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THE HIGH COURT OF SIKKIM : GANGTOK

WRIT PETITION (C) NO. 5 OF 2003

In the matter of an application under Articles 226 and 227 of the Constitution of India read with section 115 of the Code of Civil Procedure, 1908.

Tshurphu Labrang,
through its General Secretary (Zhanag Zodpa)
Dharma Chakra Centre,
Rumtek,
East Sikkim. **.... Petitioner**

VERSUS

1. Karmapa Charitable Trust,
A Public Religious and Charitable Trust,
Allegedly having its Head Office at the
Dharma Chakra Centre,
Rumtek,
East Sikkim.

2. Shri T. S. Gyaltsen,
S/o late Kazi Kesang,
R/o Trateng Villa,
Gangtok – 737 101,
East Sikkim.

3. Kunzig Shamar Rinpoche,
S/o late Thinley Dorjee,
R/o KIBI, B-19/20, Qutab Instituional Area,
New Delhi – 110 016.

4. Shri Gyan Jyoti Kansakar,
S/o late Shambhu Karpro,
R/o Kwapukhu, Thahity,
Kathmandu, Nepal.

5. State of Sikkim,
through Chief Secretary,
Tashiling Secretariat,
Gangtok – 737 101,
East Sikkim.

6. The Secretary,
Ecclesiastical Affairs,
Government of Sikkim,
Gangtok – 737 101,
East Sikkim.

7. Goshir Gyaltsab Rinpoche,
Tibetan Monk,
R/o Dharma Chakra Centre,
P.O. Rumtek Monastery,
East Sikkim – 737 135. **.... Respondents**

8. Shri J. T. Densapa,
S/o late T. D. Densapa,
R/o Burmiok House,
Development Area,
Gangtok – 737 101,
East Sikkim. **.... Ex-parte Respondents**

For the petitioner : Mr. Sudarshan K. Misra, Sr. Advocate, Mr. Naresh Sahai Mathur and Mr. Bhaskar Raj Pradhan, Advocates.

For respondent Nos.1 to 4 : Mr. Asok De, Sr. Advocate, Mr. S. Roychaudhuri, Mr. A. K. Bhattacharya and Mr. S. Hamal, Advocates.

For respondent Nos.5 & 6 : Mr. S. P. Wangdi, Advocate General with Mr. Karma Thinlay, Asstt. Govt. Advocate.

For respondent No.7 : Mr. D. K. Thakur, Mr. A. Prasad and Mr. N. Rai, Advocates assisted by Ms. Jyoti Kharka, Advocate.

For respondent No.8 : None for respondent No.8.

PRESENT: THE HON'BLE MR. JUSTICE R. K. PATRA, CHIEF JUSTICE.
THE HON'BLE MR. JUSTICE N. SURJAMANI SINGH, JUDGE.

DATE OF JUDGMENT : 26TH AUGUST, 2003.

J U D G M E N T

R. K. PATRA, C.J.

Is the learned District Judge justified in law in rejecting the prayer of the petitioner for its impleadment as a defendant in the pending suit? This is the short question that arises for consideration in this composite application made under Articles 226 and 227 of the Constitution of India read with section 115 of the Code of Civil Procedure, 1908.

2. The respondents 1 to 4 have instituted Civil Suit No. 40 of 1998 on the file of the learned District Judge (East & North) Sikkim at Gangtok against the respondents 5 to 7. Their case in the plaint is as follows:-

In the year 1959, His Holiness Ranjung Rigpae Dorje, the 16th Gyalwa Karmapa being accompanied by nearly 300 high lamas, monks and lay followers came from Tibet and settled at Rumtek in East District of Sikkim. The then Chogyal of Sikkim Sir Tashi Namgyal offered him 74 acres of land in perpetuity for the construction of the monastic centre which is now known as the Dharma Chakra Centre.

While coming to Sikkim, the Karmapa brought with him precious and sacred relics, ritual items, icons, paintings etc. which have been preserved in the monastery at Rumtek. The most precious and invaluable religious symbol of the Karmapa is the Black Hat which was also preserved in the monastery till 1992. Since 1959, besides the monks of Tibetan origin, a number of individuals from Sikkim and outside have joined the Dharma Chakra Centre as students, disciples and devotees of Karmapa. On 6th November, 1981, the 16th Karmapa expired. Before his death, he established a public religious and charitable Trust called Karmapa Charitable Trust for the purposes mentioned in the trust deed dated 23rd August, 1961. Under the said deed, the 16th Karmapa was the sole trustee during his life-time. Following the death of the 16th Karmapa, in terms of the trust deed respondents 2 to 4 took charge of the properties and affairs of the Dharma Chakra Centre. As per the trust deed, they are under legal obligation to continue to hold charge of the entire properties of the trust until the 17th Karmapa attains the age of 21 at which point of time he (17th Karmapa) shall become the sole trustee once again and the trustees discharging their obligation under the trust deed shall automatically become *functus officio*. The respondents 2 to 4 in their capacity as the duly appointed trustees of the Karmapa Charitable Trust are the sole, absolute and

