towards the west, which is a little larger than half of the entire land. On the death of Ngazek Zimik, his son, Z. Philip Siluiwung, inherited the Suit Schedule A land. Around the year 1982, one S. Shingnaisui tried to encroach upon the southern portion of the suit land but he was prevented from doing so. S. Shingnaisui, however, sold the suit land to the defendants, his relations. The plaintiff got married in the year 1993 and at that time, his father, Z. Philip Siluiwung, gifted the Suit Schedule - A land to him. The plaintiff claimed that he constructed his house thereon and was in possession. He further claimed that he came away to Luiyainaotang Village leaving the Suit Schedule A land in the care of his cousin, Z. Wungmayum. While so, the defendants started digging the suit land in March, 2015, constraining him to institute the suit.

**[3]** The case of the defendants: They are the absolute owners of the suit land, having purchased the same from late S. Shingnaisui, the eldest son of late S. Maham, who was none other than their paternal grandfather. The present suit was barred by the principle of *res judicata* as the plaintiff's father had earlier filed Civil Suit No. 13 of 1962 against late S. Maham, claiming to be the owner of this very same land, and the said suit was dismissed, by order dated 29.08.1967, holding that the plaintiff's father had failed to prove his title. The plaintiff's father thereupon filed Civil Appeal No. 65 of 1967 before the District Judge, Manipur, and the same was dismissed on 09.09.1969. Second Appeal No. 37 of 1969 was thereupon filed by the plaintiff's

father before the Judicial Commissioner for Manipur but this appeal was also dismissed as not pressed, by order dated 11.08.1971.

**[4]** On the basis of these rival pleadings, the Trial Court settled the following issues for determination:

- i. Whether the suit is barred by *res judicata*?
- ii. Who has possession of the suit land?
- iii. Whether the grandfather of the plaintiff was the original owner of the suit land?
- iv. Whether the plaintiff is the owner of the suit land?
- v. Whether there is cause of action for the suit?
- vi. Whether the plaintiff is entitled to the reliefs claimed?

**[5]** The plaintiff examined 4 witnesses, including himself, and marked Exs. A/1 to A/6 in evidence. The defendants examined 4 witnesses, including themselves, and marked Exs. B/1 to B/7. Thereupon, the Trial Court considered Issue No. 1 first, viz., whether the suit was barred by *res judicata*, and held that it was so. Noting that the said issue was not taken up as a preliminary issue, the Trial Court still opined that the suit was amenable to disposal on that issue alone under Order 14 Rule 2(2) CPC, without a decision on the other issues. The Trial Court accordingly dismissed the suit with costs on the sole ground that it was barred by *res judicata*.

**[6]** Aggrieved thereby, the plaintiff filed Civil Appeal No. 1 of 2017 before the Ld. District Judge, Imphal East. However, by judgment dated 06.09.2017, the Appellate Court held that no grounds were made out to disturb the findings of the Trial Court and dismissed the appeal. Hence, the present Second Appeal by the plaintiff. At the time of admission of this appeal on 05.08.2019, the following substantial questions of law were framed for consideration: -

