

FOR PUBLICATION ONLY

IN THE HIGH COURT OF SIKKIM

R.F.A. No.3 of 2000

Karma, Loday Bhutia ..... Appellant

Versus

Sonam Topgay Bhutia ..... Respondent

R.F.A. NO.4 of 2000

Tashi Chopel Bhutia ..... Appellant

Versus

Sonam Topgay Bhutia ..... Respondent

R.F.A. NO. 5 of 2000

Karma Pintso Bhutia ..... Appellant

Versus

Sonam Topgay Bhutia ..... Respondent

Date of Decision : 21st August, 2000.

Coram:

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

Present : Mr. S. R. Sarkar with Mr. U. P. Sharma,  
Advocates for the appellant.

Mr. S. P. Wangdi, Senior Advocate with  
Mr. Karma Ihinlay, Advocate for the  
respondent.



JUDGMENT

Dayal C.J.

All these appeals which involve common questions of law and facts have been heard together and are being disposed of by this judgment.

2. The defendant/respondent in each of these cases is a tenant under the plaintiffs/appellants who are brothers in respect of the premises with respect to which the respective suit was brought. Premises in all these cases form part of the same building. The parties entered into a registered lease deed dated 17th February, 1990 which was made effective from 28th February, 1989 for twenty four months. There is no dispute that the lease in respect of each of the tenancies has been determined according to the provisions of the Transfer of Property Act. The suits were brought for eviction of the tenant and also for the recovery of rent/mesne profits.

3. The learned trial Court decreed the suit for compensation/rent but dismissed it for eviction. These appeals are directed against the dismissal of the suit for eviction. The premises are situated within the area of Gangtok bazar. To such premises, the Gangtok Rent Control And Eviction Act of 1956 which received the assent of His Highness the Maharajah of Sikkim on 31st May, 1956 is applicable. Section 4 of that Act restricts the right of the landlord to



eject his tenant and provides as under :-

"4. A landlord may not ordinarily eject any tenant. When, however, the whole or part of the premises are required for the bonafide occupation of the landlord or his dependents or for thorough overhauling (excluding additions and alterations) or when the rent in arrears amount to four months rent or more, the landlord may evict the tenant on filing a suit of ejection in the Court of the Chief Magistrate. The tenant so evicted shall, however, have the first right to re-occupy the premises, after over-hauling, on such enhanced rent as may be fixed by the Sikkim Darbar before it is let out to any other tenant."

4. Thus a tenant can be evicted under the provisions of Gangtok Rent Control and Eviction Act only on any of the following three grounds :-

(1) When the premises are required for the bonafide occupation of the landlord or his dependants; or

(2) When the premises are required for thorough overhauling; or

(3) When the tenant has committed default in payment of arrears of rent.

5. In the instant cases, eviction is not sought on any of these grounds, but under the Transfer of Property Act. Transfer of Property Act was extended to the State of Sikkim in the year 1983 and came into force from 1st September, 1984. Learned Counsel for the appellants submits that after the Transfer of Property Act, which is a Central Act, has been extended to Sikkim and has been made operative, the State law contained in the Gangtok Rent Control Act, which is a State law, has ceased to be operative, it being inconsistent with the provisions of the Transfer of Property Act.



5. Similar submission was made before the learned trial Court, but did not find acceptance. I also see no reason to take a contrary view. Gangtok Rent Control Act is a pre-merger law and was extended to the State of Sikkim under Clause (k) of Article 371F of the Constitution which provides that notwithstanding anything contained in the Constitution, all laws in force immediately before the appointed day in the territories comprised in the State of Sikkim or any part thereof shall continue to be in force therein until amended or repealed by a competent Legislature or other competent authority. There is no dispute that neither any Act of Parliament nor any Act of Sikkim Legislature nor any other authority has expressly repealed the Gangtok Rent Control Act. The submission, however, is that the provisions of the Gangtok Rent Control Act are inconsistent with the provisions of the Transfer of Property Act, inasmuch as, under the provisions of the Transfer of Property Act, a landlord is entitled to a decree for eviction only on the determination of lease, whereas under the Gangtok Rent Control Act a landlord has to prove the existence of any of the three grounds specified in Section 4 of the Act and so with the extension of the Transfer of Property Act to Sikkim, the State Law has stood repealed by implication. I am unable to accept this submission. The Transfer of Property Act is a general Act governing the rights and liabilities of landlords and tenants. But the Gangtok Rent Control Act is a special Act restricting certain rights of a landlord, which he would otherwise have under the general law con-



tained in the Transfer of Property Act. In respect of the matters which are governed by the special law contained in the Gangtok Rent Control Act, the provisions of the Transfer of Property Act stand modified to the extent of the inconsistencies.

6. Learned Counsel for the appellant has also submitted that if the Transfer of Property Act and the Gangtok Rent Control Act are both held to be applicable to the State of Sikkim, it should be left to the choice of the landlord by which Act landlord and tenant would be governed. I see no merit in this submission. Which Act is applicable to a particular situation, is not a matter to be left to the choice of either party.

In the result, the appeals are dismissed. In the circumstances, there shall be no order as to costs.

( R. Dayal )  
Chief Justice  
21.08.2000

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ASSISTANT REGISTRAR (JUBL.)  
HIGH COURT OF SIKKIM  
AT GANGTOK