exclusive legal authority of the trust (having stepped into shoes of the deceased 16th Karmapa) which has vested in them on their assumption of the office of trustees. The corpus of the trust which vested in them, *inter alia*, includes the movable and immovable properties as mentioned in Scheduled "A" and "B" of the plaint (hereinafter referred to as the suit property). The respondents 2 to 4 as the duly appointed trustees also moved the learned District Judge in Civil Misc. Case No. 30 of 1985 for grant of succession certificate in their favour. The learned District Judge after issuing notice to the parties concerned as well as to the general public by order dated 10th March, 1986 allowed the prayer for grant of succession certificate in their favour. While the matter stood thus the state government of Sikkim through its officers respondents 5 and 6 under the pretext of maintaining law and order within the premises of the Dharma Chakra Centre deployed massive police force on 2nd August, 1993 with a view to interfere with the rights, duties and obligations of the respondents 2 to 4. The illegal and arbitrary action made on 2nd August, 1993 was the result of collusion and covert acts of the respondents 5 to 7. On that day, i.e., 2nd August, 1993, respondent 7 with the connivance of respondents 5 and 7 invited large number of lay people from Gangtok and other places into the courtyard of the monastery and terrorised and harassed the legitimate

monks/beneficiaries of the Dharma Chakra Centre. The unruly mob resorted to violence on account of which a number of monks/beneficiaries were injured and extensive damage to the monastery was also caused. Although police officials were present within the monastery, no action was taken against the culprits who indulged in violence. The then Home Secretary ordered confiscation of the main key of the principal shrine hall of the monastery which was promptly carried out by the police and officers present there. After illegal confiscation of the key, the police and supporters of respondent 7 launched illegal eviction of monks/beneficiaries from their respective homes, quarters located within the premises of the Dharma Chakra Centre. Taking advantage of indiscriminate arrest and detention of the innocent monks/beneficiaries, the officers of State Government seized an opportunity to open the principal shrine hall of the monastery. Ever since the fateful day of 2nd August, 1993, the entire premises of the Dharma Chakra Centre including the main monastery, personal residence of the Karmapa are under illegal/unlawful possession of respondent 7 held through respondents 5 and 6. As a result of this, it has become impossible for the respondents 2 to 4 to enter into the premises and discharge their lawful duties as trustees and their obligations towards the beneficiaries of the trust.

On the basis of the above averments, the respondents 1 to 4 have sought for an order of eviction of all the encroachers inducted by respondent 7 from the suit property, rooms, quarters, houses of the Dharma Chakra Centre and restoration of the same including the main key of the principal shrine hall to them (respondents 1 to 4) and for a decree that the respondents 1 to 4 are alone entitled to possess and administer the suit property.

3. Before examining the main question involved in this application, we may first consider a preliminary point as to whether this Court in exercise of its revisional power under section 115 C.P.C. can interfere with the impugned order by which the learned trial Judge rejected the petitioner's prayer for impleadment as a defendant in the suit.

Section 115(1) C.P.C. as now stands after the coming into force of Amendment Act 46 of 1999 reads as follows:-

> **"115. Revision**
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> (1) The High Court may call for the record of any case which has been decided by any court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate court appears-
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> (a) to have exercised a jurisdiction not vested in it by law, or
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> (b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit:-

PROVIDED that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings."

From the aforesaid, it may be seen that the effect of proviso is that the order impugned in revision must not only suffer from some jurisdictional error but also it has to fulfil the condition laid down in the proviso i.e. in case the impugned order is set aside it must result in final disposal of the suit or other proceedings. It is not the case of the petitioner that if the impugned order had been made in its favour it would have resulted in final disposal of the suit or any other proceedings. In view of this, we have no hesitation to hold that the petitioner's application purported to be under section 115 C.P.C. is hit by the proviso of sub-section (1) and, therefore, the same is liable to dismissed.

4. The learned trial Judge after considering the submissions of both parties rejected the petitioner's prayer by holding as follows :-

> "9. ..... However, Court cannot allow such petition if the Intervenor fails to show that its interest is involved in the Suit. The case at hand has been filed by the majority of the Trustees of the Karmapa Charitable Trust and the suit is basically for eviction, possession and maintenance of the properties mentioned in schedule to the plaint.
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> 10. As per the contention of the Intervener itself that Tshurphu Labrang connotes multifaceted sister Committees with series of members in each of the committees. If this proposition is to be accepted then all those members of sister committees would also become necessary parties in the present suit. And in case the Intervenor is allowed to participate in the suit there will be further applications from other sister committees. As already observed that the instant suit has been filed by the plaintiffs where in majority of the Trustees are parties who will sufficiently represent the case of the Intervener as the Intervener (if exists) comes within the umbrella of Karmapa Charitable Trust."

