

**THE HIGH COURT OF SIKKIM: GANGTOK**  
**(Civil Appellate Jurisdiction)**

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**SINGLE BENCH: BHASKAR RAJ PRADHAN, JUDGE.**

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**RFA No. 02 of 2017**

1. Zimpa Topgay Bhutia  
S/o Late Karma Gyatso Bhutia,  
R/o Upper Tathangchen, Below  
Mintokgang, Gangtok, East Sikkim.
2. Smt. Tashi Palmu Bhutia,  
W/o Shri Zimpa Topgay Bhutia,  
R/o Upper Tathangchen,  
Below Mintokgang,  
Gangtok, East Sikkim. .... Appellants

**Versus**

1. Smt. Tshering Dolma Bhutia  
W/o late Karma Gyatso Bhutia  
R/o Upper Tathangchen,  
Gangtok, East Sikkim.
2. Karma Sherpa  
S/o Mingma Sherpa,  
R/o Upper Tathangchen,  
Below Mintokgang,  
Gangtok, East Sikkim.
3. Palden Bhutia,  
S/o Late P.T. Bhutia,  
R/o Upper Tathangchen,  
Below Mintokgang,  
Gangtok, East Sikkim
4. Ta Tshering Bhutia,  
S/o Top Tshering Bhutia,  
R/o Upper Tathangchen,  
Below Mintokgang,  
Gangtok, East Sikkim.

5. Sher Bahadur Gurung,  
R/o Upper Tathangchen,  
Below Mintokgang,  
Gangtok, East Sikkim
  
  6. Valentine Rai  
S/o Late Robin Rai  
R/o Upper Tathangchen,  
Below Mintokgang,  
Gangtok, East Sikkim
  
  7. Atabul Rahaman  
S/o Md. Saji Mohammad,  
R/o Upper Tathangchen,  
Below Mintokgang,  
Gangtok, East Sikkim.
  
  8. Binam Singh,  
S/o Govind Singh,  
R/o Upper Tathangchen,  
Below Mintokgang,  
Gangtok, East Sikkim.
  
  9. Vijay Sharma  
S/o Late Ganesh Sharma,  
R/o Upper Tathangchen,  
Below Mintokgang,  
Gangtok, East Sikkim. .... Respondents
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**Appeal under Order XLI Rules 1 and 2 of the Code of Civil Procedure, 1908.**

**Appearance:**

Mr. Zangpo Sherpa, Legal Aid Counsel.  
Appellant No.1 & 2 in person.

Mr. Udai P. Sharma, Legal Aid Counsel, Mr. Amar Bhandari and Mr. Madhukar Dhakal Advocates for Respondent No.1.  
Respondent No.1 in person.

Mr. Umesh Ranpal, Legal Aid Counsel and Miss Kimti Gurung, Advocate for Respondent No.3.

**JUDGMENT (ORALLY)**

**(27.04.2018 & 28.04.2018)**

**Bhaskar Raj Pradhan, J**

1. This is a Regular First Appeal preferred by the Appellants against the impugned judgment and decree both dated 19.05.2017 passed by the Learned District Judge, Special Division-II at Gangtok, East Sikkim in Title Suit No 01 of 2015.
2. The Appellant No.1 is the son of Late Karma Gyatso Bhutia and the Respondent No.1. The Appellant No.2 is the wife of Appellant No.1. The Respondent No.1 is the mother of the Appellant No.1 and the mother-in-law of the Appellant No.2. Respondents No. 2 to 9 are tenants of the suit property. The impugned judgment dated 19.05.2017 came to a finding that the Title Suit filed by the Respondent No.1 as the Plaintiff in the Title Suit in respect of the suit building was maintainable and therefore entitled to the prayers as prayed for in prayers a), b), c) and g) of the plaint. The Appellants as Defendant No. 1 and 2 in the Title Suit was directed to vacate the suit building within three months from the date of the judgment. Liberty was granted to the said Defendant No. 1 and 2 to claim expenses incurred by them (minus the total rent collected by them hitherto from the suit building) in the construction of the suit building by instituting separate proceedings, if so advised. The Respondent Nos. 2, 4, 5, 6, 7 and 9 as Defendant Nos. 3, 5, 6, 7, 8 and 10 respectively were

