

IN THE HIGH COURT OF SIKKIM




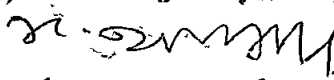
ORDER SHEET

R. First AppealNo. 34 of 199 2000

Kaushalya MindaPetitioner/Appellant

Versus

Durga Khati & OthersRespondent


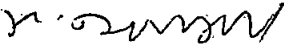
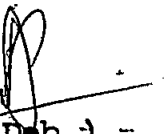
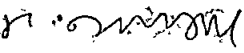
Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
1.	6.11.2000	<p>Present : Mr. U. P. Sharma, Advocate for the appellant.</p> <p style="text-align: center;">---</p> <p>Heard.</p> <p>Admit. Issue notice to the respondents.</p> <p>Be listed on 1.12.2000.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="text-align: center;">  (A. Deb) Judge 6.11.2000 </div> <div style="text-align: center;">  (R. Dayal) Chief Justice 6.11.2000 </div> </div>	<p>Requisite not filed notice not issued by Jay</p>
2.	1.12.2000	<p>Present : Mr. U. P. Sharma, Advocate for the appellant.</p> <p style="text-align: center;">---</p> <p>Learned Counsel for the appellant expresses regret for not filing requisites and makes a request for one more opportunity. Requisites be filed and notices be issued to the respondents for 14.02.2001.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="text-align: center;">  (A. Deb) Judge 01.12.2000 </div> <div style="text-align: center;">  (R. Dayal) Chief Justice 01.12.2000 </div> </div>	<p>Record of bench Court called for by Jay</p> <p>Requisite filed on 1-12-2000. Notice prepared & issued on 2-12-2000 by Jay</p> <p>Notice of Refdts 1 & 2 returned unrecd, stating that add. shifted. by Jay</p> <p>Recd from the A-D and now the envelope recd back from inspect no-3 by Jay</p>

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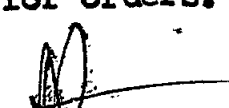
Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
3.	14.2.2001	<p>Present : Mr. U.P. Sharma, Advocate for the appellant. Mr. S.S. Hamal, Advocate for the respondent No.3.</p> <p>It appears that the summons have not been sent by normal process. Issue summons to be served by the Process Server. Requisites be filed within a week.</p> <p>Mr. Hamal has filed Vakalatnama on behalf of the respondent No.3. Let it be kept on record.</p> <p>List it on 6-3-2001 for orders.</p> <p style="text-align: right;">(Anup Deb) Judge 14.02.2001</p>	<p>Requisites filed today to 6-3-2001 notice prepared through p-server 1. Notice served upon respd. no.1 2. Notice could not be served upon respd. no.2 as the local govt. & liquor on the report of process server.</p>
4.	6.3.2001	<p>Present : Mr. U. P. Sharma, Advocate for the appellant.</p> <p>None for respondent No.1.</p> <p>Mr. S. S. Hamal, Advocate for proforma respondent No.3.</p> <p>Respondent No.1 served with notice but absent. Respondent No.2 not served. Issue fresh notice to respondent No.2 by ordinary process and by registered post for 10.4.2001. Steps be taken within 3 days.</p> <p style="text-align: right;">(A. Deb) Judge</p> <p style="text-align: right;">(R. Dayal) Chief Justice</p>	<p>Requisites filed today at 2 pm on 8-3-01 notice issued by Reg AD & process server on 9-3-01. Not served. Through Regd AD. neither the envelope nor the AD card need be back. 2. Not served through Process Server also. It has stated in the notice that notice letter shifted from the house of Deva Maya Basker. We have seen the signature the house over.</p> <p>Not served to respd no 2 as AD card not back. stating add. left.</p>

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Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
5. 10.	4.2001	<p>Present : Mr. U. P. Sharma, Advocate for the appellant.</p> <p>None for respondent No.1.</p> <p>Mr. S. S. Hamal, Advocate for proforma respondent No.3.</p> <p>---</p> <p>Respondent No.2 has not been served. Notices sent by ordinary process and by registered post have come back unserved. It appears that respondent No.2 is not residing at the given address. Correct address shall be given by 24.7.2001.</p> <p>The matter be listed for orders on 25.7.2001.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="text-align: center;">  (A. Deb) Judge 10.4.2001 </div> <div style="text-align: center;">  (R. Dayal) Chief Justice 10.4.2001 </div> </div>	<p>Correct address not filed. <i>Wijay</i> 25/7/01</p>
6.	25.7.2001	<p>Present : Mr. U. P. Sharma, Advocate for the appellant.</p> <p>None for respondent No.1.</p> <p>Mr. S.S.Hamal, Advocate for proforma respondent No.3.</p> <p>---</p> <p>Mr. U. P. Sharma, learned Counsel for the appellant states that he will file the correct address today. He is permitted to do so. For orders, the matter be listed on 31.7.2001.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="text-align: center;">  (A. Deb) Judge </div> <div style="text-align: center;">  (R. Dayal) Chief Justice </div> </div>	<p>Address of Respondent No.2 filed by Shri U. P. Sharma <i>Wijay</i> 25/7/01</p>