5. Shri Misra learned Senior counsel contended that the petitioner is a necessary party in the suit. By referring to paragraphs 2, 8, 9 and 10 of the plaint as well as to the trust deed dated 23rd August, 1961, he ridiculed the claim of the plaintiffs that following the death of 16th Karmapa the suit property vested with them. According to Shri Misra, the corpus of the trust was only a sum of Rs.2,51,473.64 out of which its (petitioner's) contribution is Rs.1,03,505.68 and vesting, if any, was in respect of the aforesaid amount. He also contended that there is conflict of interest between the petitioner and the plaintiffs *inasmuch* as the case of former

is that it being the corporation of the line of incarnations of a Lama whose properties became its property and it has been managing and administering the suit property and other assets of the Karmapa Charitable Trust. In this connection, he has also referred to some averments made by respondent 7 (defendant 3) in his written statement that it (petitioner) is the true and real owner of the suit property which has been in its possession. Learned counsel for the petitioner by referring to the 54th Report of the Law Commission also submitted that in case this Court does not invoke revisional jurisdiction under section 115 CPC, it can interfere with the impugned order in exercise of its power under Article 227 of the Constitution.

Learned Advocate General appearing for respondents 5 and 6 (defendants 1 and 2) submitted that the petitioner's presence in the suit is necessary in view of averments made in paragraphs 16 and 17 (page 11) and concluding paragraph of 8 (page 70) of the written statement filed by the respondent 7 (defendant 3) wherein it has been stated, *inter alia*, that the power and control of the suit property vests with the petitioner and it has been in its possession.

Shri De, learned Senior counsel for respondents 1 to 4 (plaintiffs) contended that the impugned order being a judicial order passed by subordinate Court cannot be

interfered with in exercise of writ jurisdiction under Article 226 but the validity of the said order can be tested within the parameters of Article 227 of the Constitution of India but the impugned order does not suffer from any such infirmity to be upset by this Court under Article 227. His submission is that the petitioner is a busy body and wants to project and get declared one Ugen Trinley Dorje as the 17th Karmapa. If the prayer of the petitioner is allowed, it would enlarge the scope of the suit *inasmuch* as an extraneous issue as to who is the 17th Karmapa would come for decision in the suit which has been filed for a limited purpose of eviction of the encroachers and recovery of possession of the suit property and the right to possess and administer of Dharma Chakra Centre till the 17th Karmapa is reincarnated or attains the age of 21 years. In this connection, Shri De brought to our notice the order dated 17th October, 2001 and order dated 7th August, 2002 passed by the learned trial Judge and contended that those orders have become final which have direct bearing on the present issue which is being considered in this application. He disputed the submission of learned counsel for the petitioner that the corpus of the trust is only a sum of Rs.2,51,473.64. Mr. De by referring to clause 4 of the trust deed which stipulates the trustee can receive donations and settlements from other donors, submitted that the corpus of the trust is

not confined to the aforesaid amount of Rs.2,51,473.64 but also donations and settlements received and receivable by the trustee.

6. Let us first examine the cases cited on behalf of the petitioner.

(i) Amon vs. Raphael Tuck & Sons Ltd., (1956) ALL E.R. 273 (290). The facts of the case reveal that in an action the plaintiff claimed damages against the defendants and injunction to restrain them from disclosing to other persons or making use of the information disclosed by the plaintiff. The allegation of the plaintiff was that he was the inventor of an adhesive dispenser in the form of a pen, known as "Fastik pen" and he approached the defendants to market the said pen and in course of negotiation disclosed the "know-how" of the pen. The negotiation, however, failed although there was an implied contract that the defendants would treat the information regarding "know-how" of the pen as confidential. In breach of that contract the defendants manufactured an adhesive dispenser called "Stixit pen" which contained three distinctive features of the "Fastik pen". On the basis of the aforesaid allegations the plaintiff claim damages. The defendants before submitting defence applied under R.S.C. Order 16 Rule 11 (a portion of which is in pari materia with Order 1 Rule 10(2) CPC) to join one

Dachinger on the ground that he was the inventor of the "Stixit pen", who was their employee and assisting them in marketing the pen. The Court allowed the prayer of intervention by applying the test :

> "May the order for which the plaintiff is asking directly affect the intervener in the enjoyment of his legal rights?"

The Court further observed:-

> " ..... Likewise, a defendant who seeks to join another defendant does not inevitably have to show that the new defendant will be directly affected by an order in the action as it is constituted. He may succeed if he can show that he cannot effectually set up a defence which he desires to set up unless the new defendant is joined with it, or unless the order made binds the new defendant. It is not that the construction of the rule differs according to circumstances. The construction of the rule is, and must be, the same in all circumstances; but the test that is appropriate to determine whether a party is necessary or not may vary according to the circumstances."

