

IN THE HIGH COURT OF SIKKIM

Civil Revision No.10 of 2000

1. Roma Poudyal wife of Shri Parsuram Poudyal.
2. Parsuram Poudyal son of Shri Manorath Poudyal,
Residents of Ranipul, P.O. Ranipul,
East District. Petitioners/
Defendants.

Versus

1. Kamalapati Poudyal.
2. Somnath Poudyal both sons of Shri Manorath
Poudyal, and residents of Ranipul Bazar,
Post Office and Police Station Ranipul,
East District. Respondents/
Proforma
Defendants.
3. Manorath Poudyal,
S/O Late Harinarayan Poudyal,
Resident of Ranipul,
P.O. and P.S. Ranipul,
East District. Proforma
Respondent/
Plaintiff.

Date of Decision : 25th August, 2000.

Coram :

The Hon'ble Mr. Justice Ripusudan Dayal, Chief Justice.
The Hon'ble Mr. Justice Anup Deb, Judge.

Present : Mr. N. B. Kharga, Advocate for the
petitioners.

Mr. S. N. Bhattacharjee, Advocate for
respondent Nos. 1 and 2.

Mr. Gautam Bhattacharjee, Advocate for
respondent No.3.

M. N. B. Kharga

JUDGMENT

Dayal CJ.

This Civil Revision is directed against the Order dated 7th August, 2000 by the Learned Civil Judge, East, Gangtok in Civil Suit No.19 of 2000. Petitioners were defendant Nos. 1 and 2, respondent Nos. 1 and 2 were proforma defendant Nos. 3 and 4 and respondent No.3 was the plaintiff in the Civil Suit.

2. The Civil Suit from which the Civil Revision has arisen was filed by the plaintiff for a decree of declaration that he is the absolute owner of the property in suit detailed in Schedule II of the plaint, the property being his self-acquired property and also for a direction to defendant Nos. 1 and 2 to vacate a portion of the same, as detailed in the plaint. It is admitted before us that respondent Nos. 3 and 4, though had been served with summonses, did not participate in the proceedings till 2nd August, 2000. It is fairly conceded that they were watching the proceedings. They neither filed any written statement nor chose to cross-examine any of the witnesses produced by the plaintiff and defendant Nos.1 and 2. Evidence of the plaintiff was closed prior to 2nd August, 2000 and evidence of defendant Nos. 1 and 2 was closed on 2nd August, 2000. On the closure of the evidence, the case was posted for arguments. Thereafter, an oral submission was made on behalf of

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defendant Nos. 3 and 4 that they wished to render their evidence. The order dated 2nd August, 2000 reads as under :-

"2.8.2000. Plaintiff with Ld.Counsel Shri N.P.Sharma. Defendants No.1-4 present. Recorded the evidence of DWS, T. Upreti and Laxmikant Dulal. Defendants 1 & 2 close evidence. Now to come up for arguments. However the defendant 3 & 4 submit that they wish to render their evidence. For evidence DE of 3 & 4 hearing. For 4.8.2000."

On 4th August, 2000, an application was filed by defendant Nos. 3 and 4 stating that during evidence a number of new facts had come from defendant No.1 and his witnesses which were beyond the pleadings and were also incorrect and, therefore, they wished to participate in the further proceedings and to lead evidence to state the factual position regarding the property which is the subject matter of the suit. Prayer made is that the Court may allow them to participate "in the remaining proceedings" in the suit in the interest of justice.

3. From the above narration, it is clear that defendant Nos. 3 and 4 filed the application after the evidence had been closed by the plaintiff and also defendant Nos. 1 and 2 and the case had been posted for arguments. If defendant No.1 was leading wrong evidence on facts or beyond pleadings, defendant Nos. 3 and 4 could cross-examine defendant No.1 and his witnesses. Defendant Nos. 3 and 4 did not choose to do so. It is true that defendant Nos. 3 and 4

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are entitled to participate in the remaining proceedings. Remaining proceedings now are the final arguments. However, by the impugned judgment, the learned trial Court allowed defendant Nos. 3 and 4 the fresh opportunity to produce evidence subject to fresh opportunity being given to defendant No.1 to produce evidence in rebuttal, if any. We are of the opinion that since defendant Nos. 3 and 4 did not choose to file written statement and made the application after the evidence had been closed and the case had been posted for arguments, defendant Nos. 3 and 4 could not be allowed to produce evidence.


4. Learned Counsel for respondent Nos. 1 and 2 relies upon the single Judge decision in Radhamoni Padhiari versus T. Jaganatham AIR 1978 Orissa 209. In that case, the suit was posted to 17th February, 1977 for ex parte hearing. On the adjourned date, an application under Order IX Rule 7 of the Code of Civil Procedure was filed, which the learned trial Judge rejected on 2nd March, 1977. Before the Civil Revision was filed in the High Court, the suit had been decreed ex parte on 13th May, 1977. The question before the Court was whether the defendant was entitled to participate in the further proceedings of the case. It was held that the defendant was entitled to participate in the further proceedings. In this proposition of law there is absolutely no doubt and this proposition of law has been accepted by us and accepting this proposition, we are inclined to hold

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that defendant Nos. 3 and 4 are entitled to participate in the further proceedings and further proceedings means on the facts of this case the stage of arguments.

5. In the result, the revision is allowed, the impugned order of the learned trial Court is set aside. It is, however, made clear that defendant Nos. 3 and 4 shall be entitled to make arguments. In the circumstances, there shall be no order as to costs.


(A. Deb)
Judge
25.8.2000


25.8.2000
(R. Dayal)
Chief Justice
25.8.2000

at/