- (a) Whether the Hon'ble Appellate Court, Imphal East, has failed to appreciate both facts and law while passing the impugned Judgment and Decree dated 06.09.2017 and as such the impugned Judgment and Decree is liable to be quashed;
- (b) Whether the Hon'ble Appellate Court was justified to uphold the impugned Judgment and Decree of Ld. Trial Court below without considering the order issues No.2 to 6 and also without considering the evidence on record, both oral and documentary evidences produced by the parties that too also in violation of Order XIV Rule 2 of C.P.C., 1908;
- (c) Whether the Ld. Appellate Court below was justified in upholding the Judgment and Decree dated 09.12.2016 of the Ld. Trial Court that the Appellant has failed to contradict the claims of the Respondents and also failed to establish that the suit was not barred by res-judicata.
- (d) Whether the Ld. Appellate Court below was justified in upholding the Judgment and Decree dated 09.12.2016 of the Ld. Trial Court on the ground that the Appellant has not denied the answer the claim by not filing any subsequent pleading. If it is the case why the Ld. Trial Court has failed to dispose of the suit on admission. The Ld. Appellate Court should not have been observed such non filing of subsequent pleading.
- (e) Whether the Ld. Appellate Court below was justified in not deciding the Issues Nos. 2 to 6 while deciding impugned Judgment and Decree dated 09.12.2016. The Ld. Appellate Court ought to have been remanded the suit with proper direction to decide all the issues as mandated under Order 41, Rule 23A C.P.C., 1908 for want of decision of the issues No. 2 to 6.
- (f) Whether the Ld. Appellate Court below has failed to exercise jurisdiction conferred by law in her failure to re-appreciate the evidence on record and re-consider the issues while passing impugned Judgment and Decree dated 06.09.2017.
- (g) Whether the Ld. Appellate Court below has failed to exercise jurisdiction conferred by law in her failure to examine that who is in possession of the suit land?
- (h) Whether the Ld. Appellate Court below has committed error in law for not deciding the appeal in merit in terms of Rule 24 of Order XLI of C.P.C.,1908 when the evidence of the parties was on record to decide the matter in controversy.

**[7]** Heard Ms. I. Lenibala, learned counsel for the appellant; and Mr. Mark Khapai, learned counsel for the respondents.

**[8]** Parties shall hereinafter be referred to as arrayed in the suit.

**[9]** Ms. Lenibala, learned counsel, would argue that the Courts below erred in not rendering judgment on all the issues framed. She would contend that the

principle of *res judicata* would not be applicable, as the defendants are not the direct descendants of late S. Maham. *Per contra*, Mr. Mark Khapai, learned counsel, would argue that the Trial Court was justified in applying Order 14 Rule 2(2)(b) CPC and pronouncing judgment on the first issue alone. He would assert that Section 11 CPC was squarely applicable to the case on hand and, therefore, the suit of the plaintiff was barred by the principle of *res judicata*.

**[10]** It is not in dispute that Civil Suit No. 13 of 1962 was filed before the Ld. Munsiff, Ukhrol, by Z. Silui and Z. Kuisang, the plaintiff's father and paternal uncle respectively, against S. Maham for a declaration that they were the owners of the suit scheduled land therein. By judgment dated 29.08.1967, the Ld. Munsiff held that the suit scheduled land was in the hands of the forefathers of S. Maham and that Z. Silui and Z. Kuisang had failed to prove that they were the owners. The Ld. Munsiff accordingly dismissed the suit. In appeal, in Civil Appeal No. 65 of 1967, the Ld. District Judge, Manipur at Imphal, confirmed that the evidence on record proved that S. Maham was in possession of the land and that Z. Silui and Z. Kuisang had failed to prove their ownership and possession. Second Appeal No. 37 of 1969 filed before the Judl. Commissioner for Manipur by Z. Silui and Z. Kuisang was not pursued.

**[11]** It is not in dispute that the suit land in the present suit is the same as the suit scheduled land in Civil Suit No. 12 of 1962 filed before the Ld. Munsiff, Ukhrol. Admittedly, the plaintiff in the present suit is the son of Z. Philip Siluiwung @ Z. Silui, the first plaintiff in Civil Suit No. 13 of 1962. It is also not in dispute that the son of late S. Maham, viz., S. Shingnaisui sold the suit land to the present defendants. The suit land in the present suit is comprised in Schedules A & B. Schedule A is the larger

extent, being a piece of hill land in Awungtang Village. Schedule B land is stated to be the western portion of Schedule A land.

**[12]** The substantial question of law that arises for consideration before this Court, in essence, is whether it was necessary for the Trial Court to pronounce judgment on all the issues, if no preliminary issue was framed initially.