From the facts mentioned above, it may be seen that since Dachinger claimed to be the inventor of the "Stixit pen" he was a necessary party and without him, no effective decree could have been passed in the action commenced by the plaintiff.

(ii) Razia Begum vs. Sahebzadi Anwar Begum, AIR 1958 SC 886. It was a case in which the plaintiff filed the suit against the second son of Nizam of Hyderabad (Prince)

alleging that she was the lawfully married wife of the Prince and in that capacity was entitled to payment of monthly allowance of Rs.2,000/- which had been denied. The Prince filed written statement admitting the entire claim of the plaintiff. An application under Order 1 Rule 10(2) CPC was filed by Sahebzadi Anwar Begum claiming to be the lawful and legally wedded wife of the Prince. She further alleged that the suit was a collusive one between the plaintiff and the Prince. The prayer for impleadment was allowed by the trial Court which came to be confirmed by the Supreme Court. The facts of that case are distinguishable *inasmuch* it was a suit for declaration of the status and the result of declaratory decree would have definitely affected Sahebzadi Anwar Begum. Therefore, in the circumstances, the presence of Sahebzadi Anwar Begum was held to be necessary for effectual and complete adjudication of the controversy.

(iii) Ramesh Hirachand Kundanmal vs. Municipal Corporation of Greater Bombay, (1992) 2 SCC 524. In the above case, the appellant Ramesh was in possession of the service station erected on the land held by Hindustan Petroleum Corporation Limited as lessee. The service station consisted of a petrol pump in the ground floor and a structure with an open terrace for parking of vehicles. The

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Bombay Municipal Corporation issued notice to the appellant Ramesh for demolition of two chattels on the terrace on the ground that they were unauthorised constructions. The appellant Ramesh filed the suit challenging the validity of the notice and for injunction restraining the Bombay Municipal Corporation from demolishing the two chattels. The Hindustan Petroleum Corporation applied for being impleaded as defendant in the suit on the plea that it had materials to show that the construction made by the plaintiff was unauthorised. The prayer for impleadment was allowed by the trial Judge which was challenged by the appellant Ramesh in the High Court by way of writ petition but without any success. Thereafter, he filed the appeal before the Supreme Court which set aside the orders passed by the trial Judge and the High Court and rejected the prayer for impleadment. While doing so, the Supreme Court observed as follows:-

> "18. The courts below have assumed that the subject matter of the litigation is the structure erected by the respondent or in other words the service station which has been allowed to be operated upon by the plaintiff under the terms of the dealership agreement. The notice does not relate to that structure but is in relation to the two chattels stated to have been erected by the present appellant unauthorisedly. According to the appellant these chattels/structures are movables on wheels and plates where servicing and/or repairs are done and used for storing implements of the mechanics. Respondent 2 has no interest in these chattels and the demolition of

> the same in pursuance to the notice is not a matter which affects the legal rights of the respondent. The courts below, therefore, failed to note that respondent 2 has no direct interest in the subject matter of the litigation and the addition of the respondent would result in causing serious prejudice to the appellant and the substitution or the addition of a new cause of action would only widen the issue which is required to be adjudicated and settled. The joining of the party would embarrass the plaintiff and issues not germane to the suit would be required to be raised. The mere fact that a fresh litigation can be avoided is no ground to invoke the power under the rule in such cases."
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> [emphasis supplied]

From the above, it would appear that this case is of no assistance to the petitioner rather it goes against it.

(iv) Jugal Krishna Mullick vs. Phul Kumari Dassi, AIR 1918 Calcutta 909. It was a case where one Phul Kumari Dassi as the administratrix to the estate of her late husband filed the suit to set aside the sale of part of the estate for arrears of revenue. One Jugal Krishna claiming to be an adopted son of the deceased husband of Phul Kumari applied to the trial Court to be made a co-plaintiff in the suit. The application was rejected by the trial Judge. It appears there was another suit pending between Phul Kumari and Jugal Krishna wherein Phul Kumari admitted that Jugal Krishna was adopted by her but pleaded she had no authority from her husband to adopt. The question arose whether in the above circumstances the prayer of

Jugal Krishna to be added as a co-plaintiff in the suit filed by Phul Kumari was justified. The Calcutta High Court held that in view of the admission of Phul Kumari that Jugal Krishna was adopted by her as a son he was entitled to be made a party. The above was a case where there was admission by the plaintiff that Jugal Krishna was her adopted son and had thus interest in the relief claimed by her in the suit. He was, therefore, held to be a proper party in the suit.

(v) Bacha Sham Sunder Kuer vs. Balgobind Singh, AIR 1930 Patna 323. It was a case in which in a rent suit filed by the landlord against a tenant, a third party applied to be added as a defendant on the allegation that the disputed holding had been transferred to him with the consent of landlord and, therefore, he was the real tenant. The Patna High Court held that the presence of intervening party would enable the trial Court to effectually and completely decide and settle all questions involved in the suit. The facts of that case are distinguishable *inasmuch* as the intervening party came forward alleging that he was the real tenant and not the defendant. In view of such allegation, his presence was, therefore, necessary in the suit.

