

THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Appellate Jurisdiction)

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

RSA No. 02 of 2018

1.

Old Rumtek Monastery
Filed through DUTCHI
Represented by Lama Dup Tshering
Dorje Lupon (Head Lama)
Old Rumtek Monastery,
Rumtek,
East Sikkim.

2.

Lama Dup Tshering
Dorje Lupon (Head Lama),
S/o Shri Naksuk Bhutia
Old Rumtek Monastery
Rumtek,
East Sikkim.

3.

Nadhu Lepcha
Gyankhang Lama
S/o late Aden Lepcha
Member, DUTCHI
Old Rumtek Monastery
Rumtek,
East Sikkim.

4.

Phurba Bhutia
Secretary
S/o Topgay Bhutia
Old Rumtek Monastery
Rumtek, East Sikkim.

..... Appellants/plaintiffs

Versus

1.

Lama Karma Dorjee
S/o Late Sonam Topden Bhutia
2.

Lama Sonam Pintso
S/o T.T. Bhutia

(Both are members of DUTCHI,
Sang Monastery,
P.O. Sang,
P.S. Ranipool, East Sikkim)
3.

Lama Palden
Lopen of Gangtok, Manilakhang
S/o late Sonam Bhutia
R/o Below Old Rumtek Monastery
P.O. Rumtek, P.S. Ranipool
East Sikkim.

4. Rinzing Bhutia,
S/o late Phurgay Bhutia
P.O. Rumtek, P.S. Ranipool
East Sikkim. Respondents
5. Secretary,
Ecclesiastical Department,
Government of Sikkim,
Gangtok,
East Sikkim.
6. Karma Samdup Lama
Acting Cheotrimpa
S/o Cheozang Bhutia,
Old Rumtek Monastery,
Rumtek, East Sikkim. Proforma Respondents

Appeal under section 100 of the Code of Civil Procedure, 1908.

Appearance:

Mr. B. Sharma, Senior Advocate with Mr. Bhola Nath Sharma,
Advocate for the Appellants.

Mr. Jorgay Namka, Advocate (Legal Aid Counsel) for the respondents
no. 1 and 4.

Ms Kunzang Choden Lepcha, Advocate for the respondents no. 2 and
3.

Mr. S.K. Chettri, Government Advocate with Ms Pema Bhutia for the
Respondent no. 5.

None for Respondent No. 6.

Date of hearing : 26.06.2021

Date of judgment : 05.07.2021

J U D G M E N T

Bhaskar Raj Pradhan, J.

1. The solitary question which requires examination in the present Regular Second Appeal is “*Whether the learned Trial Court and the First Appellate Court failed to appreciate the documentary evidence relied on by the appellants in its correct perspective?*”

2. The plaintiffs were the appellants in Title Appeal No. 06 of 2017 before the learned District Judge, Special Division-II, Sikkim at Gangtok (the learned District Judge). They are the appellants in the present Second Appeal as well.

3. Four issues had been framed by the learned Trial Court on 25.10.2016 and the suit set for trial. The learned Trial Court dismissed the Suit. However, on the question of maintainability of the suit, particularly on the point of limitation and *locus standi* of the appellants, it was held in favour of the appellants. The sole question framed by this Court is relatable to issue no. 2, i.e., “*Whether the plaintiff no. 2 is the Dorje Lopen of Old Rumtek Monastery for his lifetime and have the right to perform pujas as head lama?*” Since the appellants had sought such a declaration, the onus of issue no.2 was put on the appellants. The learned Trial Court decided the said issue against the appellants. The appellants, therefore, filed Title Appeal No. 6 of 2017 before the learned District Judge. The learned District Judge decided the said issue once again against the appellants and did not interfere with the findings of the learned Trial Court.

4. During the pendency of the Title Appeal before the learned District Judge, the appellants filed an application under Order XLI Rule 27 read with section 151 of the Code of Civil Procedure, 1908 (for short ‘the Application’) seeking to file further documents. The learned District Judge rejected the said application as well, as the documents were found to have no bearing to the facts in issue.