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7.	31.7.2001	<p>Present : Mr. U. P. Sharma, Advocate for the appellant.</p> <p>None for respondent No.1.</p> <p>Mr. S.S.Hamal, Advocate for proforma respondent No.3.</p> <p>---</p> <p>Address of respondent No.2 has been given. Issue fresh notice to respondent No.2 at the given address by ordinary process and by registered post for 30.08;2001.</p> <p style="text-align: center;">  (A. Deb) Judge 31.7.2001 </p> <p style="text-align: center;">  (R. Dayal) Chief Justice 31.7.2001 </p>	<p>Office Note as to action (if any) taken on Order</p> <p>Request filed on 1-8-01. Notice issued on 2-8-01 by Mr. Dayal</p> <p>Ordinary process served upon Mrs. Durga Khati, mother of Navin Khati. Notice by registered post returned without stating add. left.</p> <p><i>W.M.M.</i></p>
8.	30-8-2001	<p>Present: Mr. U.P. Sharma, Advocate for the appellant.</p> <p>Mr. S.S. Hamal, Advocate for proforma respondent No.3.</p> <p>---</p> <p>Office report reveals that notice has been served by ordinary process. Mr. U.P. Sharma, learned counsel for the appellant seeks three weeks' time to file Paper Book. Prayer is allowed. Paper Book be filed on or before 20-9-2001.</p> <p>List it on 21-9-2001, for orders.</p> <p style="text-align: center;">  (Anup Deb) Judge 30-8-2001. </p>	



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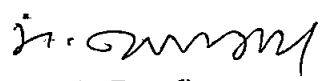
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9. 20.	9.2001	<p>Present : Mr. J. B. Pradhan, Advocate appearing on behalf of Mr. U. P. Sharma, Advocate for the appellant.</p> <p>Mr. S. S. Hamal, Advocate for proforma respondent No.3.</p> <p>-----</p> <p>Case taken up today on the request of both the sides.</p> <p>An application has been filed by the appellant for one month's time to file paper book on the ground that his Counsel is observing the death rites of his mother. Paper book may be filed by 18.10.2001.</p> <p>Be listed for orders on 19.10.2001.</p> <p> (A. Deb) Judge 20.9.2001</p> <p> (R. Dayal) Chief Justice 20.9.2001</p>	<p>Paper Book filed today by 18-10-01 </p>
10. 19.	19.10.2001	<p>Present : Mr. U. P. Sharma, Advocate for the appellant.</p> <p>Mr. S. S. Hamal, Advocate for proforma respondent No.3.</p> <p>---</p> <p>Paper book has been supplied by the learned Counsel for the appellant. For hearing, the appeal be listed on 01.03.2002.</p> <p> (A. Deb) Judge 19.10.2001</p> <p> (R. Dayal) Chief Justice 19.10.2001</p>	

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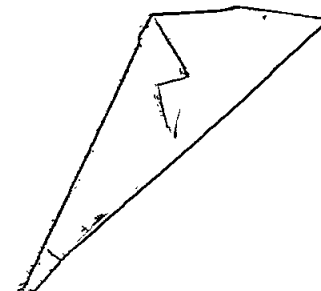
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11.	1-3-2002	<p>Present: - Mr. U.P. Sharma, Advocate for the appellant.</p> <p>Mr. B.K. Gupta, Advocate for Mr. S.S. Hamal, Advocate for proforma respondent No.3.</p> <p>Learned counsel Mr. B.K. Gupta submits that Mr. S.S. Hamal, Advocate for proforma respondent No.3 is not in station. Mr. U.P. Sharma, learned counsel for the appellant makes a prayer for fixation of the matter in the second week of April, 2002.</p> <p>Be listed on 12-4-2002</p>  <p>(Anup Deb) Judge 1-3-2002.</p>	
12.	12.4.2002	<p>Present : Mr. U. P. Sharma, Advocate for the appellant.</p> <p>Mr. S. S. Hamal, Advocate for proforma respondent No.3.</p> <p>Heard arguments in part. Both the counsel for the parties request for a date to prepare the case further.</p> <p>Be listed on 17.4.2002 for further arguments.</p>  <p>(R. Dayal) Chief Justice 12.4.2002</p>	

