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## IN THE HIGH COURT OF SIKKIM AT GANGTOK

*Civil Revision Petition No. 2 of 2009.*

1. Smt. Lhakila Tongden Lepcha,  
W/o Late Rinzing Tongden Lepcha,  
At present resident of near Hotel Orchid,  
N.H. 31-A, Gangtok, East Sikkim,  
PIN-737 101
2. Smt. Karma Sonam Choden Tongden Lepcha,  
D/o Late Rinzing Tongden Lepcha,  
At present resident of near Hotel Orchid,  
N.H. 31-A, Gangtok, East Sikkim,  
PIN-737 101
3. Miss Tashi Ongmu Tongden Lepcha,  
D/o Late Rinzing Tongden Lepcha,  
At present resident of near Hotel Orchid,  
N.H. 31-A, Gangtok, East Sikkim,  
PIN-737 101

...Petitioners

VERSUS

Shri Passang Tongden Lepcha,  
S/o Late Nochi Tongden Lepcha,  
Residing near Hotel Orchid, 2<sup>nd</sup> Floor,  
N.H. 31-A, Gangtok, East Sikkim.

...Respondent

**For the petitioners:** Mr. N.K.P. Sarraf and Mr. S.K. Sarraf,  
Advocates.

**For the respondent:** Mr. K.T. Bhutia, Sr. Advocate with Ms. Bandana  
Pradhan, Advocate.

**Date of Hearing:** 26.05.2009

**Date of Judgment:** 26.05.2009

**PRESENT: HON'BLE THE CHIEF JUSTICE  
MR. JUSTICE AFTAB H. SAIKIA**

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**JUDGMENT AND ORDER (ORAL)**

Heard Mr. N.K.P. Sarraf (Senior) and Mr. S.K. Sarraf, learned Counsel appearing for the petitioners. Also heard Mr. K.T. Bhutia, learned Senior Counsel assisted by Ms. Bandana Pradhan, learned Counsel for the sole respondent.

2. The legality and correctness of the order dated 09.12.2008 passed by the learned District Judge (Spl. Div. - I), Sikkim in Title Suit No. 07 of 2004 have been questioned in this Revision Petition.

3. The facts of the case, in a short compass, are that the petitioners as the plaintiffs filed a suit for declaration, recovery of possession and consequential reliefs against the respondent, who was defendant in the said suit filed by the petitioners. The suit of the plaintiff has been pending for disposal before the learned District Judge, Special Division-I, Sikkim, Gangtok as Title Suit No. 7 of 2004.

4. It is pleaded in the plaint that one Shri Rinzing Tongden Lepcha is the absolute owner of the suit property fully described in the plaint, and the plaintiffs being the Legal Heirs and successors of the deceased Rinzing Tongden Lepcha, they become the absolute owner of the suit property and entitled for recovery of possession. The defendant/respondent (hereinafter called as "the respondent") herein have filed the written statement and claimed to be the owner of the suit land by virtue of a partition that took place in 1991.

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5. The parties have led their evidence, however, thereafter, the plaintiffs have procured certain documents and desired to file the said documents for the adjudication of the case. The plaintiffs have accordingly filed an application under Order VII, Rule 14 (3) read with Section 94 and 151 of the Code of Civil Procedure.

6. In the meantime, the respondent herein, has also filed one application under Notification No. 2947/G, dated 22.11.1946 praying *inter alia* for the grant of permission for validation and admission of Exhibits – 'A', 'B' and 'C', already exhibited, on payment of a penalty of fifty times the usual registration fee, which were unregistered and executed in 1955, 1971 and 1991.

7. The petitioners herein have filed their objection to the application filed by the respondent.

8. The learned District Judge, Special Division-I, Sikkim, Gangtok having entertained the application filed by the respondent, by the impugned order dated 09.12.2008, has allowed the petition opining that the said document may be registered as provided by the notification.

9. Assailing the order dated 09.12.2008, Mr. Sarraf (Senior), the learned Counsel for the petitioners has forcefully contended that the impugned order has no leg to stand on the sole ground that when the respondent has himself made a prayer in his application to grant permission allowing him to deposit fifty times penalty in the form of stamps for the purpose of validation and admission of the unregistered document, the learned Judge has, by the impugned order, provided for

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registration of the said document without application of its mind and the same is manifest on the face of the impugned order itself.