(vi) Chava Lakshmidevamma vs. Chava Nagayya, AIR 1949 Mad 369. A suit was filed for declaration of the

plaintiff's title and permanent injunction restraining defendants from interfering with her possession. Defendants in the written statement denied that the plaintiff was entitled to succeed to her husband's property. According to them one S., one of their sons was adopted by the plaintiff's deceased husband and the said S. was in possession of the suit property. The Madras High Court held that a decision as to who had title to the property was necessary to be decided and, therefore, S. was a proper party whose presence was necessary for determination of the real dispute. The suit being for declaration of title and since S. staked the claim of title to the property, he was held to be a proper party. The present suit is not for declaration of title in respect of suit property.

(vii) Mukhtiyar Mohammad vs. Panna Lal, AIR 1985 MP 122. In this case a suit for permanent injunction against the defendant and from interfering with plaintiff's possession in respect of the suit property was filed. In the written statement, the defendants pleaded that the suit property was the maafi lands of the estate of Dargah Baba and the mujabir (pujari) of the said Dargah Baba gave a written patta to the first defendant. The pujari applied to the trial Court for being added as a defendant. The learned Single Judge of the Madhya Pradesh High Court held that

the pujari was a proper party because his defence to the plaintiff's case was the same as that of the defence of the defendants. The facts of that case being quite different from the facts of the present case, the ratio laid down in that case is not applicable.

7. Shri De on the other hand relying on the decision of the Madras High Court in Firm of Mahadeva Rice and Oil Mills vs. Chennimalai Goundar, AIR 1968 Mad 287, submitted that the petitioner is neither a necessary nor a proper party, therefore, its prayer was rightly rejected by the learned trial Judge. It was a case in which one Palaniappa filed suit for partition of one rice and oil mill and separate possession of his share. The defendants filed their written statement contending that the mill was a partnership property and, therefore, the suit for partition was not maintainable, during the continuance of the partnership. While the suit was pending, the defendants filed another suit praying for injunction against the plaintiff of the first suit from trespassing into the mill premises and interfering with their business. When both the suits were transferred to one Court for trial, one Palaniappa Chettiar sought to be impleaded in the suits on the plea that he was the vendor of the suit mills. The trial Judge allowed the prayer for addition of a party which was set aside by the High Court

because he was not a proper party and the suit could be completely and effectually adjudicated upon in his absence.

At this stage, we may profitably refer to a recent judgment of the Supreme Court in J. J. Lal Pvt. Ltd. vs. M. R. Murali, AIR 2002 SC 1061. It is true in that case that application for impleadment of party was filed when the appeal was pending in the Supreme Court but the ratio laid down in that case is fully applicable to the case at hand. In that case, the landlord initiated eviction proceedings against the tenant from the disputed premises on the plea of non-payment of appropriate rent. The tenants in their written statement besides denying the allegation of default submitted that there was dispute as to the rate at which rent was payable and that they were prepared to pay rent at the previous rate. The Rent Controller held that the tenants were not defaulters and, therefore, they were not liable to be evicted. Accordingly he dismissed the application for eviction. The landlords, thereafter, filed appeal before the appellate authority but without any success. Against the decision of the appellate authority, the landlord filed civil revision in the High Court which held that the tenants were willful defaulters in payment of rent and, accordingly, it directed their eviction. Being aggrieved by the order of the High Court the tenants filed appeal before the Supreme

Court. During the pendency of the said appeal the Municipal Corporation filed application seeking its impleadment on the ground that it was the owner of the disputed premises and the landlord was its allottee. Their Lordships while rejecting the prayer for impleadment observed as follows :-

> "28. Both the sets of applications raise such controversies as are beyond the scope of these proceedings. This is a simple landlord-tenant suit. The relationship of Municipal Corporation, with the respondents and their mutual rights and obligations are not germane to the present proceedings. Similarly, the question of title between Hemlata Mohan and the respondents cannot be decided in these proceedings. The impleadment of any of the applicants would change the complexion of litigation and raise such controversies as are beyond the scope of this litigation. The presence of either of the applicants is neither necessary for the decision of the question involved in these proceedings nor their presence is necessary to enable the Court effectually and completely to adjudicate upon and settle the questions involved in these proceedings. They are neither necessary nor proper parties. Any decision in these proceedings would govern and bind the parties herein. Each of the two applicants is free to establish its own claims and title whatever it may be in any independent proceedings before a competent forum. The applications for impleadment are dismissed." [emphasis supplied]

8. As indicated above, the petitioner applied under Order 1 Rule 10 CPC for being impleaded as a defendant in the suit. May it be stated that Order 1 Rule 10(2)C.P.C. provides for joinder of two classes of persons, namely,

necessary parties and proper parties. A necessary party is one who ought to have been joined, i.e., a person in whose absence no effective decree at all can be passed. A proper party is he, whose presence is necessary to enable the Court to effectually and completely adjudicate upon and decide all questions involved in the suit. The aforesaid legal position is well-settled.

