

THE HIGH COURT OF SIKKIM: GANGTOK

(Civil Appellate Jurisdiction) SKHC01-000115-2024

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

R.S.A. No. 02 of 2024

Shri. Mani Kumar Gurung,
Aged about 74 years,
S/o Late Chandra Bahadur Gurung,
R/o Near Co-operative Upper Syari,
P.O. Tadong, P.S. Sadar Gangtok,
District Gangtok-737101.

..... Appellant

Versus

- Shri Govind Khati,
S/o Late Krishna Bahadur Khati,
Aged about 66 years,
R/o near Co-operative Upper Syari,
P.O. Tadong, P.S. Sadar, Gangtok,
District Gangtok-737101.
- The District Collector Gangtok,
Office of the District Collectorate,
Gangtok, East Sikkim-737101.
- Additional District Magistrate,
Office of the District Collectorate,
Gangtok, East Sikkim-737101.
- Ms. Leela Chettri,
Head Surveyor,
Office of the District Collectorate,
Gangtok, East Sikkim-737101.
- Gangtok Municipal Corporation,
Government of Sikkim,
Deorali, Gangtok, Sikkim-737101.

..... Respondents

Second Appeal under Section 100 of the Code of Civil Procedure,
1908.

Appearance:

Mr. B. Sharma, Senior Advocate with Mr. Sajal Sharma and Ms. Shreya Sharma, Advocates for the Appellant.

Mr. Karma Thinlay, Senior Advocate with Mr. Bhusan Nepal and Mr. Zamyang Norbu Bhutia, Advocates for Respondent No.1.

Mr. S. K. Chettri, Government Advocate for Respondent Nos. 2 to 4.

Mr. Lahang Limboo, Advocate for Respondent No.5.

Date of Hearing : 07.08.2026

Date of Judgment : 07.08.2026

Date on which uploaded : 08.08.2026

J U D G M E N T (O R A L)**Bhaskar Raj Pradhan, J.**

1. An interesting issue arises for consideration before this Court in this matter. This is a Regular Second Appeal against the judgment authored by the learned Appellate Court. The learned Appellate Court did not interfere with the judgment rendered by the learned First Court. Therefore, two concurrent judgments are sought to be assailed before this Court in Regular Second Appeal (RSA). The only question of law framed by this Court on 25.03.2025 as the substantial question of law is -

"Whether the Learned Trial Court and the Learned First Appellate Court erred in dismissing the Suit of the Appellant under Order VII Rule 11(d) of the Code of Civil Procedure, 1908, on grounds that the Appellant had acquired the land from Lendup Lepcha,(sic) resulting in the Suit being hit by the Revenue Order No.1 of 1917, when Lendup Lepcha,(sic) the original vendor is not a party to the Suit nor was this question the subject matter of the suit between the parties?"

2. The two opinions rendered by the learned First Court and the learned Appellate Court were on an application moved by the State defendant nos. 2, 3 and 4 invoking the provision of Order VII Rule 11(d) of the Code of Civil Procedure, 1908 (CPC). In the application it was asserted that the plaintiff does not have any locus standi to institute and seek the prayers in the present suit before the Court as he is not the legitimate owner and holder of the Record of Rights of the suit property.

3. It was further asserted that the Record of Rights stands recorded in the name of Shri Ledup Lepcha and as per Revenue Order No.1 the plaintiff could not have purchased and owned the land of a Bhutia or a Lepcha by making an illegal agreement. The learned First Court as well as the learned Appellate Court agreed to this contention and therefore the appellant has preferred the present Regular Second Appeal.

4. Heard the learned Senior Counsel for the appellant and the defendant no.1 i.e. respondent no.1 as well as the learned State Counsel for the other respondents. Mr. Lahang Limboo, learned counsel appearing for the respondent no.5 submits that he has no submissions to make.

5. Rejection of the plaint under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 (CPC) completely extinguishes all rights asserted and claimed by the plaintiff against the

defendants. Therefore, it is settled law that it is only in those cases where the suit appears from the statement in the plaint to be barred by any law, can such a power be exercised by the Court. The Courts exercising power under Order VII Rule 11 of the CPC should exercise it cautiously lest a surviving cause of action may be nipped in the bud in its nascent stage. As held by the Supreme Court in ***Hardesh Ores (P.) Ltd. v. Hede & Company***¹ quoted by the learned Appellate Court it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie shows a cause of action, the Court cannot embark upon an enquiry whether the allegations are true in fact. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order VII Rule 11 CPC. The provision of order VII Rule 11 CPC is mandatory in nature. It states that the plaint shall be rejected if any of the grounds specified in clause (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause

¹ (2007) 5 SCC 614

of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint. It is true that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is “meaningless” and “bound to prove abortive”, should not be permitted to waste judicial time of the court.

