

THE HIGH COURT OF SIKKIM: GANGTOK
(Civil Extraordinary Jurisdiction)

SINGLE BENCH: BHASKAR RAJ PRADHAN, JUDGE.

W. P. (C). No. 32 of 2017

1. Shri Bishnu Lall Sharma
2. Shri Trilochana Sharma and,
3. Shri Kharananda Sharma,

(All sons of Late Pashupati Sharma,
R/o Lower Padamchay,
East Pendam, P.O. Pachak,
P.S. Pakyong, East Sikkim)

.... Petitioners

versus

1. Shri Rabi Lall Sharma
S/o Late Pashupati Sharma,
R/o Lower Padamchay,
East Pendam, P.O. Pachak,
P.S. Pakyong, East Sikkim.
2. Land Revenue & Disaster
Management Department,
Through its Secretary,
Government of Sikkim,
Gangtok, East Sikkim.

.... Respondents

Application under Article 227 of the Constitution of India

Appearance:

Mr. Sudesh Joshi and Mr. Sajan Sunwar, Advocates for the
Petitioners.

Mr. J.K.P. Jaiswal, Legal Aid Counsel and Miss Rajani
Rizal, Advocate for Respondent No.1.

Mr. Karma Thinlay, Senior Government Advocate with Ms. Pollin Rai, Assistant Government Advocate for State-Respondent No.2.

JUDGMENT

(02.05.2018)

Bhaskar Raj Pradhan, J

1. Heard Mr. Sudesh Joshi, Learned Counsel for the Petitioners and Mr. J.K.P.Jaiswal, Learned Counsel for the Respondent No.1. The Learned Counsel appearing for the State (Respondent No.2) made no submission.

2. On 29.12.2012 Respondent No. 1 filed a Civil Suit i.e. Title Suit No. 22 of 2014 for declaration, partition, injunction and other reliefs against the Petitioners and the Respondent No. 2 herein. The dispute is between siblings, all sons of Late Pashupati Sharma, arrayed herein as the three Petitioners and the Respondent No.1.

3. The Petitioner No.1 filed his written statement and along with it a list of documents to be relied upon. Amongst the twelve documents sought to be relied upon were two unregistered “*Bandabast Kagaz*” or settlement deeds dated 24.03.1992 and 01.03.2010 (unregistered documents). The originals of the said two unregistered documents were filed on 28.02.2017.

4. Mr. Sudesh Joshi would contend that an application dated 24.03.2017 under the provision of Notification No. 385/G dated 11.04.1928 of the Government of Sikkim praying for permission

of the Court to validate the afore-stated two unregistered documents on payment of fifty times (i.e. ₹5000/- for each document) was filed. The said application was disposed off by the Learned Civil Judge, East Sikkim at Gangtok (Learned Trial Judge) vide Order dated 05.04.2017.

5. The Learned Trial Judge, disposed off the said application for validation dated 24.03.2017 giving the following reason:

“However, since the petition filed by the defendant no.1 only seeks permission to rely and exhibit two documents, and since Ld. Counsel for the plaintiff raises no objection only for exhibition of the same, the application is dismissed.”

6. The Petitioners are aggrieved by the impugned Order dated 05.04.2017 dismissing the application dated 24.03.2017 on the afore-stated ground. Mr. Sudesh Joshi would contend that when Notification No. 385/G dated 11.04.1928 as amended vide Notification No. 2947/G dated 22.11.1946 provided that an unregistered document which ought in the opinion of the Court to have been registered may however be validated and admitted in Court to prove title or other matters contained in the document on payment of a penalty up to fifty times the usual registration fee it must be done in that way only. He would also rely upon and invoke the settled principle that when a law requires you to do a certain thing in a certain way it must be done in that way and in no other.

7. The relevant notifications sought to be relied upon by the Petitioners are reproduced herein below:

**“SIKKIM STATE
GENERAL DEPARTMENT
Notification No. 385/G**

All Kazis, Thikadars and Managers of Estates.

“In continuation of the previous rules on the subject, His Highness the Maharaja of Sikkim is pleased to order that the Law of Registration applicable in the State shall be amended. Notification No. 314 and 2283-36/G., dated the 23rd January, 1907 and 19th July, 1922, respectively shall be read and applied as under:-

“any document such as mortgage and sale deeds, and other important documents and deeds, etc. will not be considered valid unless they are duly registered.

The contents of an unregistered document (which ought in the opinion of the court to have been registered) may be provided in court but a penalty upto fifty times the usual registration fee shall be charged.

Exception:- Handnotes duly stamped shall be exempt from registration penalty”.

BY ORDER OF HIS HIGHNESS THE MAHARAJA OF SIKKIM

Gangtok
The 11th April, 1928

Sd/-
Gyaltsen Kazi
General Secretary to
H.H. the Maharaja of Sikkim.”

