Chitui Naga Vs. Onhen Kuki

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Court : Guwahati

Decided On : Sep-16-1983

Judge : K.N. Saikia, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Sections 100 - Order 1, Rules 1 and 3; Specific Relief Act, 1963 - Sections 34

Appeal No. : Second Appeal No. 26 of 1973

Appellant : Chitui Naga

Respondent : Onhen Kuki

Advocate for Def. : T. Bhubon Singh, Adv.

Advocate for Pet/Ap. : A. Nilmani Singh, Adv.

Disposition : Appeal dismissed

Judgement :

K.N. Saikia, J.

1. This defendant's second appeal is from the judgment and decree of the District Judge, Manipur dismissing the appeal and upholding the trial Court's judgment decreeing the suit.

2. The present respondent, Shri Onhen Kuki, Chief of Chalva Village, instituted Original Suit No. 7 of 1971 impleading the present appellant, Shri Chitui Naga, Gangbura of Tamah village stating that the plaintiff's village as well as the defendant's village are old villages and there was and still now exists a boundary line called Govakom alias Sonobuh nullah which is also called Charenggiu by the Nagas and that the scheduled land belonged to his villagers and the defendant illegally and without authority prevented his villagers from cutting fire-wood and threatened them claiming the land to have belonged to the defendant's village, Tamah; with a prayer for declaration that the plaintiff is the owner of the land as given in the schedule to the plaint; and for any other relief/reliefs as the Court deems proper.

3. The defendant in his written statement denied the plaintiff's averments and claimed the land to have belonged to his village, a fact which, according to him, was earlier decided in Civil Case No, 7 of 1930-31 of the Court of the S. D. O., Tamenolong, which was between Samthingng Khullakpa of Tamah village as plaitniff and Manglen Chief of Chalva as defendant, deciding that Charenggiu was the original boundary between the two villages.

4. Amongst others, the following issues were framed on the basis of the pleadings:

'(4) Whether Charenggiu Nallah is the same as Govakom alias Sonobuh Nallah?

(5) Whether the plaintiff has any right or title over the suit land?

(6) Is the suit land in possession of the plaintiff?

(7) Does the suit suffer from defect of parties?

(8) Is the suit hit by Section 34 of the Specific Relief Act?

(9) Is the suit maintainable in the present form?

(10) Is the plaintiff entitled to the Relief as claimed?'

5. At the trial the plaintiff examined fight witnesses including himself as P. W. 8 and proved one exhibit, Ext. A/1 the order dated 15-6-1930 in Civil Case No. 7/30-31, while the defendant examined five witnesses including himself as D. W. 5.

6. The second Subordinate Judge, Manipur, who tried the suit, found that the plaintiff is the Chief of Chalva village; that Govakom and Charenggiu are the same stream, the Kukis calling it Govakom and the Nagas Charenggiu, and the land to the north of it thus included in Chalva village; that Boljang and Govaliphai are the village machet within the suit land; that the plaintiff and his villagers have beer) possessing and enjoying the suit land since before, that suit is not hit by Section 34 of the Specific Relief Act; and that the plaintiff is entitled to the reliefs claimed by him. The suit has accordingly been decreed.

7. Aggrieved, the defendant preferred an appeal being Civil Appeal No. 103 of 1971 in the Court of the District Judge, Manipur which took up Issues Nos. (7), (8) and (9), which the trial Court observed not to have been pressed and by impugned judgment and order held that the suit is not bad for non-joinder of necessary parties; that the suit is not hit by the proviso to Section 34 of the Specific Relief Act; that both the words 'Charenggiu' and 'Govakom' convey the same meaning and thus Govakom formed the southern boundary of Chalva village and the villagers thereof possessed the suit land, and accordingly the appeal has been dismissed with costs. Hence this second appeal.

8. Mr. A. Nilmani Singh, the learned counsel for the appellant, urges, inter alia, (i) that the suit is bad for nonjoinder of necessary parties; (ii) that the suit is hit by the proviso to Section 34 of the Specific Relief Act; and (iii) that the findings of the learned Courts below are perverse, and, as such, liable to be set aside in this second appeal.

