

High Court of Sikkim
Record of proceedings

WP(C) No. 45 of 2017

Pema Wangyal Bhutia vs. State of Sikkim and Others

BEFORE
HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

20.09.2017

Present: Mr. S.S. Hamal, Advocate with Ms. Priyanka Chhetri and Ms. Sushma Lepcha, Advocates for the Petitioner.

Mr. J.B. Pradhan, Addl. Advocate General with Mr. S.K. Chettri, Asst. Govt. Advocate for the State-Respondents No.1 and 2.

Mr. Hemant Rai, Sub-Divisional Magistrate, East District, Gangtok, in person.

Mr. Tashi Raptan Barfungpa, Advocate for the Respondent No. 3.

1. Pursuant to the Order dated 18.9.2017 of this Court, an Affidavit bearing the same date, has been filed by the Respondent No.2, conceding therein that the jurisdiction vested in him under Section 145 and Section 146 of the Code of Criminal Procedure, 1973, has been exceeded by him in the impugned Order dated 25.7.2017.

2. Learned Counsel for the Petitioner submits that in view of the said admission, the impugned Order dated 25.7.2017, deserves to be set aside.

3. Heard and considered.

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4. Consequently, the impugned Order dated 25.7.2017, in Misc. Case No. 03/DM/East of 2017, is hereby set aside.

5. It is pertinent to state here that the Petitioner had also filed I.A. No. 2 of 2017, an Application questioning the legality and validity of an *ex parte* ad-interim injunction Order dated 8.9.2017, passed by the learned Civil Judge, East Sikkim, Gangtok, in Title Suit No. 15 of 2017 (Karma Sonam Bhutia vs. Pema Wangyal), during the pendency of the instant Writ, which pertains to the same plot of land in dispute between the parties. That, the learned Trial Court despite being seized of the matter issued an *ex parte* ad-interim injunction Order dated 8.9.2017, in the aforesaid Title Suit which she ought not to have and hence, prayed that the impugned Order be vacated.

6. Learned Counsel for the Respondent No. 3 has filed his response on 19.9.2017, to I.A. No. 2 of 2017, clarifying therein as to why he approached the Court of the learned Civil Judge, when proceedings before the Sub-Divisional Magistrate, East District at Gangtok, had been stayed by Orders of this Court dated 17.8.2017. He submits

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that the Respondent had no intention of undermining the dignity, majesty or prestige of this Court.

7. Learned Counsel for the Petitioner is unrelenting on this count submitting that propriety has to be maintained and the aforesaid response merits no consideration.

8. I have considered the submissions.

9. Consequently, the impugned Order dated 8.9.2017, of the learned Civil Judge, East Sikkim, Gangtok, in Title Suit No. 15 of 2017, stands vacated.

10. Admittedly, the Title Suit is now pending between the parties before the Court of the learned Civil Judge, East Sikkim, along with a Petition filed by the Plaintiff (the Respondent herein), under Order XXXIX, Rule 1 and 2 of the Code of Civil Procedure, 1908. Both parties may address their grievances before the concerned Trial Court.

11. Writ Petition No. 45 of 2017 stands disposed of, accordingly.

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12. Remit a copy each, of this Order, to the Court of learned Civil Judge, East Sikkim, at Gangtok, and the Sub-Divisional Magistrate, East District, at Gangtok, for information.

Judge
20.09.2017

Index : Yes / ~~No~~
Internet : Yes / ~~No~~

ds/bp