Keeping the above well-settled principle and the decisions cited by the learned counsel for parties in view, let us examine whether the claim made by the petitioner to be impleaded as a defendant in the suit has any merit. On a close and careful perusal of the averments made in the plaint and the reliefs claimed, it would appear that respondents 1 to 4 have commenced the suit essentially for eviction of unauthorised persons allegedly inducted by respondent 5 since 2nd August, 1993 from the suit property as well as from the rooms, quarters etc. of Dharma Chakra Chentre and for their restoration and return of the main key of the principal shrine hall of the monastery and for a decree that they (plaintiffs) are alone entitled to possess and administer the suit property till the 17th Karmapa attains the age of 21 years.

The above being the limited relief claimed in the suit, the petitioner is not at all a necessary party because in its

absence an effective decree can be passed. Its presence is also not necessary because without it all questions involved in the sit can be appropriately decided.

The prayer for impleadment looks innocuous but if the veil is lifted it would disclose that the entire object of the petitioner is to project and get declared Urgyen Thinley Dorje as the 17th Karmapa. This is evident from the rejoinder (vide para 3) wherein the petitioner has stated that it is in control and in possession of the suit property and is holding them for the benefit of Urgyen Trinley Dorje, who is accepted as the 17th Gyalwa Karmapa. In paragraph (I) (iv) (at page 7 of the rejoinder) it has been further stated by the petitiner that Urgyen Trinley Dorje has been confirmed as the 17th Karmapa by the Dalai Lama and also accepted by all the lamas of Kagyu School. In paragraph 18, it has contended that the real issue is whether Urgyen Trinley Dorje is the 17th Karmapa or not. In paragraph 21, it has been stated that as per the trust deed dated 23rd August, 1961, the beneficiaries include not only the petitioner but also the other followers of the Karma Kagyu Lineage and Urgyen Trinley Dorje has been recognised as 17th Gyalwa Karmapa. In paragraph 26, it has been alleged that the respondent 3 has no intention to protect the suit property and his claim over the suit property is directly adverse to the interest of

17th Gyalwa Karmapa. In paragraph 34, the petitioner has alleged that possession, management and administration of the suit property was with the 16th Gyalwa Karmapa and after his death it was always with the petitioner. At page 39 of the rejoinder, the allegation of the petitioner is that ever since the 16th Karmapa came to Sikkim in 1959, it continued to exercise possession, control and administration over all properties including the disputed property and it was never under the Karmapa Charitable Trust. In these circumstances, we are inclined to hold that entire game of the petitioner is to bring Urgyen Trinley Dorje by projecting him as the 17th Karmapa and take control over the Karmapa Charitable Trust and the Dharma Chakra Centre by him. Therefore, if it is impleaded as a defendant, it would change the complexion of the litigation and enlarge the scope of the suit because a foreign issue as to whether who would be the 17th Karmapa (whether Urgyen Thinley Dorje as claimed by defendant 3 and the petitioner or Thye Thinley Dorjee as claimed by plaintiff 3) would come up for a decision.

At this stage, we may note that the learned trial Judge was called upon by the contesting defendants to decide as to the maintainability of the suit and in his order dated 17th October, 2001, he has come to hold that the suit is maintainable. In paragraph 14 of the said order, he has

held that "defendants 1, 2 and 3 do not dispute that possession of the suit property was with the plaintiffs till 2.8.1993. Defendants 1 and 2 have admitted this fact in para 7 of their written statement. Defendant 3 also concedes this fact at para 14 in his written statement." This order was subject matter of challenge in this Court in FAO No. 1 of 2002 and this court did not interfere with the above finding. The learned trial Judge in another order on 7th August, 2002 has held that "the present suit does not relate to the question as to who is the 17th Karmapa. The main dispute between the parties is that whether the plaintiffs being the trustees are obliged to possess and administer the suit property or that whether the defendants 1 to 3 have dispossessed them from the possession of suit property. Such being the position whether a particular person is the 17th incarnation of the Karmapa or not is not the bone of contention." This order of the learned trial Judge was upheld by this Court in Civil Revision No. 5 of 2002. The findings recorded in the two orders have touched finality and are not available to be disturbed.

For all the reasons aforementioned, the petitioner's prayer for being impleaded in the suit has no merit.