9. Mr. T. Bhuban Singh, the learned counsel for the respondent, counters submitting that the dispute in the suit being about the boundaries between the plaintiff's village and the defendant's village, both the plaintiff and the defendant being Chiefs of the two villages, the villagers of either of the villages need not have been impleaded and the suit, therefore, does not suffer from defect of parties; that the suit being confined to the dispute about the boundaries between the two villages, each having its own village land owned by its Chief, a mere declaration of the title would be enough as such as a declaration itself would deter the villages from claiming any right over land across the boundaries and as such the suit is not hit by the proviso to Section 34 of the Specific Relief Act; and that the concurrent findings of fact are arrived at by both the learned Courts below on the basis of the evidence oa record those findings are not liable to be disturbed in this second appeal.

10. On the question of non-joinder of necessary parties Mr. A. Nilmani Singh's contention is that the Chief himself is not the sole owner of the entire village land. tHE villagers awn them in severally, The plaintiff therefore, according to the counsel, should have either joined all the villagers as plaintiffs or should have obtained permission to sue in a representative capacity under Order 1, Rule 8, C. P. C. He should have also impleaded the villagers of the defendant's village as defendant. The non-joinder of the villagers who are necessary parties acceding to him, is fatal to the suit.

11. The law as to who are necessary and proper parties is well settled. As was ruled in Udit Narain Singh v. Board of Revenue, AIR 1963 SC 786, a necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. In the instant case the plaintiff as Chief of Chalva claims his right over the suit land and the Chief of Tamah denies that claim and claims the suit land for his village. In this dispute the rights of the individual villagers in either of the villages would be immaterial The decision in the suit would under the system of their village organisation ipso facto be binding on the viliagers. In Ext. A/1 also it is seen that the dispute was between the Chiefs of the two villages and individual villagers did not figure. Under the above facts and circumstances the concurrent finding of the Courts below that the suit is not bad for defect of parties, has to be upheld.

12. Under Section 34 of the Specific Relief Act any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief; Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so. Mr. A Nilmani Singh contends that in the instant case the plaintiff, beisdes the relief of declaration, should have asked for the relief of confirmation of possession and of injunction restraining the defendant's villagers from interfering with the plaintiff's enjoyment of the suit land since no such further relief has been prayed, no declaration should be made and he relies on Jugraj Singh v. Jaswaat Singh, AIR 1971 SC 761 and Amma Shah v. Ismail Shah, AIR 1972 J&K; 79. In Jagraj Singh (supra) in the suit for declaration that the defendants were neither owners of the land nor they had right to get the name as per certain order of the S. D. O. acting as Collector, the plaintiff neither asked for cancellation of the order nor for any injunction, two of the reliefs which they were entitled to ask in the case in addition to the declaration, it was held that the suit was hit by Section 42 of the Specific Relief Act. The facts of the instant case are entirely different, inasmuch as in the instant case both the parties are Chiefs of the villages and the declaration either way would bind the villagers of both the villages. There was thus no need for any injunction in restrain the individual villagers. In Amma Shah (supra) it has been held that in a suit for declaration of title simpliciter when right or title to such property is denied by another person the court has the power to pass a decree for declaration in its discretion. In such a suit the plaintiff need not ask for any further relief. But in a case where the plaintiff seeks a mere declaration of his title it is doubftul if he can ask the court to grant him an interim relief of temporary injunction in his favour if he does not allege any apprehension of interference by the defendedt. This case clearly does not support the contention of Mr. Singh.

13. The trial Court in the instant case held that as the possession is with the plaintiff and his villagers, the question of the suit being hit by Section 34 of the Specific Relief Act does not arise and the suit is maintainable in the present form. The lower appellate Court held that in this case the plaintiff has claimed himself to be in possession and he has sought a mere declaration on the basis of the title and if he is found in possession and owner of the suit land such a declaration can be granted because in such circumstances no consequential relief is necessary and the C6urt relied on AIR 1930 Oudh 441 (Paschaud v. Emma Bertha Paschaud). In Naoribam Bira Singh v. Leirenjao Singh, AIR 1958 Manipur 38, it has been held that where the plaintiff whose title is denied by the defendant is out of possession and the defendant is in possession, the further relief would be recovery of possession and a suit for a declaration of title would not be maintainable unless the plaintiff prayed for possession also. A fortiori where the plaintiff is in possession further prayer for possession would be unnecessary. In Mt. Komal v. Gurcharan Prasad, AIR 1938 All 242, it was clearly held that when the plaintiff is in possession, a suit for bare declaration of title is competent. It is sufficient if the plaintiff has such possession as the nature of the property permits. When the defendant is not in possession and possession cannot be decreed against him, possession need not be asked for as a consequential relief, as was held in Sunder Singh v. Sunder Singh, AIR 1938 Lahore 63 (Sic), Malaiyya Pillai v. Perumal Pillai, (1913) ILR 36 Mad 62 and Mt Imam Bibi v. Abdul Rahman, AIR 1936 Lah 929. It was also held in Pratap Narain Pas v. Shri Krishna Das, AIR 1948 Pat 28 that for removal of cloud on title, where the plaintiff is in possession and there is

