



IN THE HIGH COURT OF SIKKIM

Civil Revision No. 2 of 2005

State of Sikkim
Through the Secretary,
Forest Department,
Government of Sikkim
And others.

... Revision Petitioners

VERSUS

1. Shri Nim Tenzing Bhutia,
S/o (L) Sepo Bhutia
R/o Yangyang Block
P.O. Yangyang, South Sikkim.
2. Sri Topden Pintso Bhutia
S/o Sri Nim Tenzing Bhutia
R/o Yangyang Block
P.O. Yangyang, South Sikkim.

... Respondents.

For the Petitioners : Messrs. S.P. Wangdi, Ld.
Advocate General assisted by
Karma Thinley, Ld. Government
Advocate.

For the Respondent : Messrs. A. Moulik, Ld. Sr.
Advocate assisted by N.G.
Sherpa, Ld. Advocate.

**PRESENT: THE HON'BLE SHRI JUSTICE N. SURJAMANI SINGH,
CHIEF JUSTICE (ACTING).**

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Date of Order: 08th December 2005.

ORDER

SINGH, C.J. (Actg.).

Heard Mr. S.P. Wangdi, learned Advocate General assisted by Mr. Karma Thinley, learned Government Advocate for the petitioners and Mr. A. Moulik, learned senior counsel assisted by Mr. N.G. Sherpa, learned counsel for the respondents.

2. The order dated 17.08.2005 passed by the learned Civil Judge, Namchi in Title Suit No. 7/2005 rejecting the prayer of the State-defendants, Petitioners herein for examination of the witness Shri B.B. Theengh, Revenue Officer-cum-Asstt. Director, Office of the District Collector, South District, Namchi as D.W. is the subject matter under challenge in this Revision Petition.

3. The facts of the case in a short compass for the purpose of disposal of this Revision Petition are as follows: -

When the learned Trial Court fixed the case, namely, Title Suit No. 7/2005 for final argument, the State-defendants made a prayer for allowing them to examine Shri B.B. Theengh, Revenue Officer-cum-Asstt. Director, Office of the District Collector, South District, Namchi by contending inter alia, that there are some documents on record which are required to be proved and exhibited by the said witness Shri B.B. Theengh, who is an

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important witness for the defendants. However, the learned Trial Court rejected the prayer by holding that at such stage of the trial the said witness cannot be examined as the Trial Court asked the learned Government Advocate that if he did not wish to examine the said D.W. 3 as listed in the additional list of witnesses and that, at the time of closing of evidence the said witness was not examined by the defendants and that being the position, the same amounts to deliberate omission which cannot be condoned at that stage of trial. This is the impugned order, the validity of it is questioned by the present petitioners in this revision petition.

4. The application dated 17.08.2005 filed by the defendants speaks that on careful examination of the records it transpired that the witness Shri B.B. Theengh is yet to be examined and there are some documents on record which are required to be exhibited by the said witness on behalf of the defendants and the interest of the defendants would be seriously prejudiced if he is not allowed to be examined on behalf of the defendants.

5. According to me, the learned Trial Court did not properly consider this specific statements made by the defendants in the said application dated 17.08.2005, specifically the statements made in paragraphs 5 and 6 of it. I am also of the view that the learned Trial Court had also completely lost the sight of the related provisions of the law laid down under Section 30 (b) read

N. S. Choudhary



with Order XVI of the Code of Civil Procedure while passing the impugned order. At this stage a question arises as to whether the grant of prayer for examination of the said witness Shri B.B. Theengh as D.W. 3, a listed witness shall cause prejudice to the plaintiffs or not. According to me, no prejudice shall cause to the plaintiffs if the said witness is examined inasmuch as reasonable opportunity will be afforded to the plaintiffs to cross-examine the said witness at the time of the recording of the statement of the said witness. Secondly, for better appreciation in the matter and for rendering substantial justice to the parties concerned the examination of the said witness is called for and that the real points in controversy between the parties shall be determined in accordance with the law, if the said witness is examined. In view of the above position, the petitioners-State, defendants could make out a case to interfere with the related findings of the learned Trial Court made in the impugned order.

6. For the reasons, observations and discussion made above, this Revision Petition is allowed with a cost of Rs.100/- (Rupees one hundred) only, which shall be paid by the petitioners to the respondents within a week. It is made clear that the examination of the said witness, Shri B.B. Theengh shall be confined to the documents namely, Anexures P-6, P-7 and P-8 in C.M.A. No. 33/05 and proof of it only.

N. B. Cee



7. Let a copy of this order be communicated to the learned Trial Court by the Registry of this Court immediately.

A handwritten signature in blue ink, appearing to read 'N.S. Singh'.

(N.S. Singh)
Chief Justice (Acting)
08.12.2005