required to pay the monthly rent from May, 2017 onwards to the Respondent No.1. In so far as the eviction sought for of the Respondent No.2 as the Defendant No.3 in the Title Suit it was directed that the Respondent No. 1 could seek his eviction by instituting appropriate eviction proceedings. In terms of the said judgment a decree was also drawn up dated 19.05.2017. Aggrieved thereby the Appellants have preferred the present Appeal.

**3.** On 03.07.2017 on hearing the Learned Counsel for the Appellant notice was issued and the Trial Court records were called for.

**4.** On 17.08.2017 on hearing the parties and realising that the matter pertained to a family dispute, with the consent and necessary instructions from the respective parties and also represented by their Counsel the matter was referred to High Court Lok Adalat for settlement.

**5.** On 30.01.2018 further time was sought and granted to the High Court Legal Services Committee to facilitate a settlement between the parties. On 23.02.2018 it was informed to this Court that the parties have failed to settle the dispute amicably and therefore, the process for hearing the matter was commenced and the matter was adjourned to 18.04.2018.

**6.** On 18.04.2018 the Learned Counsel appearing for the parties submitted that the present dispute was on the verge of settlement and sought time to do so.

7. A Deed of Compromise dated 27.04.2018 has been filed before this Court in the original signed by the parties to the dispute in the presence of witness. The Learned Counsel appearing for the respective contesting parties submit that compromise in terms of the said Deed has been amicably arrived at between the contesting parties to the present dispute. The contesting parties are also personally present in Court today. The parties who are present, states that they have willingly and amicably settled the disputes which are reflected in the Deed of Compromise dated 27.04.2018. The Deed of Compromise dated 27.04.2018 reads as under:-

#### **"DEED OF COMPROMISE**

*This Deed of Compromise is made on this the 27<sup>th</sup> day of April, 2018, between Shri **Zimpa Topgay Bhutia**, son of late Karma Gyatso Bhutia and Smt. **Tashi Palmo Bhutia wife of Shri Zimpa Topgay Bhutia**, Residents of Upper Tathangchen, Gangtok, East Sikkim, hereinafter referred to as the **Appellants/First Parties**, (which means and includes their legal heirs, successors, representatives, assigns, unless repugnant to this deed) of the **FIRST PART**.*

#### **AND**

*Smt. **Tshering Dolma Bhutia**, wife of late Karma Gyatso Bhutia Resident of Upper Tathangchen, Gangtok, East Sikkim, hereinafter referred to as the **Respondent/Second Party**, (which means and includes her legal heirs, successors, representatives, assigns, unless repugnant to this deed) of the **SECOND PART**.*

**WHEREAS** the First Parties and the Second Party are involved in a litigation. The Second Party had filed Title Suit No. 01 of 2015 (Tshering Dolma Bhutia versus Zimpa Topgay Bhutia & nine others) before the Court of the District Judge

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(Special Division-II), Sikkim at Gangtok against the Second Parties/Appellants.

**AND WHEREAS** the Id. District Judge (Special Division-II), Sikkim at Gangtok passed an order dated 19.05.2017 decreeing the Title Suit No. 01 of 2015 in favour of the Respondent herein referred to as the **Second Party**.

**AND WHEREAS** the First Parties filed Regular First Appeal No. 02 of 2017 (Zimpa Topgay Bhutia & Anr. Versus Smt. Tshering Dolma Bhutia & eight others) before the Hon'ble High Court of Sikkim assailing the order of the Id. Trial Court dated 19.05.2017 passed in Title Suit No. 01 of 2015.