interference short of dispossession, it is competent for him to ask only for a declaration simpliciter. In view of the above decisions the findings of the Courts below cannot be held to be erroneous.

14. The question may be looked into from another angle. It is common knowledge that the provision of Section 34 of the Specific Relief Act has its origin in the fact that it was not a practice in England for courts to make declarations of rights except as introductory to other relief which they proceeded to administer. Mere declaratory decrees were innovations which first obtained authoritative sanction by Section 50 of the Chancery Procedure Act, 1852 which ran thus:

'No suit shall be open to objection on the ground that a merely declaratory decree or order is sought thereby and it shall be lawful for the civil court to make binding declarations of right without granting consequential relief'.

This section was judicially interpreted to mean that declaratory decree could be granted only in cases where there was some consequential relief which could be had if it had been sought. However, it has been realised that judgments and orders are usually determinations of rights in the actual circumstances of which the court has cognizance and gives some particular relief capable of being enforced. It is, however, sometimes convenient to obtain a judicial decision upon a state of facts which has not yet arisen, br a declaration of the rights of a party without any reference to their enforcement. Such merely declaratory judgments may ip appropriate cases be given, and the court is authorised to make binding declarations of rights whether any consequential relief is or could be claimed or not. There is a general power to make a declaration whether there be a cause of action or not, and at the instance of any party who is interested in the subject matter of the declaration, and although a claim to consequential relief has not been made, or has been abandoned or refused, but it is essential that some relief should be sought, or that a right to some substantive relief should be established. A person moulds his relief according to his need. The type of further or consequential relief required to be prayed will also depend on the facts and circumstances of a case. The answer to the question whether it is incumbent upon the plaintiff to ask for consequential relief must depend upon the facts of each case. The nature and origin of the right basing upon which the declaration is sought will also be immaterial. Declaration simpliciter of a specific right created by statute is not affected by Section 34 of the Specific Relief Act. Thus in Vanniswami Thewar v. Challasami Thewar, (1921) 62 Ind Cas 276 : (AIR 1921 Mad 47) it was held that a suit for a declaration that the plaintiff was the landholder under the Madras Estates Land Act was maintainable. Such a suit is one to enforce not a common law right but a right created by statute. The same reasoning may be applied to a right created by triable custom. Declaration of a right based on such customary right would not be hit by Section 34. In seeking to enforce such a right the Courts are not entitled to impose all the restrictions which a person seeking the ordinary relief of declaration is subjected to by virtue of the proviso to Section 34 of the Specific Relief Act. In Vemareddi Ramaraghava Reddy v. Konduru Seshu Reddy. AIR 1967 SC 436 it has been held that Section 42 of the Specific Relief Act (old) was not exhaustive of the cases in which a declaratory decree might be made and the Courts had the power to grant such a decree independently of the requirement of the section; and it followed, therefore, a suit by the plaintiff-worshipper for a declaration that the compromise was not binding on he deity was maintainable as falling outside the purview of Section 42. Declaration of rights based on tribal customs may similarly be held to be outside the purview of Section 34 of the Specific Relief Act. In the instant case he right of the Chiefs over their respective village lands is based on customary law of the village organisation and as such it is not crmmon law right. It is, therefore, not permissible for the Court to impose in respect of declaration of such right the limitation prescribed under Section 34 of the Specific Relief Act. No infirmity can, therefore, be found with the concurrent finding of the learned Courts below in this respect.