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13.	17-4-2002	<p>Present: Mr. U.P. Sharma, Advocate for the appellant. Mr. A.K. Upadhyaya, Advocate for Respondent No.1. Mr. S.S. Hamal, Advocate for proforma Respondent No. 3.</p> <p>During the course of arguments, it transpires that Respondent No. 3, Prashant Kumar Goyal has obtained a decree on the basis of prior mortgage of the same property even when there was no registered mortgage deed, in Civil Suit No. 36 of 1997. The learned counsel for the appellant submits that in that mortgage suit, the plaintiff/appellant who was allegedly the puisne mortgagee had not been impleaded and as such the decree passed in Suit No. 36 of 1997 having been passed in absence of the plaintiff/appellant who was the necessary party under the provisions of Order XXXIV, Rule 1 of the Code of Civil Procedure was void. He further submits that the case may be adjourned for about two weeks in order that he may file an appeal against the decree passed in that suit in order that both the appeals may be heard together.</p> <p>In the circumstances, the appeal is adjourned to 17-5-2002 for hearing.</p> <p style="text-align: right;">  (R. Dayal) Chief Justice 17-4-2002 </p>	

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14.	17-5-2002	<p>Present: Mr. U.P. Sharma, Advocate for the appellant. Mr. A.K. Upadhyaya, Advocate for respondent No.1. Mr. S.S. Hamal, Advocate for proforma respondent No.3.</p> <p style="text-align: center;">---</p> <p>The learned counsel for the appellant submits that an appeal has been filed against the decree passed in Suit No.36/1997 but Court fees could not be filed as the challan after being duly filled in has not been given to him by the Registry of the High Court. He submits that after the challan is received, the appellant shall deposit the Court fees and that both the appeals may be heard together.</p> <p>The appeal is accordingly adjourned to 27-5-2002 for orders.</p> <p style="text-align: right;"><i>(Signature)</i> (R. Dayal) Chief Justice 17-5-2002.</p>	
rsr/	3	<p>Present : Mr. U. P. Sharma, Advocate for the appellant. Mr. A. K. Upadhyaya, Advocate for respondent No.1, Smt.Durga Khati. Mr. S. S. Hamal, Advocate for proforma respondent No.3, Prashant Kr.Goyal.</p> <p style="text-align: center;">--</p> <p>Put up for orders on 3.7.2002, the date fixed in the other connected case.</p> <p style="text-align: right;"><i>(Signature)</i> (R. Dayal) Chief Justice <u>27.5.2002</u></p>	



Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
16.	3.7.2002	<p>Present : Appellant in person.</p> <p>Mr. A. K. Upadhyaya, Advocate for respondent No.1.</p> <p>Mr. S. S. Hamal, Advocate for proforma respondent No.3.</p> <p>---</p> <p>Put up on 05.08.2002 along with C.M.A. No.100/2002.</p> <p style="text-align: right;"><i>[Signature]</i> (R. Dayal) Chief Justice <u>3.7.2002</u></p>	
17.	5.8.2002	<p>Present : Mr. B. Sharma, Advocate for the appellant.</p> <p>Mr. A. K. Upadhyaya, Advocate for respondent No.1.</p> <p>Mr. S. S. Hamal, Advocate for proforma respondent No.3.</p> <p>---</p> <p>Put up on 16.8.2002 along with C.M.A.No. 100/2002, for arguments.</p> <p style="text-align: right;"><i>[Signature]</i> (R. Dayal) Chief Justice <u>5.8.2002</u></p>	
18.	16-8-2002	<p>Present: Mr. B. Sharma, Advocate for the appellant.</p> <p>Mr. A.K. Upadhyaya, Advocate for respondent No.1.</p> <p>Mr. S.S. Hamal, Advocate for proforma respondent No.3.</p> <p>---</p> <p>Put up on 27-9-2002 with C.M.A. No.100/2002.</p> <p style="text-align: right;"><i>[Signature]</i> (R. Dayal) Chief Justice 16-8-2002.</p>	

