

# THE HIGH COURT OF SIKKIM: GANGTOK

(Civil Extra Ordinary Jurisdiction)

**DATED: 13<sup>th</sup> APRIL, 2017**

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**S.B.: HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE**

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RFA No. 06 OF 2016

**Appellants:**

1. Smt. Naina Kala Sharma,  
W/o Shri Deepak Kumar Rai
2. Miss Shriya Rani Rai,  
D/o Shri Deepak Kumar Rai
3. Miss Shiksha Rani Rai,  
D/o Shri Deepak Kumar Rai,

All residents of Jorethang Road, Namchi,  
P.O. and P.S. Namchi, South Sikkim.

(Plaintiffs/Appellants No.2 & 3 being minors are  
represented by their mother & next friend Plaintiff/  
Appellant No.1)

## **Versus**

**Respondent:**

Shri Deepak Kumar Rai,  
S/o Late Dhan Bahadur Rai,  
R/o Jorethang Road,  
Near Manav Utthan Seva Samity,  
P.O. and P.S. Namchi, South Sikkim.

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**Appearance**

Mr. Rajendra Upreti, Advocate for the Appellants.

Mr. A.K. Upadhyaya, Senior Advocate with Ms. Aruna Chettri,  
Advocate, for the Respondent.

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# J U D G M E N T

Meenakshi Madan Rai, J.

The Plaintiffs are the Appellants before this Court, assailing the Judgment and Decree dated 29.02.2016 passed by the learned District Judge, South Sikkim at Namchi, in Title Suit No. 43 of 2013, dismissing the Suit filed by the Plaintiffs.

**2.** The case of the Appellants is that the Appellant No.1 was married to the Respondent in the year 1993 and Appellants No. 2 and 3 were born from the wedlock. They led a peaceful married life initially, both being government servants and posted in different places. In 1995, they rented accommodation in Namchi and started living in the same house. It is alleged by the Appellant No.1 that their marriage then entered a turbulent phase with the Respondent ill-treating her both physically and mentally. In May 2008, the house constructed on the disputed landed property was completed, therefore, they shifted residence there. Both the land and the house thereon are the subjects of dispute.

**3.** The Appellant No.1 asserts that the plot of land bearing Khasra No. 814 and Khatiyani No. 375 (*described in the Schedule to the Plaint as Plot No. 320, measuring an area of .0230 hectares*) situated at Tinjer Block, South Division, South Sikkim, was in fact owned by her father, who gifted it to her as 'Daijo' (Marriage gift). The Respondent being landless pressurized her to transfer the land in his name, to which she succumbed under threats of abandonment held out by the Respondent. A Sale Deed was accordingly executed by her father in favour of the Respondent, showing a token payment of money by the Respondent for transferring the aforesaid land, when in fact, no money exchanged hands. Accordingly, the Suit land was registered in the name of the Respondent. In the year 2013, the Appellant No.1 moved an Application for divorce under Section 13(1) of the Hindu Marriage Act, 1955, which was accordingly

allowed by the Family Court on 17.06.2013, consequent to which the Respondent turned hostile. A Petition was also filed by the Appellant No.1 under Section 125 of the Code of Criminal Procedure, 1973 leading to a compromise on 18.07.2013.

**4.** Relying on **Exhibit-9**, which is the Panchayat recommendation addressed to the District Collector informing therein that the land claimed by the Respondent was in fact the 'Daijo' land given to the Appellant No.1, it was requested therein that the land be transferred and registered in the name of Appellants No.2 and 3. It is the Appellant's case that the said document clearly indicated that the disputed land was her 'Daijo' property. She seeks to fortify her case by averring that her sisters were also given 'Daijo' property by her father. It was also averred that she has contributed to construction of the disputed building by availing of loan. Thus, the Appellants, *inter alia*, sought for a decree declaring that the Suit land is 'Daijo' property of the Appellant No.1 and the Respondent has no right, title and interest over it, while Appellants No.2 and 3 are entitled to partition and registration of the Suit property in their names.

**5.** The Respondent opposed the allegations and contended that the Suit property is his self-acquired property, purchased by him in the year 1998, from the father of the Appellant No.1 at a consideration value of Rs.30,000/- (Rupees thirty thousand) only, and denies that the Suit property was gifted as 'Daijo' to the Appellant No.1. That, the Suit land has been registered in his name duly following the procedure for registration of land, prevalent at the material time with the consent of the family members of the Appellant No.1, the executor of the Sale Deed being the Appellant's father himself. That, plots of land were gifted to the sisters of the Appellant No.1, only in the year 2007, whereas the Respondent purchased the disputed plot of land in the year 1998, whereupon he constructed a two and a half storied building by obtaining a housing loan from the State Bank of India, Ravangla Branch, which has been duly repaid by deductions made from his salary. The allegation of

the Appellant that she had obtained loan for construction is denied and it is put forth that whatever was obtained by her was for her personal use and not for construction of the property. Nevertheless, he has no plans to dispose of the property as alleged by the Appellant, hence the Suit being devoid of merit, deserves dismissal.