6. Therefore, the plaint must be read as a whole and viewed from what is pleaded in its entirety. If in a holistic and purposeful reading of the plaint it appears that it is barred by any law, the power under Order VII Rule 11(d) CPC should be exercised otherwise the suit should be allowed to be proceeded and determined after a trial. It was therefore, necessary for the learned Courts to examine the plaint in a holistic manner.

7. On a reading of the plaint it can be seen that it is directed against the defendant no.1/respondent no.1 as well as the State-respondents and its officers. In the plaint, the plaintiff pleads, that he had purchased a portion of plot no.25 being plot no.11 vide a sale deed (Annexure-P1) from one Ledup Lepcha measuring an area 70' x 40' situated at Syari, Gangtok. The plaintiff has also relied upon the *parcha khatian* (Annexure-P2) and a copy of the purported sale deed (Annexure-P1) dated 26.02.1980. The plaint also describes Schedule A property and Schedule B property. Schedule A property seems to be the property purportedly purchased by

the plaintiff from Ledup Lepcha. Schedule B property seems to be the property allegedly encroached by the defendant no.1.

8. It is the plaintiff's case that since the date of purchase of the immovable property from Ledup Lepcha i.e. plot no.25 being plot no.11 measuring area 70'x40' situated at Block-Syari, Gangtok District, East Sikkim, the plaintiff has been using, enjoying, occupying, possessing the suit land peacefully and uninterruptedly. This plot of land is described in Schedule A to the plaint.

9. It is alleged that in the month of January, 2022, the defendant no.1, without having any right, title and interest in and over any part and portion of the land purchased by the plaintiff from Ledup Lepcha had started construction after dismantling his old building and had encroached the land of the plaintiff measuring about 6' x 40' approximately. This plot of land is described in Schedule B to the plaint.

10. The plaint also makes various allegations against the State respondents for their alleged inaction and failures and seeks relief against them as well.

11. From the averments in the plaint it is quite clear that as per the plaintiff the defendant no.1 was an encroacher who encroached upon the Schedule B land which was part of the

Schedule A land purportedly purchased by the plaintiff from Ledup Lepcha.

12. It is also true as noted by the learned First Court and the learned Appellate Court that Ledup Lepcha was not a party to these proceedings.

13. So the moot question which ought to have been examined by the learned Courts was-whether from the averments in the plaint the suit was actually barred by law and resultantly the entire suit had to be thrown out or in other words did any cause of action survive against the defendants or anyone of them?.

14. It is true that in paragraph 2 of the plaint the plaintiff has asserted that he had purchased a portion of plot no. 25 being plot no.11 vide a sale deed from Ledup Lepcha i.e the Schedule A property. It is also true that they have relied upon purported unregistered sale deed (Annexure-P1) dated 26.09.1980. Equally true is the fact that the purported *parcha khatiyan* relied upon by the plaintiff reflects that the Schedule A land was still recorded in the name of Ledup Lepcha.

15. A perusal of this purported sale deed dated 26.09.1980 also reflects that Ledup Lepcha had agreed to sell the suit land to the plaintiff, a Nepali Sikkimese, irrespective of Sikkim Revenue Order No.1 of 1917. It is also seen that the purported

sale deed records that the consideration of Rs.2500/- had also been recorded as having been made by the plaintiff to Ledup Lepcha.

16. From the averments in the plaint it is clear that after the purported payment of consideration amount by the plaintiff as reflected in the purported sale deed, the plaintiff has been purportedly in peaceful and uninterrupted possession of the suit land since 1980. There is also no averments in the plaint which reflects that the defendant no.1 had any better right on the encroached portion i.e. the Schedule B land as against the plaintiff. In such a situation it was important for the learned Courts to examine the prayers prayed for in the suit. The prayers are as under:-

- "a) *A decree declaring that the Schedule B property is the property of the Plaintiff.*
- b) *A decree declaring that the Defendant No.1 has encroached upon the Schedule B property of the Plaintiff and the same is liable to be demolished and consequential relief of possession be granted in the favour of Plaintiff;*
- c) *A decree declaring that the Defendant No.1 has no right, title and interest over the suit property and consequently delivering and confirming the khas possession of the suit land measuring area 6' x 40' which has been encroached by Defendant No.1.*