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19.	27.9.2002	<p>Present : Mr. B. Sharma, Advocate for the appellant. Mr. A. K. Upadhyaya, Advocate for respondent No.1. Mr. Shailendra Singh, Advocate for respondent No.3.</p> <p>-----</p> <p>Put up on 30.9.2002 along with C.M.A.No.100/2002 for hearing.</p> <p style="text-align: center;"><i>(Signature)</i> (R. Dayal) Chief Justice 27.9.2002</p>	
20.	30.09.2002	<p>Present : Mr. B. Sharma, Advocate for the appellant. Mr. A. K. Upadhyaya, Advocate for respondent No.1. Mr. S. S. Hamal, Advocate for respondent No.3.</p> <p>-----</p> <p>Be listed for hearing on 19.11.2002 along with R.F.A. No.4/2002.</p> <p style="text-align: center;"><i>(Signature)</i> (Ripusudan Dayal) Chief Justice 30.09.2002</p>	
21.	19.11.2002	<p>Present : Mr. B. Sharma Advocate for the appellant. Mr. A. K. Upadhyaya, Advocate for respondent No.1. Mr. S. S. Hamal, Advocate for respondent No.3.</p> <p>-----</p> <p><u>C.M.A.No.191 of 2002.</u></p> <p>An application has been filed by respondent No.3 to the effect that the 4 documents mentioned therein have not been included in the paper book. Learned Counsel for the appellant requests for time to file a proper paper book. Proper paper book be filed by 3.12.2002.</p> <p>Be listed for hearing on 5.3.2003.</p>	

(Signature)
(R. Dayal)
Chief Justice
19.11.2002

Serial No. of Order	Date of Order	Order with Signature	Office Note, as to action (if any) taken on Order
22.	5-3-03	<p>Present: Mr. B. Sharma, Advocate for the appellant.</p> <p>Mr. A.K. Upadhyaya, Advocate for respondent No.1.</p> <p>Mr. S.S. Hamal, Advocate for respondent No.3.</p> <p style="text-align: center;">---</p> <p style="text-align: center;"><i>has been</i></p> <p>An application moved by the appellant for adjournment on the ground that the talk of compromise is going on. Not opposed.</p> <p>Be listed for recording of compromise failing which, for argument, on 19-3-2003.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="text-align: center;"> <p><i>N. Surjamani Singh</i></p> <p>(N. Surjamani Singh) Judge 5-3-2003.</p> </div> <div style="text-align: center;"> <p><i>R. Dayal</i></p> <p>(R. Dayal) Chief Justice 5-3-2003.</p> </div> </div>	
23.	19.3.2003	<p>Present : Mr. B. Sharma, Advocate for the appellant.</p> <p>Mr. A. K. Upadhyaya, Advocate for respondent No.1.</p> <p>Mr. S. S. Hamal, Advocate for respondent No.3.</p> <p style="text-align: center;">---</p> <p>On request of the learned Counsel for the parties, the matter be listed tomorrow i.e. on 20.3.2003 for compromise.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="text-align: center;"> <p><i>N. Surjamani Singh</i></p> <p>(N. Surjamani Singh) Judge <u>19.3.2003</u></p> </div> <div style="text-align: center;"> <p><i>R. Dayal</i></p> <p>(R. Dayal) Chief Justice <u>19.3.2003</u></p> </div> </div>	

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Serial No. of Order	Date of Order (vnsfi)	Office Note taken on Order	Order with Signature	Office Note as to action (if any) taken on Order	Serial No. of Order
24.	20.3.2003	Present :	<p>Mr. B. Sharma, Advocate for the appellant.</p> <p>Mr. A. K. Upadhyaya, Advocate along with respondent No.1, Smt. Durga Khati.</p> <p>Respondent No.2, Nabin Khati in person</p> <p>Mr. S. S. Hamal, Advocate for respondent No.3. along with Constituted Attorney, Shri Prem Prakash Goyal.</p> <p>---</p> <p>An application has been filed today by the appellant for dismissing the appeal as not pressed for the reason that the matter has already been settled by a compromise between the parties in RFA No.4/2002. The application is allowed. The appeal is dismissed as not pressed.</p>		
At/	<p><i>N. Surjmani Singh</i> (N. Surjmani Singh) Judge 20.3.2003</p>	<p><i>Ripusudan Dayal</i> (Ripusudan Dayal) Chief Justice 20.3.2003</p>	<p>Copy of order of trial court received has sent.</p> <p><i>huglas</i></p>		