

RSA No. 03/2016
Chewang Dorjee Bhutia vs. Ruth Haleem @
Ruth Karthak Lepcha & Ors.

BEFORE
MR. JUSTICE SATISH K. AGNIHOTRI, CJ.

08. 12.04.17 Present: Mr. B.R. Pradhan, Sr. Advocate with Ms. Tshering Palmoo Bhutia, Advocate for the Petitioner.

Mr. A. Halim, Constituted Attorney for Respondent No. 1.

Mr. S.K. Chettri and Ms. Pollin Rai, Asstt. Govt. Advocates for Respondents No. 2 and 3.

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The Second Appeal is admitted on the following substantial questions of law:-

"1. Whether the present suit land (a Bhutia land) could be transferred in favour of a Sikkimese woman (the respondent No. 1/defendant No. 1) married to a non-Sikkimese, in view of the following applicable laws of Sikkim, which are protected as old laws under Article 371 (f) of the constitution of India:-

a. Notice of John C. White, Political officer, Sikkim, dated 2nd January 1897.

b. Revenue order no. 1 dated 17th May 1917.

c. Sikkim State General Department Notification no. 660/G of C.E. Dudley, General Secretary to his Highness the Maharaja of Sikkim dated 21st May 1931.

d. Sikkim State Land Revenue Department Notification no. 3082/LR dated 24th March 1954 issued by the Mahararja of Sikkim.

e. Government of Sikkim Land Revenue Department O.O no. 105/LR dated 25th February 1961.

f. Land Revenue Department Notification no. 28/L.R dated 21st April 1969.

by which it is clear that the said laws prohibits the transfer of immovable property of a Bhutia in favour of a non Bhutia and whether the previous judgment rendered without examining the effect of the said laws would be binding and the subsequent suit held to be barred Res judicata?

2. Whether the first Appellate Court was correct in holding that the present suit was barred by Res judicata when the pleadings and documents on record clearly reveal that the Judgment in the previous title suit had been rendered beyond the sale deed by which the Respondent No. 1/Defendant No. 1 who was the Plaintiff in the previous suit had claimed title and further when the said judgment had been obtained by the suppressing the fact that the said suit land had been resold to the original owner, the father in law of the Appellant/ Plaintiff

vide agreement dated 06.05.1969 which agreement was found to be not forged or fabricated or manufactured for the purpose of the present suit and further when against the said finding of the learned Trial Court no appeal was preferred by the Respondent No. 1/ Defendant No. 1?

3. Whether the Appellant / Plaintiff can be made to suffer a judgment and a decree against the Appellant/Plaintiff due to the mistake or illegality committed by the Trial Court in framing a wrong issue relating to the Appellants plea of adverse possession and rendering a judgment on an issue which was not contested and failing to render a judgment on an issue which ought to have been framed and the first Appellate Court perpetuating the said wrong?

4. Whether the Judgment dated 09.01.1986 in Civil Suit No. 23 of 1980 could be enforced or executed without a decree having been passed pursuant to the said judgment and Whether the first Appellate Court was correct in holding that in spite of the non execution of the Judgment dated 09.01.1986 by the Respondent no. 1/Defendant no. 1 beyond the period of limitation it could still not be held that of Respondent no. 1/Petitioner no. 1 had waived off her rights?

5. Whether in view of Notification no. 2947/G dated 22nd November 1946, before shutting out a document from evidence on the ground of non registration and non-validation the Appellant/ Plaintiff who sought to rely upon the said non registered document ought to have been allowed to validate the same by paying the penalty as prescribed after coming to a finding that the said document ought to have been registered by the first Appellate Court even whilst holding that the said document was not a forged and fabricated document?"

Mr. A. Halim, Constituted Attorney for respondent No. 1 is present in the Court and has no objection to the aforestated questions of law.

Lower Courts' records be requisitioned within a period of three weeks from the Court below. Three weeks, thereafter, for preparation of paper-books.

List it for hearing on 13.06.2017.

Chief Justice
12.04.2017