5. The learned District Judge, however, while examining issue no.4, i.e., “*Whether the plaintiffs are entitled for other relief or reliefs?*” held that once the suit filed by the appellants was found maintainable and once the issue no.3, regarding the authority of the respondents no.1 to 4 to constitute a new *Dutchi*/Committee was decided in the negative, the learned Trial Court ought to have decreed the suit in terms of prayers ‘a’ and ‘b’ of the plaint instead of dismissing it in its entirety. Accordingly, the learned District Judge decreed the suit in favour of the appellants in terms of prayers ‘a’ and ‘b’. The present Second Appeal has been filed by the appellants. There is no cross-appeal by the respondents against the findings in favour of the appellants by the learned District Judge.

6. Heard Mr. B. Sharma, learned Senior Counsel with Mr. Bhola Nath Sharma, learned Advocate, for the appellants; Mr. Jorgay Namka, learned Counsel for the respondents no.1 and 4; Ms Kunzang Choden Lepcha, learned Counsel for the respondents no.2 and 3 and Mr. S.K. Chettri, Government Advocate with Ms Pema Bhutia, Assistant Government Advocate, for the respondent no.5.

7. Mr. B. Sharma reiterated the arguments raised by the appellants before the learned Trial Court as well as before the learned District Judge. Traversing through all the evidences, both oral and documentary, led by the appellants, it was submitted that the appellant no.2 was the *Dorje Lupon* (Head Lama) of the appellant no.1, i.e., the Old Rumtek Monastery, for his life time and had the right to perform pujas as such. Mr. Jorgay Namka on the other hand vehemently supported the findings of the learned Trial Court as well as

the learned District Judge. He submitted that since it was the appellants' case before the learned Trial Court that the appellant no.2 was the *Dorje Lupon* appointed for his life time it was incumbent upon him to establish the same at least by preponderance of probability which they have failed to do. None of the documents sought to be relied upon established the facts asserted by the appellants. Ms Kunzang Choden Lepcha supported the arguments made by Mr. Jorgay Namka. Mr. S.K. Chettri submitted that he represented the proforma-respondent who had nothing to do with the matter.

8. The appellants had pleaded that the appellant no.2, being the *Dorje Lupon* (Head Lama), held and occupied the permanent post as per customs, traditions and culture and that he could not be removed from his post till he retired on his own or resigned. The respondents had specifically denied the assertion of the appellants that the appellant no.2 had been made the *Dorje Lupon*. It was, in fact, further stated that the appellant no.2 did not even qualify for the post of *Dorje Lupon*.

9. Lama Dup Tshering (PW-2), who is the appellant no.2, reiterated these statements made in the plaint. He was cross-examined. Bhaichung Lepcha (PW-3) and Karma Chuttem Bhutia (PW-4) also stated that the appellant no.2 is the *Dorje Lupon* (Head Lama) of the appellant no.1, i.e. the Old Rumtek Monastery, and as per custom, tradition, precedent and culture, *Dorje Lupon* held the post till he died or till he retired. They were also cross-examined by the respondents. Besides the statements, the appellants sought to rely upon certain documents. "*The Gazetteer of Sikkim by H.H. Rishley*" was exhibited by