- d) *A decree injuncting the Defendant No.1 from carrying on the construction work upon the suit land.*
- e) *A decree of dismantling the structure so constructed upon the Schedule B land for the delivery of Khas possession to the Plaintiff.*
- f) *A decree declaring that the Defendant No.1 has no right, title and interest in and over the suit land;*
- g) *A decree declaring that the inspection and the surveys of the suit land have not been done as per law.*
- h) *A decree declaring that the inspection and the survey of the suit land and/or suit plot being No.11 made by the Revenue Surveyor of Gangtok Block is bad, illegal;*
- i) *A decree declaring that the report prepared by Defendant No.4 is bad, illegal and the same is liable to be set aside.*
- j) *A decree for perpetual injunction restraining the defendant No.1, his men, agent and associates from entering/trespassing into the suit land and also from doing any sort of obstruction, interference and annoyance to the quiet and peaceful use, enjoyment and possession of the plaintiff with regard to the suit land as delineated in the site plan annexed with the plaint;*
- k) *To appoint a Commissioner to verify and demarcate the entire Schedule A property;*
- l) *Compensation for harassment and immense mental tension to the Plaintiff who is a senior citizen.*

- m) *Cost of suit;*
- n) *Any other relief and/or reliefs to which the Plaintiff is legally entitled."*

17. On a perusal of the prayers it is seen that the suit is confined to Schedule B only allegedly encroached by the defendant no.1. There is no declaration sought by the plaintiff with regard to ownership and title of the Schedule A property measuring 70'x40' feet being plot no.25 which was purportedly the subject of the purported sale deed executed between Ledup Lepcha and the plaintiff.

18. Revenue Order No.1 dated 17th May 1917 is what is commonly known in Sikkim as one of the "old laws" of Sikkim made during the time when the State was a kingdom and now protected by Article 371F of the Constitution of India. It provides that "*no Bhutias and Lepchas are to be allowed to sell, mortgage or sub-let any of their land to any person other than a Bhutia or a Lepcha without the expressed sanction of the Darbar or officers empowered by the Darbar in their behalf, whose order will be obtained by the landlord concerned. If anyone disobeys he will be severely punished.*" By the Adaptation of Sikkim Laws (No.1) Order, 1975 wherever the expression "Sikkim Darbar" or "Darbar" occurs in an existing law then, in the application of that law in relation to the

administration of the State of Sikkim, or, as the case may be, to any part thereof, unless the context otherwise requires, there shall be substituted therefor with the expression "State Government". For further clarity, the Revenue Order No.1 refers to Order dated 2nd January 1897 which also provided that *"no Bhutias and Lepchas are to be allowed to sell or sub-let any of their lands without the express sanctioned of the Council. If anyone disobeys this Order, he will be punished severely"*. Although the argument of the State respondent that the purported sale deed was against Revenue Order No.1, in view of what is recorded in the purported sale deed, is at the first brush luring to pronounce upon it however, it would have been more prudent to exercise restraint in the facts of the case as prayers "b" to "f" would clearly be maintainable against the defendant no.1 at this stage without examining the written statements of the defendants.

19. The learned First Court has reproduced all the prayers in the plaint in its judgment. However, while examining the prayers the learned First Court has expressed its mind on the first prayer only. The learned First Court also examined the *parcha khatian* of the Schedule A land filed by the plaintiff and noted that the Schedule A land was still recorded in the name of Ledup Lepcha and not in the name of the plaintiff. As such the learned First Court concluded that since the sale of

Schedule A land was barred by Revenue Order No.1 the relief claimed by the plaintiff deserves to be rejected without considering whether any cause of action would survive against the defendants.

20. On appeal the learned Appellate Court's attention seem to have been drawn to this situation when it was argued on behalf of the plaintiff in appeal that the learned First Court rejected the plaint only on prayer (a) which sought a decree declaring that the Schedule B property is the property of the plaintiff. The learned Appellate Court thus recorded a finding that the plaintiff had sought several prayers i.e. prayer (a) to prayer (n) at paragraph 22 of the plaint however, *"the crux of the plaintiff's case and the relief sought as a whole is that he should be declared owner of plot no.11 (purchased by the sale agreement dated 26.02.1980 from Ledup Lepcha which has a total land measuring 70'x40' of which, Schedule 'B' (6'x40') is a part."*

21. It appears that both the learned Courts therefore, took a view that the suit related to a declaration that the entire property i.e. Schedule A property was the property of the plaintiff, contrary to what was actually prayed for. The substantive prayers against the defendant no.1 were all prayers relating to the alleged encroached portion of Schedule A property i.e. the Schedule B property only, contrary to what

was perceived by the learned Courts. By doing so, although the learned Appellate Court had correctly quoted the passage from ***Hardesh Ores*** (supra) it indulged in construing the plaint not as it stands but by reading into it what was not sought for.