**6.** On the basis of the pleadings of the parties, the learned Trial Court settled nine Issues for determination as follows;

*"1. Whether the suit is maintainable? (OPP)*

*2. Whether the suit is barred by the law of limitation? (OPD)*

*3. Whether the suit land is the 'daijo' property of the Plaintiff No.1? (OPP)*

*4. Whether the building standing on the suit land was constructed by the Plaintiff No.1? (OPP)*

*5. Whether there was only a sham transaction (and not actual sale transaction) pertaining to the suit land between the father of the Plaintiff No.1 and the Defendant? (OPP)*

*6. Whether the Defendant pressurized the Plaintiff No.1 for the concerned transaction? (OPP)*

*7. Whether the Plaintiffs have any right, title or interest over the suit land and the building constructed thereon? (OPP)*

*8. Whether the Defendant can be regarded as having no right, title and interest over the suit land and the building standing thereon? (OPP)*

*9. Whether the Plaintiffs are entitled to the reliefs as prayed for by them? (OPP)"*

The learned Trial Court on consideration of the evidence furnished by the parties decided all Issues against the Plaintiffs and dismissed the Suit of the Plaintiffs by the impugned Judgment, hence this Appeal.

**7.** Before this Court, the averments made in the learned Trial Court were reiterated in the arguments of the learned Counsel.

Assailing the Judgment of the learned Trial Court, it was urged by the learned Counsel for the Appellant that the Suit cannot be barred by limitation, as it is for partition and correction of records of rights, for which no limitation has been prescribed. Apart from the above argument, it was contended that the Appellants No. 2 and 3 are the daughters of the Respondent and have to be treated as coparceners capable of demanding partition. That, it is unimaginable that the building was constructed alone by the Respondent as both the Respondent and the Appellant No.1 are government employees and she has contributed to the construction.

**8.** *Per contra*, the arguments advanced by learned Senior Counsel for the Respondent was that no issue was settled before the learned Trial Court for partition of the Suit properties, neither was any issue framed as to whether it was a joint property and therefore, these matters cannot now be raised in appeal. That, the Appellants have not sought for cancellation of the land records of the Suit property registered in the Respondent's name and therefore, no reliefs as prayed can be granted. It was further argued that the period of limitation for filing a Suit to cancel or set aside an instrument or decree or for the recession of a contract is three years as per Article 59 of the Limitation Act, 1963, while the Respondent has been in uninterrupted possession of the Suit property from the year 1998 and hence, the Suit is clearly barred by the aforesaid provisions of Law, apart from Article 65 of the same Act. That, the Appellant has failed to produce any gift deed or any other document to establish her claim that the property was 'Daijo' property and she failed to raise any objection against the registration or mutation of the Suit land in favour of the Respondent till the filing of the present Suit in the year 2013. The building on the Suit land was constructed by the Respondent by availing of bank loan duly supported by evidence. Besides, the Appellant No.1 has failed to show that either the vendor late Dilli Ram Sharma her father, or she herself were pressurized by the Respondent to sell the Suit land to him and register it in his name. The property is therefore, clearly self-

acquired property of the Respondent and hence the Appeal be dismissed.

**9.** I have heard the parties at length and given due consideration to their submissions. I have also carefully perused all documents on record and the pleadings.

**10.** The only questions for consideration before this Court are;

- (i) Whether the Suit property is the 'Daijo' property of the Appellant No.1 gifted to her on her marriage or whether it is the self acquired property of the Respondent?
- (ii) Ancillary thereto, it has to be considered whether the Appellants have any right, title or interest over the Suit land and the building constructed thereon and whether the Suit is barred by limitation?

**11.** The constant refrain of the Appellant No.1 is that the property is her 'Daijo' property, in other words, the plot of land bearing No. 320 measuring an area of .0230 hectares at Namchi Bazar Block was gifted to her by her father on her marriage. To buttress this claim, she draws strength from **Exhibit-9**, a document allegedly prepared by her brothers, neighbours, friends and well-wishers. It is indeed relevant to point out that this document although addressed to the District Collector, South Sikkim, was never submitted before him. It is evident that **Exhibit-9** is not substantiated by any documentary evidence to the effect that the Suit property was indeed gifted to the Appellant No.1. How the document is of assistance to the Appellant is indeed unfathomable. All that the Appellant No.1 has been able to fortify her claim with is the allegation that in terms of parity, two of her sisters were also gifted property by her father. These claims, I am afraid are of no assistance to her unless backed by documentary evidence. No records exist to indicate transfer of the Suit land to the Appellant No.1 by way of gift or otherwise by her father at any point of time.