appellant no.5. Besides the voluminous *Gazetteer of Sikkim* exhibited by the appellant no.5 in *toto*, Mr. B. Sharma also referred to the following correspondences – (i) Memo No. 61/DCE dated 14/07/09 addressed to the President of Old Rumtek Monastery (Exhibit-5). (ii) Correspondence reference no. 03/ORM/09-10 dated 18.07.2009 addressed to the Revenue Officer (Acquisition) under the signature of five persons (Exhibit-6). (iii) Order dated 23.08.12 passed by this Court in W.P.(C) No. 24 of 2008 (Exhibit-10). (iv) Correspondence no. 1059/EA dated 12.9.13 addressed to the appellant no.2 as Dorje Lupon (Head Lama) of appellant no.1 by the Additional Secretary, Ecclesiastical Department of the Government of Sikkim (Exhibit-12). (v) Correspondence bearing reference no. 05/ORM/13 dated 21.11.2013 addressed to certain individuals and signed by four persons (Exhibit-13). (vi) A certificate regarding expenditure incurred for burning butter lamps at the Rumtek Gumpa signed by five persons and certified by the Department of Ecclesiastical, Government of Sikkim (Exhibit-14).

10. Besides the aforesaid documents relied upon by Mr. B. Sharma, the learned District Judge has also examined the following documents – Exhibit-4, Exhibit-8 and Exhibit-15. Exhibit-4 is a petition dated 16.08.2013, filed by the appellant no.2 under section 144 and 145 of the Code of Criminal Procedure, 1973 against the contesting respondents. This document only reflects that the appellant no.2 had filed petition before the learned District Magistrate as the *Dorje Lupon*. Exhibit-8 is the FIR filed by the appellant no.2 dated 31.07.2013 as the *Dorje Lupon* against some of the contesting

respondents. Exhibit-15 is a register. Once again, none of these documents have been proved in the manner envisaged by the Indian Evidence Act, 1872. Merely producing and exhibiting a document is not enough. Signatures thereon must be identified and proved. The contents of the documents must also be proved. No attempt has been made by the appellants to do so. Even these documents do not throw any further light on the issue which was required to be established by the appellants save the fact that during the period of these documents, the appellant no.2 had projected himself as the *Dorje Lupon*. There is no material, therefore, to establish that the appellant no.2 was the *Dorje Lupon* of the appellant no.1, i.e. Old Rumtek Monastery, for his life time.

11. None of the above correspondences exhibited by the appellant no.5 have been proved and exhibited in the manner required under the law. None of the signatures appearing thereon are proved or identified. Mr. B. Sharma insists that since some of these correspondences refer to the appellant no.2 as the *Dorje Lupon*, it must be held to be so. This Court cannot but disagree with the submission made by the learned Senior Counsel. It is elementary that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exists. This is the requirement of section 101 of the Indian Evidence Act, 1872. The burden of proof in a civil suit would remain on the appellants as plaintiffs and their mere assertions in the plaint would not be sufficient to discharge the burden. The appellants asserted that the appellant no.2 was the *Dorje Lupon* (Head Lama) of

the appellant no.1, i.e. the Old Rumtek Monastery, and he was appointed through custom, tradition, precedent and culture for life. They further asserted that the appellant no.2 had been performing the duty of *Dorje Lupon* (Head Lama) since 1981. It was, therefore, for the appellant to prove the existence of such facts including the custom, tradition, precedent and culture. Unfortunately, save exhibiting the entire *Gazetteer of Sikkim*, no such evidence, either oral or documentary, was led by the appellants. Not even an attempt was made to refer to any extract/statement in the book leave alone support it by any contemporary facts. None of the correspondences exhibited by the appellant throw any light on the appointment of the appellant no.2 as the *Dorje Lupon*. Mr. B. Sharma would draw attention to Exhibit-12 and to the fact that the Ecclesiastical Department had vide this correspondence addressed the appellant no.2 as the *Dorje Lupon* (Head Lama). A closer scrutiny of Exhibit-12 makes it clear that it was in reply to the representation dated 3/8/2013 made by the appellant no.2, quite obviously, as *Dorje Lupon* of the appellant no.1, i.e. the Old Rumtek Monastery. The appellants have not exhibited this representation dated 3/8/2013. Thus, all that one can presume, even if this Court was to take cognizance of Exhibit-12, which lies not proved, is that during this period of correspondence the appellant no.2 had referred to himself as the *Dorje Lupon*.

