

IN THE HIGH COURT OF SIKKIM

CIVIL JURISDICTION

WP (C) No...13.....of 2012...

Basu Deo Agarwal & Ano.

Appellants/s)
Petitioner (s)

Versus

State of Sikkim & Ors.

Respondent (s)
Opposite party/s)

Appellant

For

Petitioner
(Advocate (s))

Mr.K.T.Bhutia,Sr.Advocate with
Ms.Bandana Pradhan

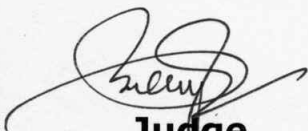
Respondent

For

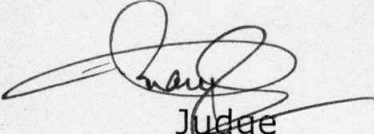
Opposite Party/
(Advocate (s))

Mr.J.B.Pradhan,Addl.Advocate General with
Mr.Karma Thinlay,Govt.Advocate and Mr.S.K.
Chettri,Asstt.Govt.Advocate.

Serial No.	Date	Order (s) with Signature (s)
1	2	3
01.	17.04.2012	<p style="text-align: center;"><u>BEFORE</u></p> <p style="text-align: center;">HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE</p> <p>Present: Mr. K. T. Bhutia, Senior Advocate with Ms. Bandana Pradhan, Advocate for the Petitioners.</p> <p>Mr. S. K. Chettri, Assistant Government Advocate for Respondents.</p> <p style="text-align: center;">----</p> <p>Heard.</p> <p>Admit.</p> <p>Notice is dispensed with in respect of Respondents No.1 to 3 as Mr. S. K. Chettri, Assistant Government Advocate accepts notice.</p>

Serial No.	Date	Order (s) with Signature (s)
1	2	3
ds		<p style="text-align: center;">Issue notice upon the Respondent No.4 returnable within four weeks.</p> <p style="text-align: center;">Requisites be filed within two days.</p> <p style="text-align: center;">Call for the records of the case.</p> <p style="text-align: center;">List on 18-05-2012.</p> <div style="text-align: center;">  Judge 17-04-2012 </div> <p>Index : Yes/No Internet : Yes/No</p>

Serial No.	Date	Orders (s) with Signature (s)
1	2	3
02.	18.05.2012	<p style="text-align: center;">BEFORE <u>HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE.</u></p> <p>Present: Mr. K. T. Bhutia, Senior Advocate with Ms. Bandana Pradhan, Advocate for the Petitioners.</p> <p>Mr. Karma Thinlay Namgyal, Govt. Advocate with Mr. S. K. Chettri, Assistant Govt. Advocate for the respondents no.1, 2 and 3.</p> <p>None for respondent no.4.</p> <p style="text-align: center;">***</p> <p style="text-align: center;"><u>ORDER (ORAL)</u></p> <p>Heard.</p> <p>Shorn of all details, the question requiring determination by this Court in this case, is as to whether the impugned order dated 21.03.2012 (Annexure P-9) passed by the Sub-Divisional Magistrate, Namchi, the respondent no.3, is valid in law.</p> <p>It is the case of the petitioners that the respondent no.3 by passing the order has assumed jurisdiction not vested in her by law and that such matter can only be adjudicated upon by the competent court prescribed under the special law provided for the process of disputes between landlord and tenant.</p> <p>I have perused the order dated 21.03.2012. The order appears to have been passed on the basis of a compromise said to have been entered between the petitioners and the respondent no.4. Had it remained as it is, perhaps things may have been quite different. However, this was followed by an order dated 16.04.2012 (Annexure P-13) by the respondent no.3 which clearly</p>

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		<p>reflects an objection having been filed to the first impugned order (Annexure P-9) as regards the finding of the parties having coming to an agreement. In the absence of a consent, the order would tantamount to an order of eviction of a tenant which is beyond the jurisdiction of the Sub-Divisional Magistrate, and, therefore, illegal and invalid.</p> <p>Mr. Karma Thinlay Namgyal, the learned Government Advocate, appearing on behalf of respondents no. 1, 2 and 3, fairly concedes to the proposition. In view of this, the impugned order Annexure P-9 dated 21.03.2012 and the subsequent order Annexure P-13 dated 16.04.2012 stand hereby quashed and set aside.</p> <p>The Writ Petition is allowed and is accordingly disposed of.</p> <p>No order as to costs.</p> <p>Let a copy of this order be transmitted to the respondent no.3 for its due compliance.</p> <div style="text-align: right; margin-top: 20px;">  Judge <u>18.05.2012</u> </div>

Index : ~~Yes~~ / ~~No~~Internet : ~~Yes~~ / ~~No~~

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