

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Revisional Jurisdiction)

DATED: 8<sup>th</sup> May, 2017

SINGLE BENCH : HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

CRP No. 7 of 2016

- Petitioners** : 1. Shri Rinzing Wangyal Bhutia,  
S/o Late Achung Kazi,  
R/o Yangtay,  
Gyalshing, West Sikkim.
2. Shri Zamyang Kunga Bhutia,  
S/o Shri Ringzing Wangyal Bhutia,  
R/o Yangtay,  
Gyalshing, West Sikkim.

versus

- Respondents** : 1. Shri Wangchuk Bhutia,  
S/o Late Topgay Bhutia,  
R/o Lotus Village,  
Gyalshing, West Sikkim.
2. Shri Thinlay Odzer Bhutia,  
S/o Late Topgay Bhutia,  
R/o Dentam, West Sikkim.
3. Sub Registrar,  
District Administrative Centre,  
Rabdentse,  
Gyalshing, West Sikkim.

**Appearance**

Mr. Tashi Rapten Barfungpa and Mr. Ugang Lepcha, Advocates for the Petitioners.

Mr. Rahul Rathi, Mr. Pujan Kharka, Mr. Bishal Subba and Mr. Karma Bhutia, Advocates for the Respondents No.1 and 2.

Mr. Karma Thinlay Namgyal, Senior Government Advocate with Mrs. Pollin Rai, Assistant Government Advocate, for the Respondent No.3.

O R D E R

Meenakshi Madan Rai, J.

**1.** This Revision Petition impugns the Order dated 08.09.2016, of learned Civil Judge, West Sikkim at Gyalshing, in

Title Suit No. 4 of 2016, in the matter of Shri Wangchuk Bhutia and Another vs. Shri Rinzing Wangyal Bhutia & Another, vide which the learned Civil Judge rejected the prayer of the Petitioners in a Petition filed by them under Order VII, Rule 11 (a) (b) and (d) read with Section 151 of the Code of Civil Procedure, 1908 (for short "the CPC").

**2.** The grounds being pressed before this Court are under Order VII Rule 11 (a) and (d) of the CPC. The Petitioners were the Defendants 1 and 2 before the learned Trial Court, while the Respondents 1 and 2 were the Plaintiffs (hereinafter, Petitioners and Respondents, respectively). Respondents 1 and 2 filed a Civil Suit seeking Declaration, Recovery of Possession, Cancellation of Mutation and other consequential reliefs, which was registered as the aforesaid Title Suit, before the learned Trial Court. Their case is that, their grandfather late Dorjee Bhutia, was the owner of several plots of land measuring a total area of 7.4360 acres at Yangtay, West Sikkim, which were recorded in his name. Of the said properties, the scheduled properties fell in the share of the Respondents father late Tobgay Bhutia, who passed away in 2012. In 2015, on enquiry of the title and possession of their ancestral lands, it came to light that the scheduled properties were recorded in the name of the Petitioners. It is alleged that the said mutation had been done without adherence to the due process of law and in connivance with employees of the District Collectorate, Gyalshing, West Sikkim. The Respondents approached the Petitioners for an amicable settlement but were rejected, *inter alia*, on ground that the Respondents grandfather had sold the plots of lands to them but records would show that some properties were bought from one Tenzing Dorjee Bhutia, who was not their grandfather, in addition to which the procedure prescribed for mutation had not been followed in connection with the other properties. Hence, the prayers for setting aside the mutation of the suit lands recorded in the name of the Petitioners 1 and 2, a declaration that the Respondents are the absolute owner of the suit lands, a declaration granting restoration of possession of suit lands to the

Respondents and that the Petitioners have no right, title and interest over the suit properties. The Petitioners 1 and 2 filed their Written Statements before the learned Trial Court and after issues were settled for determination, the parties having been duly examined under Order X, a Petition under Order VII Rule 11 read with Section 151 of the CPC was filed by the Petitioners. The learned Trial Court rejected the said Petition by the detailed impugned Order.