10. Relying on the notification dated 22.11.1946, the learned Counsel has submitted that the said notification permits for validation and admission of an unregistered document for the purpose of proving the title and other related matters by way of payment of penalty upto fifty times of usual registration fee. However, the learned Judge having lost sight of the said provision, by the impugned order has opined that the said document may be registered as provided by the notification, which is totally not permissible by the notification itself.

11. Besides, Mr. Sarraf (Senior), the learned counsel for the petitioners has also argued that the impugned notification itself has lost its force in terms of the views expressed by this Court in a case of *Bishnu Kumar Rai vs. Minor Mahendra Bir Lama and Ors.* reported in AIR 2005 Sikkim 33. According to him, the Division Bench comprising of Justice N.S. Singh, the then Chief Justice (Acting) and Justice A.P. Subba, of this Court in *Bishnu Kumar Rai's* case (supra), clearly and specifically has declared that both the notifications dated 11.04.1928 and 22.11.1946 have been repealed and they shall be non-est in the State of Sikkim. To substantiate his submission, he has basically relied upon the observations made by this Court in paragraph 13 to the extent that:

“But, in the case in hand, we are of the view that this document Exhibit D-1 could not be validated or admitted in Court to prove the title or other matters contained in the document on payment of penalty as discussed above as such document could not be registered as sale deed even the appellant desires to avail the protection of his case by the said notifications dated 11<sup>th</sup> April, 1928 and 22<sup>nd</sup> November 1946. According to us, such notifications cannot override



the related statutory provisions of the Transfer of Property Act, 1882.”

12. In view of the above observations as well as taking note of the impugned order itself, it is submitted by the learned Counsel that this impugned order deserves interference of this Court and accordingly the same is liable to be quashed.

13. For the sake of convenience, the two notifications dated 11.04.1928 and 22.11.1946 referred to in *Bishnu Kumar Rai's* case (supra) are reproduced as under:

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

All Kazis, Thekadars 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 23<sup>rd</sup> January, 1907 and 19<sup>th</sup> July, 1922, respectively shall be read and applied 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 exempted from registration penalty.”

BY ORDER OF HIS HIGHNESS THE MAHARAJA OF SIKKIM.

Gangtok  
The 11<sup>th</sup> April, 1928.

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 11<sup>th</sup> 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.

Gangtok  
The 22<sup>nd</sup> Nov., 46

T. Tsering  
(Offs) General Secretary to  
H.H. The Maharaja of Sikkim"

**14.** In support of the impugned order and basically refuting the statements and contentions as regards the repealment of the two notifications as indicated hereinabove in *Bishnu Kumar Rai's* case (supra), Mr. Bhutia, the learned Senior Counsel has argued that at no point of time these two notifications above mentioned have ever been repealed in terms of the ratio of *Bishnu Kumar Rai's* case (supra). His main thrust is that after passing of this Judgment of the Division Bench of this Court, the issue has again been brought before the Court for the clarification as to whether by *Bishnu Kumar Rai's* case (supra), both the notifications mentioned hereinabove, have been repealed or not.

**15.** Making clarification in this regard, this Court in a Single Bench comprising of Hon'ble A.P. Subba, J. who was also a party in *Bishnu Kumar Rai's* case, in Civil Revision Petition No. 7 of 2006 (*Kul Bahadur Gurung vs. Gajendra Gurung and others*) disposed of on 14.12.2006, in paragraph 17 has held that by *Bishnu Kumar Rai's* case




(supra), the two notifications are not repealed. In paragraph 17, it is observed clearly as under:

"17. It would thus be clear from the above, that the observation made by the Division Bench in *Bishnu Kumar Rai's* case (supra) being against a different background, cannot be taken to have repealed the two Notifications. The first point is accordingly answered in the negative."

16. At this stage, Mr. Sarraf (Senior) has submitted that he has not argued on the point that both the notifications have been repealed, but his primary submission is that the two notifications have lost its force after the operation of the Transfer of Property Act, 1882 in the State of Sikkim.

