

Between Kinley and Karchung

(Operative part of the Judgment)

(Translation)

Judgment No. SC (Hung-18-18)

IN THE SUPREME COURT OF BHUTAN

Kinley.....Appellant

(Represented by

Lhatu)

Versus

Karchung.....Respondent

(Represented by

Karma Tshultrim)

1. BACKGROUND

The appellant filed a civil suit in 2014 before the Wangduephodrang district court in the matter of land dispute contending that the Wangduephodrang district court passed the judgment no. (1247)99/1051 dated 16/12/1999, wherein, in accordance to the judgment, the ownership title of 21.73 acres of land—19.7 acres from Tashilakha (Pangzhing) and 2.66 acres out of 3.66 acres from Tashilakha (Kamzhing) shall be transferred to the respondent. However, the Wangduephodrang district court in its subsequent order no. (1247/2000/3265) dated 03/01/2000 stated that instead of 21.73 acres as stipulated in the judgment, the total land to be transferred to the respondent is 19.53 acres of land –19.7 acres from Tashilakha (Pangzhing) and 46 decimal out of 3.66 acres from Tashilakha (Kamzhing). However,

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appellant contended that without his knowledge, the respondent had transferred the ownership title of all 3.66 acres of land from the latter part. The Wangduephodrang district court dismissed the case on the ground that the matter was already adjudicated by the Wangduephodrang district court in 1999 and ordered the enforcement based on earlier judgment. Appellant appealed the case before the High Court in 2016 but the High Court upheld the lower court's decision and dismissed the appeal petition. Aggrieved by the Judgment No. (HC-16-243) dated 06/09/2016 rendered by the High Court, the appellant filed an appeal petition before this Court and it was accordingly registered on 13/11/2017 under Registration No. (Aa-17-39).

8. COURT FINDINGS

The Court in accordance with Section 110 of the Civil and Criminal Procedure Code of Bhutan, 2001 has given careful consideration of parties' submissions, judgments of the lower courts, and the reports from the relevant agencies, hereby, outlines the court findings as follows:

- 8.1. The appellant contends that the Wangduephodrang district court passed the judgment no. (1247)99/1051 dated 16/12/1999. Wherein, in accordance to the judgment, the ownership title of 21.73 acres of land—19.7 acres from Tashilakha (Pangzhing) and 2.66 acres out of 3.66 acres from Tashilakha (Kamzhing) shall be transferred to the respondent. However, the Wangduephodrang district court in its subsequent order no. (1247/2000/3265) dated 03/01/2000 stated that instead of 21.73 acres as stipulated in the judgment, the total land to be transferred to the respondent is 19.53 acres—19.7 acres from Tashilakha (Pangzhing) and 46 decimal out of 3.66 acres from Tashilakha (Kamzhing). However, the appellant contends that respondent had transferred the ownership title of all 3.66 acres of land from the latter part without his knowledge, thereby, amounting to total of 21.73 acres. Therefore, the appellant prayed before the court for the reinstatement of 3.20 acres from the respondent. The Court while examining finds: firstly, although as per the judgment of

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Wangduephodrang district court, the respondent is supposedly entitled to 21.73 acres from the appellant, however, the court record maintained by Wangduephodrang district court shows that the judgment was not enforced to that effect since the court passed the subsequent order.

Secondly, the Wangduephodrang district court issued subsequent order no. (1247/2000/3265) dated 03/01/2000 to the director of land registration, Department of Survey then (now the National Land Commission) stating that instead of 21.73 acres as stipulated in the judgment, the land to be transferred to the respondent is 19.53 acres—19.7 acres from Tashilakha (Pangzhing) and 46 decimal from Tashilakha (Kamzhing). Further, the Wangduephodrang district court in its order to the Department of Survey stated that the ownership of remaining land of 3.20 acres under Thram no. (12) shall be merged with Thram no. (20) owned by appellant's mother Lhaden. To which, neither of parties have appealed against the order.

Thirdly, the letter vide No.(1118) dated 05/01/2000 from Assistant Secretary of the Department of Survey was issued to the Wangduephodrang Dzongkhag administration for the enforcement of Wangduephodrang district court's subsequent order, and at that point of time, neither of the parties have objected the enforcement of the court order nor appealed.

8.2. Furthermore, the National Land Commission ('NLC') secretariat letter no. (002489) dated 07/09/2017 sent to this Court states that, although, in accordance with the judgment of Wangduephodrang district court, the ownership title of 19.7 acres from Tashilakha (Pangzhing) and 2.66 acres out of 3.66 acres of land from Tashilakha (Kamzhing) shall be transferred to the respondent. However, the Wangduephodrang district court in its subsequent order no. (1247/2000/3265) dated 03/01/2000 stated that instead of 21.73 acres, the total land to be transferred to the respondent is 19.53 acres. Therefore, the Department of Survey in compliance with the subsequent order

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no. (1247/2000/3265) dated 03/01/2000 of Wangduephodrang district court transferred the ownership title of 19.53 acres of land to the respondent under Thram no, (356) –19.7 acres from Tashilakha (Pangzhing) and 46 decimal from Tashilakha (Kamzhing). And also, the ownership title of remaining land under Thram no. (12) measuring 3.20 acres was merged with Thram no. (20) owned by appellant's mother Lhaden.