9. At this stage, we may like to know as to who is this petitioner – Tshurphu Labrang. According to the

petitioner 'labrang' means the residence of a high and eminent spiritual master 'Lama'. It also means the administration of Lamas. Amongst some prominent Labrangs, the petitioner is one them being Tshurphu monastery of Karmapa. In paragraph 7 of this application, the petitioner has averred that after the death of 16th Gyalwa Karmapa in November, 1981, Urgyen Trinley Dorje who is now a minor has been recognised by the Dalai Lama as the 17th reincarnation of the Gyalwa Karmapa. In paragraph 8, it has been asserted that the petitioner is in charge of the administration over property, monasteries, schools, philanthropic and spiritual works undertaken by the Karmapa including religious activities at the Rumtek monastery. The specific case of the petitioner is that Karmapa alone is competent to appoint a General Secretary (in Tibetan language, General Secretary is known as Zhanag Zodpa)]. If, according to the petitioner, the 17th Karmapa is still a minor, it is not conceivable under what law a minor could appoint a General Secretary through whom application under Order 1 rule 10 CPC as well as this application has been filed. Besides this, one Tenzing Namgyal claims to be the General Secretary of the petitioner since 1992. This claim has been refuted by respondents 1 to 4 in their counter-affidavit stating that the 16th Gyalwa Karmapa appointed one Dhamchoe Yongdu as the General

Secretary who died on 10th December, 1982 and after him one Topga Yulgyal who died in October, 1997. If Topga Yulgyal was the General Secretary from 1982 till his death in October 1997, Tenzing Namgyal could not have been appointed as the General Secretary in 1992. The claim, therefore, put forth by Tenzing Namgyal that he is the General Secretary of the petitioner appears to be preposterous.

10. We have already recorded the finding that the application made on behalf of the petitioner under section 115 CPC against the impugned order would not lie. It has recently been held by the Supreme Court in Sadhana Lodh Vs. National Insurance Company Ltd. & Ors., 2003(1) SCALE 739, that where remedy for filing a revision before the High Court under section 115 CPC has been expressly barred by the State enactment, in such a situation a writ petition under Article 227 would lie and not under Article 226 of the Constitution of India.

It is now fairly settled by series of Supreme Court decisions that the power of superintendence conferred on the High Court under Article 227 of the Constitution over all courts and tribunals in relation to which it exercises jurisdiction is supervisory and not appellate. The power of supervision under this Article casts a duty upon the High

Court to keep the subordinate courts and tribunals within the bounds of their authority. In exercise of such jurisdiction, the High Court can interfere with finding of facts recorded by lower court/tribunal if there is no evidence at all to support the finding or the finding is so perverse or unreasonable that no reasonable person can possibly reach such a conclusion, which the court/tribunal has come to. Except to this limited extent the High Court has no jurisdiction to interfere with findings of facts based on appreciation of materials on record. The impugned order passed by the learned trail Judge has, therefore, to be decided on the basis of the aforesaid well-established parameters.

11. The learned trial Judge rejected the application for impleadment on two grounds (1) the suit filed by the majority of the trustees is basically for eviction, restoration of possession and maintenance of property and the petitioner has failed to show as to how its interest is involved in it (2) the suit has been filed wherein majority of the trustees are parties who sufficiently represent the case of the petitioner.

The suit as instituted is principally for eviction of the encroachers from the suit property and other premises of the Dharma Chakra Centre and restoration of possession. The petitioner has not be able to indicate as to how its interest is

involved in the suit as framed. In any case, admittedly in the deed of trust the petitioner is one of the settlers whose name features at serial No.14. The suit having been filed by the trustees on the basis of the trust deed, the petitioner's interest, if any, is duly protected by the plaintiffs.

The above two findings reached by the learned trial Judge are based on appreciation of evidence and are pure findings of facts which cannot be upset by this Court in exercise of its jurisdiction under Article 227 of the Constitution.

12. In the result, there is no merit in this composite application which is hereby dismissed with costs assessed at Rs.3,000/-.

(R. K. Patra)
Chief Justice
26.08.2003

SINGH, J.

12A. I have had the privilege of perusing the judgment proposed by the Hon'ble the Chief Justice. I respectfully concur the opinion expressed by the Hon'ble the Chief Justice and, over and above that, I hereby add opinion of mine and observations stated infra: -

On perusal of the available materials on record, it is seen that the locus standi and the identity of Tenzing Namgyal, alias Tung Tenzing, the alleged General Secretary of the Tshurphu Labrang as claimed by him is not free from doubt. It is note-worthy to highlight the fact that the suit was filed on 30th July 1998 and it is contested by the parties concerned and the cause of action for the suit arose within the jurisdiction of the learned trial Court on and from 2nd August 1993 and the plaintiffs sought for restoration of the status quo-ante prevailing before 2nd August 1993 in the matter of administration of the trust in accordance with the instrument of trust and all the trust properties more elaborately set out in Schedules "A" and "B" annexed to the plaint and, the trial Court already held that the suit was maintainable vide, related order dated 17th October 2001. The main relief sought for by the plaintiffs is for restoration of status quo-ante as highlighted above in accordance with the instrument of trust/Deed of trust. For better appreciation in the matter the identity and the particulars of the followers of the said Holy Karmapa Sect hereinafter called the settlers in terms of the trust deed/instrument of trust dated 23rd August 1961 is necessary and essential for just determination of the real points in controversy between the parties and accordingly, those settlers/followers as