17. Having considered the clarification made in the *Kul Bahadur Gurung's* case (supra), this Court is not prepared to be persuaded by the submission of Mr. Sarraf (Senior) to the effect that the Court in *Bishnu Kumar Rai's* case (supra) has had the intention to make both the notification non-est. It is clarified in the discussion made in *Kul Bahadur Gurung's* case that particular order or observation was made in *Bishnu Kumar Rai's* case (supra) taking into the peculiar circumstances of the case therein. It is accepted that each and every case is founded on its own facts and circumstances.

18. That apart on a pointed query, the learned Counsel for the parties at the bar have submitted in chorus that the Judgment in *Kul Bahadur Gurung's* case has not been taken before any higher forum and in that view of the matter, this Judgment of *Kul Bahadur Gurung* has attained its finality.





19. That being the position, this Court is disinclined to entertain the submission that these two notifications have lost its force.

20. Now coming to the impugned order, it is seen that a bare reading of the order itself would go to apparently indicate that the trial Court has opined for registration of the document which has not been at all sought for by the respondent in his application.

21. It would be apt and convenient to reproduce the application so submitted by the respondent seeking protection under the notification dated 22.11.1946. The same reads as under:

“IN THE COURT OF LD. DISTRICT JUDGE (SPECIAL  
DIVISION - I), EAST SIKKIM AT GANGTOK.

T.S. No. 7 of 2004

Mrs. Lhakyla Tongden Lepcha and others

...Plaintiffs

VERSUS

Shrii Passang Tongden

...Defendant

AN APPLICATION UNDER NOTIFICATION No. 2947G DATED  
22<sup>nd</sup> November 1946 UNDER THE SIGNATURE OF THE  
GENERAL SECRETARY TO HIS HIGHNESS THE MAHARAJA  
OF SIKKIM.

The humble defendant/applicant named above,

MOST RESPECTFULLY SHEWETH:

1. That the above title suit is pending for disposal in this Hon'ble Court and today is the date fixed for filing of objection by the defendant.

2. That that defendant has exhibited the partition deeds of 1955, 1971 and 1991 and marked as Exts A, B and C respectively. The said exhibits which are in original are not registered in the Office of the concerned Sub-Registrar. Hence, the instant application to grant permission to the humble defendant to pay the penalty of fifty times the usual registration fee under the aforesaid notification necessary for

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validation and admission of the above mentioned exhibits in this Hon'ble Court.

In the circumstances mentioned above it is most fervently prayed that Your Honour may be pleased enough to grant permission allowing the humble defendant to deposit the fifty times penalty in the form of stamps in the interest of justice.

And for which act of kindness, the humble defendant shall ever pray.

Gangtok  
Dated: 2/7/08.

Filed by

(Passang Tongden, Defendant)

VERIFICATION

I, Passang Tongden, the defendant do hereby verify that the statements made in paragraphs 1 and 2 are true to the best of my knowledge and I sign this verification on the 2<sup>nd</sup> day of July 2008 at Gangtok, East Sikkim.

(Passang Tongden, Defendant) "

22. It is explicitly mentioned in the application itself that the defendant has prayed for to grant permission allowing him to deposit the fifty times penalty in the form of stamps in the interest of justice so as to make that unregistered document valid and admissible in the Court of law to prove the title. However, the learned District Judge has opined that "the said document may be registered as provided by the notification". It exhibits complete lack of application of judicious mind and accordingly we do quash the impugned order to the extent of directing for registration of the said document.

23. However, after hearing the learned Counsel for the parties, this Court directs the parties, in the interest of justice, to make a payment as a penalty of fifty times the usual registration fee before the competent authority within a period of fifteen days from today.



24. At this stage Mr. Bhutia, learned Senior Counsel has informed that he has already deposited the penalty amount of fifty times the usual registration fee which is not objected by Mr. Sarraf, the learned Counsel (Senior) for the petitioner in his all fairness. Consequently, this Court accepts the submission of the learned Senior Counsel representing the respondent.

25. In view of what has been stated, observed and discussed above, this Civil Revision Petition stands disposed of.

26. However, there shall be no order as to costs.

27. Send down the LCR forthwith.

Chief Justice.

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