In fact, by filing **Exhibit No.10** and **Exhibit No.11**, she has given substance to the claim of the Respondent, thereby fortifying the fact that the Suit property was registered in his name, consequent to a valid deed of transfer, being the Sale Deed document **Exhibit-11**, indicating sale of the Suit land by Dilli Ram Sharma, admittedly the father of the Appellant No.1, to the Respondent on 20.03.1998. It thus carries a presumption that the transaction was genuine. The witnesses furnished by the Appellant No.1 before the learned Trial Court have failed to lend any credence to her claims.

**12.** Thus, I have to disagree with the argument advanced by learned Counsel for the Appellants, that there is over whelming evidence to hold that the Suit property is the 'Daijo property of the Appellant No.1. To the contrary, there is an absence of any evidence whatsoever to buttress her claims. All the evidence on record leads to the untrammelled view that the property was indeed the self acquired property of the Respondent duly supported by **Exhibit-10** and **Exhibit-11**. It had been claimed by the Appellant No.1 that she had contributed to the construction of the building standing thereto but once again, it has to be propounded that this claim finds no support of any documentary evidence. **Exhibit-13** purporting to be the loan deduction document of the Appellant No.1 has been filed to substantiate her contention. Unfortunately, this document being devoid of any details, save that the balance opened with loan amount being transferred therein, has no bearing to the Appellants case.

**13.** It would thus be appropriate now to address the question of the Appellants right, title and interest over the Suit land.

**14.** It was vehemently contended by learned Counsel for the Appellants that the Appellants No.2 and 3 being coparceners to the property are entitled to seek partition thereof. In this regard, it may be pointed out that the Mitakshara concept of coparcenary is based on the notion of the birth right of son, son's son and son's son's son (See **V. Venugopala Ravi Verma Rajah v. Union of India and another<sup>1</sup>**). It is pertinent to point out that the daughter has also

been made coparcener by virtue of Hindu Succession (Amendment) Act, 2005. This Court having reached a finding that the property in dispute was a self acquired property, we may refer to the decision of **C.N. Arunachala Mudaliar, Appellant v. C. A. Muruganatha Mudaliar and another**<sup>2</sup>, wherein the Hon'ble Apex Court while referring to the decision of **Rao Balwant vs. Rani Kishori**<sup>3</sup> and discussing the Law laid down in Mitakshara in regard to father's right of disposition of his self acquired property, held that the father of a joint Hindu family governed by Mitakshara law has full and uncontrolled powers of disposition over his self-acquired immovable property and his male issue could not interfere with these rights in any way. Thus, in the light of the decision in **C.N. Arunachala Mudaliar (supra)** and considering that daughters have been included as coparceners in the Hindu Succession Act, 1956, I have to opine that no rights are conferred to Appellants No. 2 and 3 for partition, in view of the property being the self acquired property of the Respondent. In any event, it would be essential to clarify that this Court is aware that the Hindu Succession Act, 1956 has not been extended or enforced in Sikkim and the Sikkim Succession Act promulgated in 2008, rules the roost.

**15.** The question of partition having thus been settled, now what remains for consideration is whether the Suit is barred by limitation. Undoubtedly, the Suit is said to be one for Declaration, Partition and Correction of documents. In this context, we may refer to Article 58 of the Limitation Act, 1963, which deals with obtaining declaration and indicates the period of limitation for seeking a relief to be three years. That apart, assuming that the Appellant in fact sought for setting aside of the records of rights of the Respondent, here too, the limitation in terms of Article 59 of the Limitation, is three years. In view of the above stated circumstances, it is clear that the Suit is barred by limitation.

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1. AIR 1969 SC 1094  
2. AIR 1953 S. C. 495  
3. 25 Ind App-54 (PC) (B)

**16.** In the end result, I find that there is no reason to interfere with the findings of the learned Trial Court.



**17.** Appeal stands dismissed.

**18.** No order as to costs.

**19.** Records of the learned Trial Court be transmitted forthwith.

Sd/-

**( Meenakshi Madan Rai )**  
**Judge**  
13-04-2017

Approved for reporting : **Yes**  
Internet : **Yes**