**“SIKKIM STATE
GENERAL DEPARTMENT
Notification No. 2947/G**

Amendment of para 2 of Notification No: 385/G dated the 11th April, 1928.

An unregistered document (which ought in the opinion of the court to have been registered) may however be validated and

admitted in court to prove title or other matters contained in the document on payment of a penalty upto fifty times the usual registration fee.

Issued by order of H.H. the Maharaja of Sikkim.

<p>Gangtok The 22nd Nov., 46</p>	<p>Sd/- T. Tsering (Offs) General Secretary to H.H. The Maharaja of Sikkim.</p>
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Copy of memo No. 2553/C & F dated the 18th Sept., 1949, from the Dewan, Sikkim State to the Tahasildar, East Sikkim.

A copy of Rule regarding registration of document (1930) is sent herewith.

The seals of registration fees is one rupee fee every Rs.100/- or fraction thereof on the value of property or properties.”

8. The above two notifications are what, along with many others, is commonly referred to in Sikkim as the “old laws” covered by Article 371F (k) of the Constitution of India.

9. Mr. Sudesh Joshi would contend that unless the payment of fifty time the applicable registration fees is paid the two unregistered documents cannot become admissible evidence and the “no objection” of the Learned Counsel for the Respondent No.1 would be of no consequence in view of the aforesaid notifications.

10. Mr. J.K.P. Jaiswal would however, vehemently submit that the Writ Petition was filed belated and after the Respondent No.1 had filed his written synopsis of argument dated 20.06.2017 at the final hearing of the said Title Suit to fill in the *lacunae* and

on this ground alone the present Writ Petition is liable to be dismissed. He would further submit that the two unregistered documents in any case do not fall within the purview of the said two notifications.

11. The facts reveal that the two unregistered documents had been filed and sought to be relied upon along with the written statement filed by the Petitioners in the Title Suit. The original copies of the said two unregistered documents were also filed by the Petitioner No.1 on 24.03.2017. The application dated 24.03.2017 seeking validation of the said two unregistered documents on payment of fifty times the registration fee under the provisions of Notification No. 385/G dated 11.04.1928 was filed. The impugned Order dated 05.04.2017 reflects that when the said application dated 24.03.2017 seeking validation of the said two unregistered documents was filed, the Plaintiff, the Respondent No.1 herein, had as yet not been examined. It also reflects that on the said date i.e. 07.04.2017 the Learned Trial Judge examined the Plaintiff and posted the matter to 07.04.2017 for examination of the Plaintiff's witness. It is not in dispute that on 24.06.2017 when the present Writ Petition was filed the trial of the Title Suit was already complete and the matter was posted for judgment on 30.06.2017. The interim order passed by this Court on 29.06.2017 on the application filed by the Petitioner has deferred the pronouncement of the judgment. In the back drop of the aforesaid facts this Court has

been called upon to determine firstly whether the application dated 24.03.2017 seeking validation of the two unregistered documents filed by the Petitioner No.1 could have been dismissed barely on the ground that the Respondent No. 1 had “no objection” only for exhibition of the said two unregistered documents and secondly; whether the delay in approaching this Court by the Petitioners against the impugned Order dated 05.04.2017 after the trial was complete and the matter was posted for final judgment would prejudice the Respondent No.1?

12. A perusal of the unregistered “*Bandabast Kagaz*” i.e. settlement document dated 21.03.1992 *prima-facie* reflects that it is a document purportedly apportioning the landed property of one Pashupati Sharma between his elder son Rabi Lall Sharma and Bishnu Lall Sharma. Both of them apparently are parties to the dispute before the Trial Court. The certified copy of the said unregistered document *prima-facie* reflects that it has also been exhibited. Similarly, a perusal of the unregistered “*Bandabast Kagaz*” i.e. settlement deed dated 01.03.2010 *prima-facie* reflects that it is a settlement arrived at on 01.03.2010 between apparently the same Rabi Lall Sharma, Divya Rupa Sharma and the same Bishu Lall Sharma. A perusal of this unregistered “*Bandabast Kagaz*” or settlement deed further *prima-facie* reveals that it has been agreed that the sons of Late Pashupati Sharma had willingly partitioned the landed properties of Late Pashupati Sharma on 21.03.1992 but had not been able to

mutate the same in their respective names. The said document also *prima-facie* reflects that as per the decision of their mother Rabi Lall Sharma, her elder son, in addition to his share was given a further share from the share of Bishnu Lall Sharma. The evidentiary value of the aforesaid two unregistered “*Bandabast Kagaz*” or settlement deeds and the effect of the same on the dispute in the Title Suit are to be necessarily decided by the Learned Trial Judge.

13. The application filed by the Petitioner No.1 dated 24.03.2017 clearly invokes the provision of Notification No. 385/G dated 11.04.1928 and states that the Petitioner No.1 would like to rely and exhibit the said documents in the instant case and for the said purpose is willing to pay fifty times the stamp duty and the registration duty as required under the notification. There is no anomaly on the intent and purport of the said application dated 24.03.2017 as sought to be argued by Mr. J.K.P. Jaiswal.