15. The last submission of the counsel for the appellant is that the finding that the stream Govakom is the same as Charenggiu, is perverse being not based on any evidence on record. According to him there having been clear evidence that Charenggiu crosses the Imphal-Kangpokpi-Tamenglong road at 32 milestone, while Govakom at 35 milestone, the two could never be the same and the finding to that effect, even though concurrent, is liable to be set aside. A finding of fact, it is submitted, not based on any legal evidence or en a

judicial consideration of the evidence adduced, can be set aside in second appeal, and he relies on 1972 Assam LR 148 : AIR 1972 Gauh 52 (Abdul Ali v. Harija Bibi), and AIR 1979 Gauh 53 (Chandra. Kanta Deka v. Hem Chandra Deka. If a finding is based on no evidence, or on an improper rejection of material evidence, or on a misconstruction of document or on oral statements, or on inference not warranted by the facts, or as a result of placing of onus, it can be set aside in second appeal, but it is for the appellant to show the existence of one of other of those circumstances. There can be no dispute about these propositions of law. The question is whether these propositions are applicable to the facts of this case. To hold the concurrent findings to be perverse it has to transpire that it is based on no legal evidence. The learned trial Court observed that in course of evidence of both sides it was ar. admitted fact that the plaintiffs village Chalva and the defendant's village Tamah are adjacent to each other with the Charenggiu stream in between them as demarcating line forming the southern boundary of Chalva village and northern boundary of Tamah village and that the question arose as to whether the Govakom alias Sonopuh Nullah, as alleged by the plaintiff, was also called Charenggiu by the Nagas, or whether the Charenggiu was different, as contended by the defendant, from Govakom alias Songpuh Nullah. After formulating the above question the Court discussed the evidence of the P. Ws. as well as the D. Ws., including the order in Civil Case No. 7 of 1930-31 passed by the S. D. O. Tamenglong on 15-6-1930 (Ext. A/1) but did not believe the defendant's evidence that Charenggiu stream lies on Imphal-Tamenglong road and found that Govakom and Charenggiu are one and the same stream called as Govakom by the Kuki and Charenggiu by the Nagas.

16. The learned lower appellate Court proceeded on the basis that both the parties admitted that Charenggiu was the common boundary of those two villages and the admission was further fortified by Ext. A/1. The Court also observed that as the respondent (Plaintiff) claimed that Govakom was the southern boundary of his village it was for him to establish that Govakom was known as Charenggiu and that it was the southern boundary of his village. The Court then discussed the evidence of the P. Ws. and the D. Ws. D. W. 1 stated that Charenggiu is the boundary between Tamah and Chalva village and he was supported in this by D. Ws. 2 and 4 and oh the appreciation of the evidence of the P. wS. and the D. Ws. the Court concluded that a scrutiny of the oral evidence of the respondent would show that Govakom is the boundary of Chalva and Tamah villages, was consistent. This position was also found consistent with the fact that the presently D.W. 2 has been paying lambal to the plaintiff though he had been paying lambal to Tamah earlier.

17. Counsel for the appellant strenuously submits that the unchallenged testimony of the D. Ws. completely overlooked by the Courts below. The evidence of the D. Ws. may be summarised as under:

D. Ws. 1, Namereinjine, deposes that Charenggiu is known in Kuki language

as Tuiha. His village Lcngmai lies to the south of Tamah village. Charenggiu

crosses Imphal-Kangpoki-Tamenglong road and one bridge was reconstructed

by this crossing point on the said road. The crossing point is at about 32 mile

stone. He knows Phoikon Hill which lies within the village land of Tamah. Ho

knows the Nullah called by the Kukis as Govakom. It flows within the village

land of Tamah. Govakom also crosses Imphal-Tamenglong road at about 35

milestone. He knows Phoikon village (Kuk'), which is within the village land

of Tamah village. In cross-examination he says that in their language 'Giu'. indicates Nallah or river. 'Chareng' is 'Urj' (creeper). 'Gova' is bamboo, but he does

not know what is the meaning of 'Kom'. He was born and brought up in Langmei

village. He does not know when Tamah village was shifted to the present site.