22. The learned Appellate Court also took the view that the other reliefs sought by the plaintiff such as declaring the defendant no.1 had no right over Schedule B land or that it has been encroached and its possession has to be delivered to him has its roots in prayer "a". The learned Appellate Court also took the view that the rest of the prayers are also consequential prayers to the main prayer "a" and therefore, if prayer "a" could not survive the rest of the prayers would not as well. It was opined that if prayer "a" was allowed, the plaintiff would succeed in circumventing the local law which prohibits sale transaction such as the present one and that the relief sought at prayers "b" to "n" would naturally follow and the plaintiff's contract of sale with Ledup Lepcha which is void ab initio will acquire legality with the approval of the Court. Therefore, the learned Appellate Court justified the opinion of the learned First Court.

23. In such a situation the question whether prayer "a" being subsequently allowed or not was unnecessary to be examined at that stage. A prayer would necessarily be allowed after a trial. Therefore, even if prayer "a" remained as it is in the

plaint beyond the stage of consideration of the Order VII Rule 11 CPC application and it was sent for trial it did not preclude the Courts to subsequently hold the prayer to be not maintainable. Thus, the perception of catastrophic consequences as perceived by the learned Appellate Court on such prayer being allowed was not necessary at the stage of examining the averments in the plaint to see if the plaint could be rejected as being barred by law. When a suit is filed against several defendants seeking different set of reliefs against those defendants, it is incumbent upon the Court to examine each of the prayers and come to the conclusion if each of them were maintainable or not.

24. The plaint discloses at least two clear causes of action. The cause of action against the defendant no.1 was his encroachment of Schedule B property which was in the plaintiff's possession. The other cause of action was against the State-respondents for their actions and inactions as specifically pleaded in the plaint.

25. At this juncture it may be relevant to examine the law of possession of immovable property. The learned Senior Counsel for the appellant has relied upon the judgment of the Supreme Court in **Poona Ram** vs. **Moti Ram (Dead) Through Legal**

Representatives & Ors.² Although the case was arising from a suit for possession based on possessory title/previous possession and not ownership/proprietary title what has been expounded in paragraph 11 to 14 would be relevant for us to appreciate certain settled legal principles on possession of immovable property as propounded therein.

"11. *The law in India, as it has developed, accords with jurisprudential thought as propounded by luminaries like Salmond. Salmond on Jurisprudence (12 Edn. at paras 59-60) states:*

"These two concepts of ownership and possession, therefore, may be used to distinguish between the de facto possessor of an object and its de jure owner, between the man who actually has it and the man who ought to have it. They serve also to contract the position of one whose rights are ultimate, permanent and residual with that of one whose rights are only of a temporary nature.

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In English law possession is a good title of right against anyone who cannot show a better. A wrongful possessor has the rights of an owner with respect to all persons except earlier possessors and except the true owner himself. Many other legal systems, however, go much further than this, and treat possession as a provisional or temporary title even against the true owner himself. Even a wrongdoer, who is deprived of his possession, can recover it from any person whatever, simply on the ground of his possession. Even the true owner, who takes his own, may be forced in this way to restore it to the wrongdoer, and will not be permitted to set

² (2019) 11 SCC 309

up his own superior title to it. He must first give up possession, and then proceed in due course of law for the recovery of the thing on the ground of his ownership. The intention of the law is that every possessor shall be entitled to retain and recover his possession, until deprived of it by a judgment according to law.

Legal remedies thus appointed for the protection of possession even against ownership are called possessory, while those available for the protection of ownership itself may be distinguished as proprietary. In the modern and medieval civil law the distinction is expressed by the contrasted terms petitorium (a proprietary suit) and possessorium (a possessory suit)."

