

RSA No.03 of 2016

CHEWANG DORJEE BHUTIA

...APPELLANT

VERSUS

RUTH HALEEM @ RUTH KATHAK LEPCHA AND ORS.

...RESPONDENTS

Date: 14.09.2020

CORAM:

THE HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, CHIEF JUSTICE

...

Heard Mr. N. Rai, learned Senior Counsel for the appellant assisted by Ms. Tshering Palmoo Bhutia, Legal Aid Counsel. Also heard Mr. A. Halim, Constituted Attorney, appearing for respondent no.1 and Ms. Y. W. Rinchen, learned State Counsel for respondent nos.2 and 3.

I.A. No.1/2016 is an application by the appellant for validation of an agreement dated 06.05.1969 on payment of penalty in terms of notification No.2947/G dated 02.11.1946.

Mr. N. Rai submits that in view of substantial question of law No.5, I.A. No.1/2016 may be considered at the time of final hearing of the second appeal.

I.A. No.3/2018 is "an application for comprehensive draft of paper-book rightfully to enable certified copy of it be supplied to the humble petitioner to replace the xerox copy supplied to her vide application of 7.10.2017 ref no.752 to the Registry", filed by the respondent no .1.

The appellant has filed response and the respondent no.1 has also filed rejoinder.

One grievance in the application is that documents filed /submitted by respondent no.1 were not incorporated in the Paper Book. It is also pointed out that Exhibit- P17 Shown against Sl. No.4 of the index of the Paper Book is not correct. Further issue raised is that orders dated 5.10.2007 and 15.10.2007 are not correctly reproduced.

HIGH COURT OF SIKKIM
Record of Proceedings through Video Conferencing

Rule 133 of The Sikkim High Court Practice and Procedure Rules, 2011, provides that the Paper Book shall consist of:-

- (a) copies or translations of the Judgments of the Lower Courts and the decree of the Lower Appellate Court;
- (b) The grounds of appeal or revision and a memorandum of the names of parties or, if the Appeal or revision was filed in vernacular, a translation thereof; and
- (c) a copy of the order of the Judge admitting the case to a Bench.

Rule 134(2) provides that an additional sum of Rupees fifty only for translating the plaint and pleas shall be similarly deposited in every case in which the plaint and the pleas are to be included in the Paper Book. The plaint and pleas shall not, however, be typed except at the express request of the parties or their counsel, or, when so directed by the Judge or Judges admitting the appeal.

In the Paper Book, there are total 52 documents. Apart from what are required to be included in the Paper Book as noted above, amongst others, exhibits and depositions are incorporated. Mr. Halim is correct in submitting that plaint is wrongly shown as Exhibit-P17. Some documents which were not exhibited are also included but the same will not have any material effect, given the scope of second appeal. However, it will not be appropriate to now give direction to include documents which are not exhibited. The orders dated 5.10.2007 and 15.10.2007 are in relation to issues. What are the issues framed are noted in the impugned judgments.

Accordingly, no direction as prayed for is called for and I.A. No.3/2018 is disposed of with the aforesaid observations.

I.A No.04/2019 is an application filed by respondent no.1 to incorporate her several petitions in the order (in the index of the application it is mentioned as 1.6.2019).

It is for the court to pass order as is considered appropriate.

HIGH COURT OF SIKKIM
Record of Proceedings through Video Conferencing

The application is misconceived. If anybody is aggrieved by any order passed, remedy has to be availed in accordance with law. Accordingly, I.A No.04/2019 is disposed of as being without any merit.

Mr. A. Halim, the Constituted Attorney of respondent no.1 submits that he is an old person and the matter is delayed and therefore, the appeal may be heard today.

Mr. Rai submits that he is ready to argue the case today.

Accordingly, arguments have been heard.

Judgment is reserved.

Chief Justice

Pm/Avi