enshrined in the trust deed/instrument of trust are given below: -

(1)	H.H. GYALWA KARMAPA Camp-Gangtok (Sikkim)	son of Mr. ATHUP SEPU
(2)	Mr. DONGNER THUBGYEN Camp-Gangtok (Sikkim)	son of Mr. DAGAY
(3)	Mr. SOLPON JINPA Camp-Gangtok (Sikkim)	son of Mr. TASHI
(4)	Mr. DZIMPON LIDEO THARCHEN Camp-Gangtok (Sikkim)	son of Mr. DHONDHAM
(5)	Mr. JAMPEY PAO LAMA Camp-Gangtok (Sikkim)	son of Mr. KARCHING
(6)	Mr. THAMCHOI Camp-Gangtok (Sikkim)	son of Mr. LHUNDA
(7)	Mr. ATA Camp-Gangtok (Sikkim)	son of Mr. CHITTA
(8)	Mr. KINCHOK Camp-Gangtok (Sikkim)	son of Mr. TSEWANG RABDEN
(9)	Mr. TSEWANG NORBU Camp-Gangtok (Sikkim)	son of Mr. KHAPOOK
(10)	Mr. JEWON TAKPOO YONGDU Camp-Gangtok (Sikkim)	son of Mr. NANGPA TASHI
(11)	Mr. ZIMPON LEGSHEY Camp-Gangtok (Sikkim)	son of Mr. THEMDUP
(12)	Mr. THUMCHEO YANGOO Camp-Gangtok (Sikkim)	son of Mr. DHAGEY
(13)	Mr. KARMA GYALTSEN Camp-Gangtok (Sikkim)	son of Mr. PHUNTSO
(14)	H.H. GYALWA KARMAPA for TSURPHU LABRANG Camp-Gangtok (Sikkim)	son of Mr. ATHUP SEPU

13. A bare perusal of the said Trust Deed shows that H.H. Gyalwa Karmapa for Tshurphu Labrang came Gangtok,

Sikkim, is also one of the 14 (fourteen) settlers/ followers in terms of the said deed/instrument. According to me, the Tshurphu Labrang, one of the settlers is duly protected and represented by the plaintiffs in terms of Trust Deed and as such the original suit can be effectually and completely adjudicated upon and settled all the questions/issues involved in the suit without impleading the present writ petitioner through its alleged General Secretary or Power of Attorney holder of the said General Secretary, Shri Tenzing Namgyal whose status and locus as General Secretary is not free from doubt.

14. I am also of the view that the application filed by the writ petitioner under Order 1 Rule 10 C.P.C. before the Court below is defeated by delay and laches inasmuch as the suit was filed on 30th July 1998 and the cause of action for the suit arose on 2nd August 1993 and the said application under Order 1 Rule 10 was filed in the Court below on 30th July 1998. It may be mentioned that if either Shri Tenzing Namgyal or Karma Drolma had/has interest in the suit for and on behalf of Tshurphu Labrang, they ought to have filed the application under Order 1 Rule 10 C.P.C. in the Court below earlier but they remained silent for a long time thus causing inordinate delay in the matter. It is well settled that "delay defeats justice".

N. Gyalu

15. It is further revealed that Shri Karma Drolma, the alleged Power of Attorney holder alone signed and filed the present writ petition as Power of Attorney holder of the said General Secretary for and on behalf of Tshurphu Labrang. However, further perusal of the General Power of Attorney shows that the said Tenzing Namgyal appointed three persons namely, Karma Drolma, Karma Tashi Ozer and Karma Lodro Samphel as his attorneys in his name and on his behalf to do and execute all or any of the acts, deeds and things enumerated/contained in the said General Power of Attorney, but there is no any material document showing the factum of authorisation of the other two alleged attorneys so as to enable Shri Karma Drolma to do all such acts and things including filing of this writ petition in terms of the said General Power of Attorney on their behalf i.e. on behalf of the said two attorneys.

16. For the reasons and observations made above, I am of the view that the writ petitioner could not make out a case to justify interference with the impugned order dated 16th November 2002 passed by the learned District Judge (East and North) in CMC No.19/2002 and apart from that, the said Shri Tenzing Namgyal, the alleged General Secretary or Shri Karma Drolma, the alleged Power of Attorney holder has failed to establish that they have enforceable legal right

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to file the present writ petition for and on behalf of the Tshurphu Labrang. In my considered view, the writ petition is devoid of merit.

N. Surjamani Singh

(N. Surjamani Singh)
Judge
26.08.2003