However, during the cadastral survey in 2000, it was found that the land measuring 3.20 acres under Thram no. (20), Plot No. K9/22NW owned by appellant's mother Lhaden was under forest cover and moreover, there was no evidence that the land was transferred to the respondent. Later when the new Thram was issued, the land measuring 3.20 acres was remarked as forest, hence, under government forest. Therefore, in accordance with the Guidelines on the New Sathram Compilation, 1998, only in the case of land acquisition for the purpose of road constructions, building schools and hospitals, and for other state purposes, the land owner is entitled for the compensation from the government. Since the appellant neither used the land for any purposes including cultivation nor constructed the house. As a result, it was remarked as government forest. Therefore, the appellant is not entitled for the compensation from the government. However, out of 3.20 acres of land, the appellant was substituted with 1.34 acres from Kothakha (Kamzhing) and Thengpakha by the Department of Survey, but as for the appellant's claim for the remaining 1.86 acres is beyond the prerogatives of this Court to grant.

Similarly, the respondent's prayer to upheld the judgment no. (Wangduephodrang Court 1247)99/1051 dated 16/12.1999 rendered by Wangduephodrang district court and the claim of 21.73 acres of land from the appellant is dismissed due to application of principle of *estoppel*. Section 155 of the Civil and Criminal Procedure Code of Bhutan states that, "*a party is prevented by his/her own act from claiming a right to the detriment of other party who was entitled to rely on such conduct and has acted*

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accordingly.” Moreover, the Wangduephodrang district court after rendering the judgment, it issued a subsequent order no. (1247/2000/3265) dated 03/01/2000 stating that instead of 21.73 acres as stipulated in the judgment, the land to be transferred to the respondent is 19.53 acres. At that point of time, the respondent neither raised the objection nor appealed to the court but acted based on court order. Hence, the respondent’s claim over 21.73 acres of land is dismissed by invoking principle of *estoppel* as enshrined under the Civil and Criminal Procedure Code of Bhutan.

8.3. Hence, the judgments of lower courts are hereby reversed and the appellant shall be entitled to litigation cost of Nu. 45,000/- (forty five thousand) which he deposited at the revenue section of this Court vide receipt no. (40265) dated 26.01.2015.

9. DECISION

This Court after granting full opportunity and consideration to all the submissions of the appellant and respondent decides as follows:

9.1. Giving effect to the report vide no. (002489) submitted by the NLC to this Court in accordance with Section 4 (a) and Section 46 (a) and (b) of the Evidence Act of Bhutan, 2005, the Court rules that respondent is entitled to 19.53 acres of land— 19.7 acres from Tashilakha (Pangzhing) and 46 decimal out of 3.66 acres from Tashilakha (Kamzhing). Regarding remaining balance of 3.20 acres, which according to the NLC report states that out of 3.20 acres of land, 1.34 acres has already been substituted in the name of appellant’s mother Lhaden at Kothakha (Kamzhing) and Thengpakha and for that, this Court have no comments on the substitution made by the NLC. However, the remaining balance of 1.86 acres out of 3.20 acres is not acquired by the government, but it was neither used for any purposes including cultivation nor constructed the house by the appellant and later turned into forest, which now falls under government forest. Thus, in accordance with Section 32.3 of the Guidelines on the New Sathram Compilation, the land is treated as forest. Hence,

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the judgments of lower courts are reversed as per Section 111 (b) of the Civil and Criminal Code of Bhutan.

9.2. In accordance with the principle of *estoppel* as enshrined under Section 155 of the Civil and Criminal Code of Bhutan, the claim made by the respondent for 21.73 acres from the appellant is hereby dismissed and he is accordingly entitled to 19.53 acres, the ownership of which has already been transferred between 2000-2014.

9.3. In accordance with Section 111 (b) of the Civil and Criminal Code of Bhutan, this Court through its rulings has reversed the judgments of the lower courts, therefore, the Court orders that the litigation cost of Nu. 45,000/- (forty five thousand) deposited by the appellant at the revenue section of this Court vide receipt no. (40265) dated 26.01.2015 as per Section 97 of the Civil and Criminal Code of Bhutan be handed back to the appellant.

COURT ORDER

In accordance with Section 96 of the Civil and Criminal Procedure Code of Bhutan, the Court granted full opportunity to the parties to make their submissions by way of written depositions, documents on record, and the oral arguments. All their submissions were given most careful consideration. Therefore, the Court considering their submissions both in written and oral, and documents on record, the Court orders the NLC to coordinate the registration of ownership title of 19.53 acres of land—19.7 acres from Tashilakha (Pangzhing) and 46 decimal from Tashilakha (Kamzhing) to the respondent in accordance with the NLC Report vide no. (002489) dated 07/09/2017.

Thirdly, after transferring 46 decimal out of 3.66 acres of land from Tashilakha (Kamzhing), although, the remaining land of 3.20 acres is now under forest cover, the NLC has granted 1.34 acres as substitution by transferring it to appellant's mother Lhaden and for that, this Court have no comments on the substitution made by the NLC, but as for the claims for

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remaining 1.86 acres out of 3.20 acres of land by the appellant is hereby dismissed as reasoned above.

Non-compliance of orders as enumerated in this judgment from either of the parties may result in finding civil and criminal sanctions in accordance with Sections 104 and 107 of the Civil and Criminal Procedure Code of Bhutan.

Issued under the hand and seal of this Court on the twenty first day of sixth month of earth male dog year corresponding to the third day of the eighth month of two thousand and eighteen.

(Tshering Wangchuk)

The Chief Justice of Bhutan

(Kuenlay Tshering)

Justice

(Rinzin Penjor)

Justice

(Tashi Chhozom)

Justice

(Norbu Tshering)

Justice