

HIGH COURT OF SIKKIM  
Record of Proceedings**Suo Motu Transfer Petition (Civil) No.12/2019**

KISHORE DUNGMALI (RAI)

PETITIONER (S)

VERSUS

SHIVA KUMAR RAI (DUNGMALI) &amp; ORS.

RESPONDENT (S)

**Date: 04/09/2019****CORAM :****HON'BLE MR. JUSTICE VIJAI KUMAR BIST, CJ.**

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**1.** The learned District & Sessions Judge, Special Division-I, Sikkim at Gangtok (I/C) has sent a letter bearing reference No.115 dated 13.08.2019 along with the order dated 13.08.2019 in which he has expressed his difficulty to proceed with the matter i.e. Title Appeal No.05 of 2018 (*Mr. Kishore Dungmali (Rai) versus Shiva Kumar Rai (Dungmali) & ors.*) on the ground that he has passed an injunction order on 19.10.2015 in Title Suit No.11 of 2015 (*N.B Dungmali & ors. Versus Kishore Dungmali & Anr.*) in the capacity of Civil Judge, East Sikkim at Gangtok (I/c). The said suit was finally decided by another Judge. Against that judgment appeal is before him.

**2.** I have seen the injunction order dated 19.10.2015 passed in Title Suit No.11 of 2015 (*N.B Dungmali & ors. Versus Kishore Dungmali & Anr.*) allowing the application filed by the plaintiff under Order XXXIX Rule 1 and 2 read with Section 151 of Code of Civil Procedure, 1908 (for

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short CPC). By the said order temporary injunction was granted in favour of the plaintiff.

**3.** In my view, the learned District & Sessions Judge is not correct in showing his inability to hear the matter, as different orders are passed by Judicial Officers at different stages of the cases and all such orders passed by Judicial Officers merge in the final orders when the cases are finally decided. The learned District & Sessions Judge passed the injunction order in the suit when he was Civil Judge. At that time, he had not finally adjudicated the matter and had not decided any issue finally. While deciding an application for interim order the Judicial Officer expresses his tentative view in the matter as the matter is to be adjudicated finally. Therefore, there should be no difficulty in hearing a matter in appeal which has been decided by another Judge.

**4.** Moreover, Sikkim is a small State and there are very few Judicial Officers. Many orders are passed by them at different stages. In case some small order is passed by a Judicial Officer during pendency of a case, in that situation, he cannot be stopped from hearing the matter at appellate stage which is decided by another Judge. If Officers are prevented to hear the appeal in which matter they had passed some small order at any stage in the suit proceedings, in that event a practical difficulty will also arise in this State. Therefore, in my view, there is no impropriety or illegality if

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the matter is heard by the District & Sessions Judge, Special Division-I, Sikkim at Gangtok at appellate stage.

**5.** In view of the above, the Suo Motu Transfer Petition (Civil) No.12 of 2019 is hereby rejected.

**6.** Let a copy of this order be sent to the learned District & Sessions Judge, Special Division-I, Sikkim at Gangtok forthwith.

**7.** This Suo Motu Transfer Petition is, accordingly, disposed of.

**Chief Justice**

04.09.2019

Index : Yes  
Internet : Yes

jk/avi