**[13]** Order 14 CPC deals with settlement of issues and determination of the suit on issues of law or on issues agreed upon. Order 14 Rule 2 CPC reads as under-

2. Court to pronounce judgment on all issues:

(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to-

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

**[14]** It may be noted that Order 14 Rule 2(1) CPC is general in nature and provides that the Court shall pronounce judgment on all issues, notwithstanding the fact that the case may be disposed of on a preliminary issue. However, this is subject to the provisions of Order 14 Rule 2(2) CPC. In effect, Order 14 Rule 2(2) CPC carves out an exception to Order 14 Rule 2(1) CPC, by providing that where issues of law and of fact arise in the same suit and the Court finds that the suit, or any part thereof, may be disposed of on an issue of law only, it may try that issue first. Such issue must either relate to the jurisdiction of the Court or it must relate to a bar to the suit created by any law for the time being in force. The provision goes on to state that, for this

purpose, the Court may postpone settlement of other issues until after that issue of law has been determined and may then deal with the suit in accordance with the decision on that issue. A plain reading of this provision clearly manifests that if the Trial Court, having found an issue of law either relating to its jurisdiction or to a bar to the suit created by any law, may first decide that issue and settlement of other issues would depend upon its decision on that issue. Such an issue of law would ordinarily be tried as a preliminary issue before the trial itself as it would not require evidence, being purely an issue of law.

In **Major S.S. Khanna vs. Brig. F.J. Dillon [AIR 1964 SC 497]**, the Supreme Court observed that the jurisdiction to try an issue of law under Order 14 Rule 2 CPC may be exercised only where, in the opinion of the Court, the whole suit or a part thereof may be disposed of on the issue of law alone as the CPC does not confer jurisdiction upon the Court to try a suit on mixed issues of law and fact as preliminary issues. *Per* the Supreme Court, normally all issues in a suit should be tried by the Court and not doing so, especially when the decision on issues even of law would depend upon the decision on issues of fact, would result in a lop-sided trial of the suit.

Thereafter, in **Ramesh B. Desai vs. Bipin Vadilal Mehta [(2006) 5 SCC 638]**, the Supreme Court observed that, though there was a slight amendment in the language of Order 14 Rule 2 CPC in the year 1976, the principle enunciated in **Major S.S. Khanna** (*supra*) still holds good and there could be no departure from the principle that the CPC does not confer jurisdiction upon the Court to try a suit on mixed issues of law and fact as preliminary issues and where the decision on an issue of law depends upon an issue of fact, it could not be tried as a preliminary issue.

In **Thiruvambadi Rubber Co. Ltd. vs. N.K. Damodaran Nair and others [AIR 1984 Kerala 191]**, the Kerala High Court observed that Order 14 Rule 2(2) CPC confers jurisdiction to try only an issue of law as a preliminary issue, provided that such issue either related to the jurisdiction of the Court or to a bar to the suit created by any law for the time being in force. It was noted that there may be inherent lack of jurisdiction or territorial jurisdiction or pecuniary jurisdiction or a suit may be barred by *res judicata* or limitation and that all cases involving lack of jurisdiction would depend either on a pure question of law or a mixed question of law and fact. The Court concluded that upon a careful consideration of Order 14 Rule 2 CPC, it was clear that only an issue raising a pure question of law, falling either under clause (a) or clause (b) of sub-rule 2 of Rule 2 of Order 14 CPC, where recording of evidence is not necessary, can be tried as a preliminary issue, as such an issue of law would go to the root of the suit and would be capable of being decided without any evidence.

**[15]** Applying these principles to the case on hand, it may be seen that the Trial Court did not take up any preliminary issue before the trial but decided to treat Issue No.1 as a preliminary issue after completion of evidence. Merely because the trial stood concluded, it did not preclude the Trial Court from taking recourse to Order 14 Rule 2(2)(b) CPC and deciding an issue of law in the first instance. Taking it up as a preliminary issue before the trial is only a matter of convenience and to save time for all concerned and no more. Failing to do so at that stage would not posit a bar to adopting that procedure even after conclusion of the trial.