**3.** Before this Court, it is contended by learned Counsel for the Petitioners that the suit discloses no cause of action, *inasmuch* as the documents filed by the Respondents would indicate that the suit lands have been legally transferred to the names of the Petitioners, duly supported by the Sale Deed documents filed by them, subsequent to which, "*Khatiyen Parcha*" for the disputed plots of lands were issued in their names. That, although the Respondents father was alive till 2012, the Petitioners forbore from making enquiries about the suit lands in his life time and it was allegedly only after his passing, that, in 2015 the Respondents started making enquiries. That, although the Respondents claim that the suit properties fell in the share of their father, no documents of partition have been submitted to fortify this averment, nor does the Plaint make any averment of oral partition. That, the Respondents had in fact attained the age of majority by 1998/2000 but did not raise the issue of ancestral lands with their father and have now come to the Trial Court with concocted facts withholding the truth there from. That, in view of the above facts and circumstances, there is no cause of action thereby making the suit liable for rejection under Order VII Rule 11 (a) of the CPC. Besides, the suit property as evident from the Sale Deed documents were purchased in the year 1985 and 1988 and as the suit is for declaration and recovery of possession, it is clearly barred by law as provided under Order VII Rule (d) and hence, considering the aforesaid infirmities, the suit be dismissed.

4. *Per contra*, it was vociferously argued by learned Counsel for the Respondents that a perusal of the Sale Deed documents would in fact show that one of the Sale Deeds reflects the name of the Seller as "Tenzing Dorjee Bhutia" while the name of the Respondents grandfather was only "Dorjee Bhutia", therefore, how the said Tenzing Dorjee Bhutia came to be in possession of the suit lands and sold it to the Petitioners, requires to be looked into. Besides, they did not enquire into the ancestral property during their father's life time, as he was the head of the family, apart from which there was never talk of alienation of ancestral lands at any point of time. Now, on enquiries, they have learnt that the suit lands are indeed their ancestral properties, as it stood in the name of their grandfather not only in the survey operation of 1950-51 but also in 1977-78. While canvassing the arguments, the averments in the Complaint were reiterated by learned Counsel.

5. I have considered the submissions made by both learned Counsel and I have also perused the impugned Order.

6. What is cause of action has been succinctly laid down in ***The Church of Christ Charitable Trust & Educational Charitable Society, Represented by its Chairman vs. M/s Ponniammam Educational Trust, Represented by its Chairperson/Managing Trustee : (2012) SCCR 700, inter alia***, as follows;

"8.....The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words "cause of action". A cause of action must include some act done by the defendant since in the absence of such act no cause of action could possibly accrue.

9. In *A.B.C. Laminart Pvt. Ltd. and another vs. A.P. Agencies, Salem*, (1989) 2 SCC 163, this Court explained the meaning of "cause of action" as follows:

"12. A cause of action means every fact, which if traversed, it would be necessary for the

plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff."

**7.** That having been said, in order to consider a petition under Order VII Rule 11 of the CPC, the Court is required to look into averments in the plaint but at the same time, it is necessary to point out that averments in the written statements are immaterial *inasmuch* as the pleas taken by the defendants are wholly irrelevant and the matter requires decision solely on what has been put forth in the Plaint.

**8.** It has been laid down in a catena of decisions that if on meaningful reading of the plaint it is manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue, the court should exercise its power under Order VII Rule 11 of the Code. At the same time, in ***P.V. Guru Raj Reddy & Ors. vs. P. Neeradha Reddy and others : 2015 (2) RCR (Civil) 43 (Civil Appeal No. 5254 of 2006, D/o 17.02.2015)***, it was held that the rejection of a plaint under Order VII Rule 11 of the CPC is a drastic power conferred in the Court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order VII Rule 11, therefore, are stringent and have been consistently held to be so by the Hon'ble Apex Court. It is only if the averments in the plaint *ex facie* do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims have to be adjudicated.

**9.** In the aforesaid backdrop, it would be essential to see whether the Plaint discloses a cause of action. It is the Respondents claim that the suit properties have been illegally transferred in the names of the Petitioners, for which the Respondents place reliance on the survey operations of 1950-52 and 1977-78, when the same lands stood recorded in their grandfather's name. Some portions have been recorded in the name of the Petitioners after being transferred to them from one Tenzing Dorjee Bhutia, who was not their grandfather. Thus, there are pertinent questions that require to be delved into thereby disclosing a clear right to sue. So far, as the question of limitation is concerned, it is trite to mention that the same involves mixed questions of law and facts and therefore, at this stage, on this ground, the suit of the Respondents cannot be dismissed.

**10.** In view of the above aforesaid reasons, I am of the considered opinion that findings of the learned Trial Court in the impugned Order, requires no interference.

**11.** Nonetheless, the observations in this Order are not to be construed as observations on the merits of the case, which shall be decided at the time of trial.

**12.** Accordingly, the Revision Petition is rejected.

**13.** Copy of this Order be sent to the learned Trial Court and records be remitted forthwith.

Sd/-  
( **Meenakshi Madan Rai** )  
**Judge**  
08-05-2017

Approved for reporting : **Yes**  
Internet : **Yes**