He also docs not know if Songsana village once established in the present

village site of Tamah. According to him, during the British regime the villagers

used to repair path and ways within their own lands. They used to welcome British Sahebs at their boundary. 'Chapareng', in their language, is 'Paya' (bamboo split). 'Chapai' is bamboo and 'Rerg' is a thing for the purpose of tying. D. W. 2, Sonpu of Tamah

village, according to him the boundary between these two villages is a Nala,

which is called Charenggiu in Naga and 'Tuiha' by the Kuki. Govakom is different from Tuiha. The witness has no land near Govakom, but the cultivated Tampak low near it on payment to

Tamah village. He has been cultivating for the last 2/3 years and paid lamban to Tamah but this year he paid it to Chalva as Chalva claims the lou as belonging to them. Chalva took the lam-ban in the month of January, 1971 last. Govakom runs between Tuiha stream and the house site of Tamah village. He did not file case against Chalva for taking the lamban. In cross-examination he admits that Govakom is in Kuki language. It means a group of bamboos near which a nala runs. He knows Songpu Kom which is another name of Govakom. Songpu means in Kuki dialect a big stone projecting from the hill and under which some 10 persons can sleep. Scngpu lies to the western portion of Govakom. He admits that, during the British regime the villagers repaired the path within their respective villages, but he does not know up to what point towards the south the villagers of Chalva repaired the path. He knew from others that Charenggiu alias Tuiha is the boundary between Chalva and Tamah. Lamban was taken from him. He does not pay lamban to Tamah. The place where he resides is called Govaiang and it lies to the north of Govakom about 3 or 4 miles away from Chalva Govakom about one mile away. In cross-examination he says that Govakom is about 3 or 4 miles away from Chalva village and 7 miles from Tamah village. D. W. 3 Nganing, Gangbura, deposes that Charenggiu is the boundary line between Chalva and Tamah. Charenggiu is the Naga dialect. According to him, Charenggiu means the stream wherefrom Langmeidong bird takes water. This Charenggiu stream is known as Tuiha in Kuki language. 'Tuiha' means the spot where water falls. Charenggiu stream crosses Imphal-Tamenglong road at about 32 milestone. He knows the boundaries of Tamah village. It is bounded on the north by Charenggiu, on the South by Kuki stream, on the East by Irang river, and on the west by Pokki stream, beyond which lies the Kuki village. His village Maku lies to the east of Tamah village, intervened by Irang river. He knows Govakom which is a stream. Govakom is Kuki dialect. Govakom is known as Chapaiggiu in Naga dialect. It also crosses Imphal-Tamenglong road at about 35 milestone. He knows Foikonching lying to the south of Charenggiu stream, with the village Tamah. He knows the homestead land of Foikon village, which lies within the Tama village land, which lies near Charenggiu stream on the southern side. His forefather lived at Myumlok village, which is now extinct and Chalva village established at the site of Mayum Lok village. In cross-examination he admits that Tamah village is situated near 37 milestone on Imphal-Tamenglong Road where it has been existing for the last about 10 years and it is about 2 miles away from the western boundary of Pokhi stream. Pokhi stream is about 2 miles away from Tamah village. Irang river is about 4 miles from Tamah village site. Chalva village is about 5 miles from the house site of Tamah village and it is about one mile from Imol S. D. O. Headquarters, situaled north of Imol. He does not know Samthinang and the exact location of 35 milestone with relation to Govakom. He never saw Chalva people cultivating paddy near 33 or 34 milestone on Imphal-Tamenglong road. He knows that 'Foikon' is Kuki word, but does not know its meaning. He does not know if Tamah village was once settled in the present Thenjang village site. Paya (bamboo pieces) is known as Chareiyang in Lengmei Naga Language. D. W. 4, Alemfune, is of Tamah village. According to him Charenggiu is the boundary between Tamah and Chalva. He is Khunbu of Tamah village, Gang-bura is the Khullakpa of the village. By Khullakpa he means Headman. Charenggiu falls into Irang river by crossing Imphal-Tamenglong road at 32 milestone. There is a bridge on the same stream. He knows Phoikon and homestead land of Phoikon village which lies within Tamah village. Phoikon villagers pay to them lamban and Sakok. Charenggiu in the Naga dialect and in Kuki language Charenggiu is called Tuiha. He knows Govakom, which is a Kuki name. They call the stream as Chapaigiu. Govakom crosses Imphal-Tamgnelong road at about