12. As far back as 1924, in the case of *Midnapur Zamindary Co. Ltd. v. Naresh Narayan Roy*, AIR 1924 PC 144, the learned Judge observed that in India, persons are not permitted to take forcible possession; they must obtain such possession as they are entitled to through a court. Later, in *Nair Service Society Ltd. v. K.C. Alexander*, AIR 1968 SC 1165, this Court ruled that when the facts disclose no title in either party, possession alone decides. It was further held that if Section 9 of the Specific Relief Act, 1877 (corresponding to the present Section 6) is employed, the plaintiff need not prove title and the title of the defendant does not avail him. When, however, the period of six months has passed, questions of title can be raised by the defendant, and if he does so the plaintiff must establish a better title or fail. In other words, such a right is only restricted to possession in a suit under Section 9 of the Specific Relief Act (corresponding to the present Section 6) but does not bar a suit on prior possession within 12 years from the date of dispossession, and title need not be proved unless the defendant can provide one.

13. It was also observed by this Court in *Nair Service Society Ltd* (*supra*) that a person in possession of land in assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against the entire world except the rightful owner. In such a case, the defendant must show in himself or his predecessor a valid legal title and probably a

possession prior to the plaintiff's, and thus be able to raise a presumption prior in time.

14. In *Rame Gowda v. M. Varadappa Naidu* (2004) 1 SCC 769, a three-Judge Bench of this Court, while discussing the Indian law on the subject, observed as under:

"8. *It is thus clear that so far as the Indian law is concerned, the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking the law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner."*

26. Even if the learned Courts were of the prima facie view that in view of Revenue Order No.1 the declaration sought for

by the plaintiff that Schedule B property was the property of the plaintiff may not be grantable, it was incumbent upon both the learned Courts to first examine if the rest of the prayers could survive. As seen in the present case as against the alleged encroacher i.e. the defendant no.1 the plaintiff would definitely have a right stemming from his possession from 1980 even if it was illegal. If the purported sale deed was in fact an executed agreement for sale in the year 1980 with Ledup Lepcha by the plaintiff and he has been in continuous and uninterrupted possession thereof since then as pleaded, he had the right and duty to protect it as against the encroacher. If subsequently, it is held that there actually was no transfer of the Schedule B land to the plaintiff by Ledup Lepcha and the transaction was void in view of the mandate of Revenue Order No.1, the plaintiff would still have a right to pursue for the realization of the consideration amount he purportedly paid to Ledup Lepcha for the purported sale in the year 1980 after which possession was handed over to him. For such an eventually he would also have to protect the Schedule B property which he had purportedly purchased from Ledup Lepcha to be able to return it and get back his consideration amount.

27. The suit land as per the plaintiff in the plaint is the Schedule B land encroached by the defendant no.1 and not the

Schedule A land as perceived by the learned Courts. Prayer "b" to prayer "f" as quoted above could not have been held to be not maintainable before a trial against the defendant no.1 who is alleged to be the encroacher of the Schedule B property. Holding thus I refrain from examining the maintainability of the rest of the prayers against the defendants to enable the learned First Court to independently examine it without any opinion being rendered by this Court. I am unable to agree to the view taken by the learned First Appellate Court that the rest of the prayers in the plaint were all consequential to the grant of prayer "a". I am also not in agreement to the opinion that since prayer "a" was not grantable as it was against Revenue Order No.1 the other prayers would not survive. If prayers "b" to "f" are held not to survive because prayer "a" was against Revenue Order No.1 the plaintiff would be deprived of his right to protect his possessory right over Schedule B property which was allegedly encroached by the defendant no.1 who had no better title.

28. In ***Central Bank of India v. Smt. Prabha Jain***³ the Supreme Court has held that if the Civil Court is of the view that one relief say relief A is not barred by law but is of the view that relief B is barred by law, the Civil Court must not

³ (2025) 4 SCC 38

make any observations to the effect that relief B is barred by law and must leave that issue undecided in an Order VII Rule 11 application. This is because if the Civil Court cannot reject the plaint partially then by the same logic it ought not to make any observations against relief B. Even if one relief survives the plaint cannot be rejected under Order VII Rule 11 CPC.

29. The substantial question of law framed by this Court is answered in favour of the plaintiff i.e. the appellant herein and against the defendants.

30. Consequently, I am of the view that the concurrent judgments rendered by the learned First Court and the learned Appellate Court needs to be interfered with. The impugned judgment of the learned Appellate Court as well as the judgment of the learned First Court are set aside. The Regular Second Appeal is allowed and the case is reverted to the learned First Court to proceed with it in accordance with law.

31. The observation made in this judgment is solely for the purpose of determining whether the impugned judgment rejecting the plaint as being barred by law was correct or not. The learned First Court may not be influenced by any observation touching upon the merits while examining the case independently during the trial.

32. Copies of this judgment shall be forwarded to both the learned Appellate Court as well as the learned First Court along with the respective records.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting :**Yes**

to