14. The Trial Court has however, dismissed the application dated 24.03.2017 on the “no objection” from the Respondent No. 1 for exhibiting the same without examining the merits of the application or applying its mind to the effect of Notification No. 385/G dated 11.04.1928 as amended vide Notification No.2947/G dated 22.11.1946 to the said application dated 24.03.2017. Therefore, what in effect the impugned Order dated 05.04.2017 has done is the dismissal of the application dated

24.03.2017 seeking to pay the penalty for the Petitioners failure to register the unregistered documents and validate them on the “no objection” of the Respondent No.1 without a word on the status of the two unregistered documents and further without a finding on the effect of the Notification No.385/G dated 11.04.1928 as amended by Notification No.2947/G dated 22.11.1946 on the two unregistered documents.

15. The effect of failure to register an unregistered document required to be registered may be harsh and it may be equally harsh not to permit the validation of the unregistered document if the Court comes to the conclusion that it ought in its opinion to have been registered. Registration of a document involves the parties to the document on the one hand and on the other the Registering Authority. Payment of registration fee is the revenue of the State. In such circumstances a “no objection” of one private party cannot permit another private party not to pay the required amount of money for validation which is in effect is the penalty for the failure of the said party to register the said unregistered document on payment of the requisite fees. The same party i.e. the Respondent No.1 vehemently contests the present Writ Petition before this Court in spite of the “no objection” given before the Trial Court which has been clearly recorded in the impugned Order dated 05.04.2017. The Learned Trial Judge has scribed no other reason for dismissal of the application dated 23.04.2017. A judicial order must reflect the

mind of the Court and the mind of the Court must be drawn to the *lis* before it. The *lis* in the application dated 24.03.2017 under consideration was whether the two unregistered documents were documents which ought in its opinion required to be registered and would be covered by Notification No.385/G dated 11.04.1928 as amended by Notification No. 2947/G dated 22.11.1946 and whether the said unregistered documents ought to have been allowed to be validated and admitted in Court to prove title or other matters contained in the said unregistered documents on payment of penalty up to fifty times the usual registration fee.

16. In view of the aforesaid this Court is of the view that the application dated 24.03.2017 must necessarily be reconsidered by the Learned Trial Judge. Mr. J.K.P. Jaiswal, for the Respondent No.1 may be right that the Writ Petition has been preferred belatedly when the trial was already complete and judgment reserved. This however, cannot be a ground to perpetuate an illegality. However, his argument that the present Writ Petition has been filed only to fill in the *lacunae* in the Title Suit may not be correct in view of the fact that the Petitioner had filed the said two unregistered documents along with his written statement and sought to rely upon them and further the application was filed on 24.03.2017 when the Plaintiff was yet to be examined much before the written synopsis of argument dated 20.06.2017 was filed by the Respondent No.1. Filling in

the *lacunae* in a case cannot be equated with the fallout of an oversight committed during trial as; to err is human. *Prima facie* the said two unregistered documents seem to pertain to the dispute before the Trial Court. The purpose of trial is always to seek the truth. Probable evidence cannot be resisted on technicalities or even delay in placing the evidence before the Court. It must be remembered that it is the cardinal rule in the law of evidence that the best available evidence should be brought before the Court to prove a fact or the points in issue. In the present case the Trial Court is yet to render its judgment. The Respondent No. 1 may not be adversely effected if the application dated 24.03.2017 is reconsidered before delivering the judgment. Although the Learned Counsel appearing for the respective parties have made extensive arguments on the two unregistered documents and whether the said two unregistered documents would fall within the purview of Notification No.385/G dated 11.04.1928 as amended by Notification No. 2947/G dated 22.11.1946 this Court would desist from rendering its view on the arguments made and leave it open to the parties to raise all such arguments before the Trial Court to assist it effectively to enable the Learned Trial Judge to come to a correct conclusion.

17. In view of the aforesaid the impugned Order dated 05.04.2017 to the extent it dismisses the application dated 24.03.2017 filed by the Petitioner on the “no objection” from the

Respondent No.1 is set aside and the Trial Court is directed to rehear the said application dated 24.03.2017 before pronouncing its judgment in the Title Suit. The Learned Trial Judge is free to decide the further course as per law after considering the application dated 24.03.2017 and deciding the *lis* thereof. It is also made clear that the observations made in this judgment on the aforesaid two unregistered documents have been made solely for the purpose of examining the *lis* before this Court and the Learned Trial Judge shall not be bound by the observations so made herein while examining the merits thereof.

18. The Writ Petition is allowed on the above terms. No order as to costs.

Sd/-
(Bhaskar Raj Pradhan)
Judge
02.05.2018

Approved for reporting: yes.

Internet: yes.

to/