12. Mr. B. Sharma would also rely on the order dated 23.08.12 passed by this Court in *W.P.(C) No. 24 of 2008*. A perusal of the said order reflects that the writ petition was directed against order dated 25.08.2008, passed by the Sub-Registrar/District Collector,

cancelling the Lease Deed dated 16.10.2007. This Court held that the only question which remained to be examined was the procedural anomaly. This Court set aside the impugned order dated 25.8.2008 and remitted the matter back for passing a fresh order after according hearing to the petitioner, the Monastery and the complainants/representationists. This Court is unable to understand how even the order passed by this Court dated 23.08.12 would help the appellants to prove what they asserted.

13. That brings us to the next issue raised by Mr. B. Sharma. It is his contention that as it was held that the appellants had the *locus standi* to prefer the title suit, the learned Trial Court as well as the learned District Judge ought to have held issue no.2 also in favour of the appellants. The learned Trial Court examined the issue of maintainability *vis-à-vis* the question of limitation and *locus standi*. With regard to *locus standi*, it was held that since it was admitted that appellant no.2 managed the harvested crops of the *gumpa* land till 2012 and also since there were other documents like exhibit 6, 7, 12, 14, etc., which showed that the appellants had corresponded with others on behalf of the appellant no.1, i.e. the Old Rumtek Monastery, it was decided that the suit of the plaintiff was maintainable. Thus, it is clear that the learned Trial Court had decided to examine the suit in detail and consequently held the point of *locus standi* in favour of the appellants taking cognizance of the existence of the aforesaid documents. These documents, as held above, have neither been proved in the manner required under the Indian Evidence Act, 1872 nor throw any light as to how and when the appellant no.2 was

appointed as the *Dorje Lupon* (Head Lama) for life. These documents exhibited by the appellants to establish that appellant no.2 was the *Dorje Lupon* for life has been examined in detail by the learned Trial Court and concluded - “43. *Since the plaintiffs have to bring in proper evidences to prove their own case, which in the instant case, they have failed to produce, issue no.2 is decided against the plaintiffs.*” The learned District Judge in the impugned judgment dated 31.03.2018 held that the finding of the learned Trial Court with regard to the maintainability had not been assailed by the appellants in the first appeal preferred by them before him and as such the findings had attained finality.

14. Mr. B. Sharma then referred to the Application filed by the appellant before the learned District Judge as the First Appellate Court. This application was filed by the appellants before the learned District Judge seeking to produce further documents which was rejected. The learned District Judge examined those documents and held that “*While the attendance sheets proposed to be filed simply show the attendance of monks during the concerned Annual Gootor (Mahakala Puja) from 8th to 16 December, 2009, the RTI reply and its enclosures are seen to be concerning the lease deed document executed between the existing Dutchi of the appellant no.1 Monastery and Alembic Pvt. Company which, strictly speaking, have no bearing to the facts-in-issue in the present matter.*” The application as well as the documents have been examined in detail. None of these documents throw any further light in favour of the appellants to prove the facts they assert.

Consequently, the finding of the learned District Judge rejecting the application of the applicant is also upheld.

15. The concurrent findings of both the learned Trial Court as well as the learned First Appellate Court are sound and need not be interfered with. None of the grounds pressed by Mr. B. Sharma fall within the exceptions to the general rule of non-interference in such cases, i.e., (i) material evidence were ignored or the courts acted on no evidence; (ii) wrong inferences from proved facts by erroneously applying the law; or (iii) the courts have cast the burden of proof wrongly. Thus, the solitary question set by this Court is answered in the negative. It is held that neither the learned Trial Court nor the learned District Judge had failed to appreciate the documentary evidence in its correct perspective.

16. The appeal is dismissed and disposed of accordingly.

17. Pending applications, if any, also stand disposed.

18. No order as to costs.

19. Records of the Courts below be remitted forthwith along with a copy each of the judgment, for information.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting: **Yes/No**
Internet : **Yes/No**

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