35 milestone. In cross-examination he says that he can' read and write in Manipuri. He was born and brought up in Tamah village site, where his father was also born. But his grandfather was born in Thenjang village. The present Tamah village comprises of 60 villagers. About 40 persons of their village pay house-tax in the name of Gangbura. The names of stream, hillock etc. are called by Nagas in their Naga name, and the Kuki in their Kuki names. Pokki stream is about 4 miles away from Tamah village. Irang is about 4 miles away from Tamah village. Govakom is about 3 miles away from the Tamah village, Chalva village is about 7 miles from Tamah village which is about one mile from Imol S.D.O. Headquarters from the north. 'Giu' in their language means stream or river. 'Chapai' means bamboo in their language 'Chareng' means also 'Uri' or 'Paya' in their language. He knows the meaning of Gov-akom which means the place where bamboos grow, D. W. 5 is Chitui (defendant in the suit). He does not know who is the Chief of Chalva village. He knows the plaintiff but does not know if he is the Chief cf Chalva village. Charenggiu is the northern boundary of Tamah village demarcating it from Chalva. On the south there lies the village Langmei intervened by a lok known Tayangio. Charenggui crosses Imphal-Tamenglong road at about 32 milestone and there is a bridge at that place. Charenggui means a kind of big bird. Charenggui drinks water from this lok and hence this lok is called as Charenggui. 'Giu' means lok. Phoikon hill, according to him, lies to the side of Tamah village. There is a village at Phoikon hill and some of the villagers of that village have their houses in the plain area within his village land. The said plain lies near Charenggiu, opposite to Chalva village house site intervened by Charenggiu. The villagers of Phoikon pay them lambal or Changseo. Charenggiu is their Naga name and the Kukis call this stream as Tuiha. He knows Govakom alias Sonapub. They call it as Chapaigiu. Govkom is kuki dialect. This stream runs within their village land and crossed Imphal-Tamenglong road near 35 mile stone. According to him there was a civil case between Tamah village as plaintiff and Chalva village as defendant, being Civil Case No. 7 of 1930-31 of SDO., Temenglong. Prior to the establishment of Chalva village the land belonged to Mayum lok village, which become extinct. They never encroached upon or interfered with the possession of any piece of Chalva land. The Tamah village land belongs to all their villagers jointly. In cross-examination he says that bamboo is known as 'Chapairiu' and 'Payas' is known as Charia in their dialect. 'Giu' in their dialect stands for place or places or lok. In Govakom there grow bamboos. In Tuiha no bamboos grow. He knows of Tuiha from many persons. He saw Mayum Lok villagers shifting to their present village from the present Chalva village land. He does not know if Chalva village had been established for the last 60 or 70 years.

18. Learned lower appellate Court also came to the conclusion that both the words 'Charengiu' and 'Govakom' convey the same meaning. He also did not accept that Tuiha stream is known as Charenggiu in Naga dialect. The Court ultimately came to the conclusion that Govakom is known as Charenggiu in Naga dialect and it crosses the Imphal-Tamenglong road at 35 milestone and was the southern boundary of the Chalva village. P. Ws. 1 to 8 consistently gave the boundaries of Chalva village with Govakom as the southern boundary. All of them said that Govakom was the boundary between Chalva and Tamah. P. W. 8 deposed that the stream called Govakom in Kuki dialect was called Charenggiu in Naga dialect. The villagers of the two villages used to clear the bridle-paths on respective sides of Govakom. The Courts did consider this evidence and held Govakom and Charenggiu to be the same Stream, disbelieving the defendant's version. The Court also found good and sufficient evidence for the proof of possession of the plaintiff and as such confirmed the finding of the lower Court on this point. It cannot, therefore, be said that the learned Courts below either overlooked any material piece of evidence or gave finding on no legal evidence at all. The argument advanced on etymological basis may not lead to a correct determination of the question under the facts and circumstances of the case. The question whether this Court could have arrived at a different conclusion on a proper appreciation of the evidence is entirely a different matter. The finding as such cannot, therefore, be held to be perverse on any of the above grounds. It is accordingly not amenable to interference in this second appeal.

19. This second appeal is accordingly found to be without merit and it is dismissed with costs. Stay order, if any, stands vacated.