**AND WHEREAS**, the parties hereto have amicably resolved their differences and disputes on the following terms and conditions:-

- 1.** That the First Parties namely Shri **Zimpa Topgay Bhutia** and Smt. **Tashi Palmo Bhutia** shall vacate the suit building and shall handover the premises occupied by them to the Second Party on or before 31.10.2018.
- 2.** That the other party namely Smt. **Tshering Dolma Bhutia** shall pay to the First Parties the sum of Rs.5,50,000/- (Rupees five lakhs fifty thousand) only through a Demand Draft of a nationalized bank in favour of Shri Zimpa Topgay Bhutia on the date the First Parties vacate the suit building and handover the premises occupied by them to the Second Party.
- 3.** That the Second Party shall withdraw all the Execution cases filed by her in the court of the District Judge, East Sikkim at Gangtok.
- 4.** That the Second Party shall not make any claims for outstanding dues or adjustments against the First Parties.

In witness whereof this Deed of Compromise is made on the date hereinabove first mentioned. The parties put their respective hands on this Deed of Compromise at Gangtok, East Sikkim.

**Witnesses:**

First Parties

1. Sd/-

Sd/  
(Zimpa Topgay Bhutia)

Tashi Ongmu Bhutia  
2.

Sd/-  
(Tashi Palmo Bhutia)

*Second Party*

*Sd/-  
(Tshering Dolma Bhutia)''*

**8.** The Deed of Compromise dated 27.04.2018 is taken on record. In terms of the Deed of Compromise dated 27.04.2018 Shri Zimpa Topgay Bhutia and Smt. Tashi Palmo Bhutia, the Appellant's herein, shall vacate the suit building and handover the premises occupied by them to Smt. Tshering Dolma Bhutia, the Respondent No.1 herein, on or before 31.10.2018. Smt. Tshering Dolma Bhutia, the Respondent No.1, shall pay to Shri Zimpa Topgay Bhutia and Smt. Tashi Palmo Bhutia a sum of Rs.5,50,000/- (Rupees five lakhs fifty thousand only) through a Demand Draft of a Nationalised Bank in favour of Shri Zimpa Topgay Bhutia, the Appellant No.1 herein, on the date when the Appellants vacate the suit building and handover the premises to Respondent No.1. Smt. Tshering Dolma Bhutia, the Respondent No.1, shall withdraw all the execution cases filed by her in the Court of the District Judge, East Sikkim at Gangtok and shall not make any claims for outstanding dues against the Appellants hereinafter.

**9.** Mr. Umesh Ranpal, Legal Aid Counsel for Respondent No.3 submits that he represents a tenant who has already vacated the premises and as such he would have no objection on the Compromise Deed dated 27.04.2018. The rest of the tenants who are Respondents before this Court are not represented. The Learned Counsel appearing for the Appellants

as well as the Respondent No. 1 submit that the Compromise Deed dated 27.04.2018 does not affect the said Respondents who are tenants in the suit premises. In view of the compromise and settlement between the parties nothing further remains in the present RFA No. 02 of 2017 which is disposed of accordingly.

**10.** The parties undertake before this Court to abide by the terms and conditions set out in the Deed of Compromise dated 27.04.2018 and not to dispute the same hereinafter. The impugned judgment as well as the decree both dated 19.05.2017 are modified to the extent of the Compromise Deed dated 27.04.2018 entered into between the contesting Respondents i.e. the Appellants and the Respondent No.1. A decree in terms of Deed of Compromise dated 27.04.2018 shall be drawn accordingly.

**11.** It is indeed heartening to see that the family dispute has been settled within the family with their good intention and desire to resolve their differences. The efforts of the parties to do so must not only be respected but also appreciated. It is equally important to appreciate the efforts of the Learned Counsel for the parties to facilitate the amicable settlement. This Court records its appreciation of the efforts of the parties to the dispute to arrive at an amicable settlement and of the Learned Counsel for the parties to facilitate the same and bring an end to an unfortunate adversarial litigation between

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the mother on the one side and son and the daughter-in-law in the other.

**12.** The parties to bear their own costs.

**Sd/-**  
**Judge**  
**28.04.2018**

to/ **Index: yes/No**  
**Internet: yes/No**