The Trial Court took up the issue as to whether the present suit was barred by Section 11 CPC and the principle of *res judicata* was applied by perusal of the earlier judgments in the first round of litigation between the predecessors-in-

interest of the parties to the present suit and no further evidence was really necessary for that purpose, though it was available. Therefore, this was purely an issue of law falling under Order 14 Rule 2(2)(b) CPC. Having pronounced its decision on that issue in favour of the defendants and against the plaintiff, the Trial Court was justified in not pronouncing judgment on the other issues. This was in keeping with the procedure contemplated by law and the Trial Court did not err in stopping short of rendering findings on all the issues framed, even though the suit proceedings stood concluded by then in all respects.

**[16]** As regards the second contention of Ms. I. Lenibala, learned counsel, to the effect that Section 11 CPC would have no application to the case on hand, it would be apposite to note the language of Section 11 CPC. This provision, to the extent relevant, is extracted hereunder:

‘Section 11. *Res judicata* - No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court...’

**[17]** In **City Municipal Council, Bhalki vs. Gurappa [(2016) 2 SCC 200]**, the Supreme Court reiterated the legal principles laid down earlier in **Syed Mohd. Salie Labbai and others vs. Mohd. Hanifa [(1976) 4 SCC 780]** that the following conditions must be proved for the principle of *res judicata* to be applied:

- i. that the litigating parties must be the same;
- ii. that the subject-matter of the suit also must be identical;
- iii. that the matter must be finally decided between the parties; and
- iv. that the suit must be decided by a Court of competent jurisdiction.

Therefore, the Courts below correctly noted and applied the conditions that need to be satisfied for the principle of *res judicata* to be attracted. Trite to state, *res judicata* operates not only against the parties to the former decision but also their privies, i.e., persons claiming under them. The object underlying this principle is that if a proceeding originally instituted is proper, the decision therein would be binding on all such persons on whom that right or interest devolves.

**[18]** In the present case, there is no dispute that the suit land in the present suit was the suit land in Civil Suit No. 13 of 1962 filed by the plaintiff's father and uncle. Thus, there can be no dispute that the plaintiff is claiming through one of the plaintiffs in Civil Suit No. 13 of 1962, being his son. According to the defendants, late S. Maham, the defendant in Civil Suit No. 13 of 1962, was their grandfather and his eldest son, S. Shingnaisui, sold them the present suit land. The contention of Ms. I. Lenibala, learned counsel, is that only the direct descendant of a party in the earlier suit would be bound by the principle of *res judicata*. This contention is untenable on the face of it. The language of Section 11 CPC does not commend itself to such an interpretation. All that the provision requires is that the former suit and the present suit should either be between the same parties or between parties under whom they or any of them claim, litigating under the same title. Therefore, the successor-in-interest of a party to a former suit would be equally bound by the decision in that suit, owing to the principle of *res judicata*. Apart from the fact that the defendants claim to be the grandsons of late S. Maham, the defendant in Civil Suit No. 13 of 1962, they also qualify as successors-in-interest, having purchased the suit land from S. Shingnaisui, the eldest son of late S. Maham. There is no dispute as to the competence of the Court in the first round of litigation between the predecessors-

in-interest of the present parties. That apart, there is no dispute that both parties are litigating under the same title. In effect, the principle of *res judicata* squarely applies and the present suit stood barred thereby.

**[19]** On the above analysis, it is clear that both the Courts below correctly appreciated the law and more particularly, the provisions of Section 11 CPC and Order 14 Rule 2(2)(b) CPC. The judgment of the Trial Court and the confirming judgment of the Appellate Court therefore do not brook any interference in law. The substantial questions of law framed in this appeal are accordingly answered in favour of the respondents herein and against the appellant.

The second appeal is dismissed.

In the circumstances, there shall be no order as to costs.

**CHIEF JUSTICE**

**FR/NFR**

*Indrajeet*