

IN THE HIGH COURT OF SIKKIM

Regular First Appeal No.35 of 2000

Chogyal Miwang Wangchuk Namgyal *Appellant.*

Versus

1. Shri L. B. Chettri.

2. The State of Sikkim. *Respondents.*

Coram:

The Hon'ble Mr. Justice Ripusudan Dayal, Chief Justice.

The Hon'ble Mr. Justice N. Surjamani Singh, Judge.

Present : Mr. T. B. Thapa, Advocate for the appellant.

Mr. A. Moulik, Advocate for respondent No.1.

Mr. N. B. Khatiwada, Additional Advocate General
with Mr. J. B. Pradhan, Government Advocate for
respondent No.2.

Date of Decision : 24th March, 2003

JUDGMENT

Dayal, C.J.

This appeal is directed against the Order dated 7th February, 2000 by the Learned District Judge, Special Division, Sikkim rejecting the plaint of the plaintiff-appellant in Civil Suit No.18 of 1999, on the grounds that neither the plaint disclosed cause of action nor the suit was within limitation.

2. The plaintiff claimed the following reliefs in the plaint :-

- (a) declaration that the grant dated 16.9.1981 is ineffectual, incomplete, inchoate and void ab initio and is unenforceable;

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- (b) a mandatory injunction directing defendant No.2 to remove defendant No.1 and his belongings and/or any other person or persons inducted by him on to the suit premises and to take charge of and hand over the same to the plaintiff;
- (c) restrain the defendants their employees, servants or agents or any persons claiming under or through them from making use of and/or occupying the suit premises, pending the hearing and final disposal of the suit;
- (d) for all costs of the suit;
- (e) for any other relief or reliefs which the plaintiff may be found entitled to in law and equity.

3. Regarding prayer (a), the plaintiff-appellant alleged that his late father, Palden Thondup Namgyal, who was the absolute, sole and exclusive owner of the property in question, had granted the said property to defendant No.1, Shri L. B. Chettri, on 16.9.1981, in recognition of the meritorious services rendered by defendant's late father Purna Bahadur Chettri, but no follow-up action was taken thereafter and subsequently on 22.2.1993 the said grant was cancelled. We are of the opinion that the suit with respect to this relief is hopelessly barred by limitation. Under Article 58 of the Limitation Act, a suit to "obtain any other declaration" can be instituted within three years from the date when the right to sue first accrues. The right to sue first accrued when the grant was made, i.e., 16.9.1981 and the suit was filed long after three years thereof on 16.8.1993.

4. As regards prayer (b), admittedly there are no averments in the plaint as to when defendant No.1 was inducted into the suit premises and when his belongings came to be kept on the premises. Absolutely no details have been

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given about the belongings. Section 39 of the Specific Relief Act provides that the Court may in its discretion grant an injunction to prevent the breach complained of and also to compel performance of the requisite acts when, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing. There are no averments in the plaint about the acts, performance of which is required in order to prevent the breach of any obligation. Absolutely, there is no averment that there has been any breach of any obligation on the part of defendant No.1 or defendant No.2, the State Government. The prayer made is vague and to support even this vague prayer, there are no averments made in the plaint. As such, the plaint does not disclose any cause of action in respect of prayer (b).

5. The plaintiff has claimed temporary injunction in prayer (c). Prayers (c), (d) and (e) are incidental to prayers (a) and (b) and have no nexus with the points of cause of action and limitation.

In the result, the appeal is dismissed with cost.

N. Surjmani Singh
 (N. Surjmani Singh)
 Judge
 24.03.2003

Ripusudan Dayal
 24.3.2003
 (Ripusudan Dayal)
 Chief Justice
 24.03.2003

At/