



**IN THE HIGH COURT OF SIKKIM  
GANGTOK**

FR.

**Civil Revision Petition No. 5 of 2008**

1. Durga Bahadur Rai  
S/o Late Dhan Bir Rai,  
R/o Nandok Busty,  
East Sikkim.
2. Shri Ishu Bdr. Rai,  
S/o Late Man Bdr. Rai,  
R/o Rhenock,  
East Sikkim.
3. Shri Tara Bdr. Rai,  
S/o Late Man Bdr Rai,  
R/o Rhenock,  
East Sikkim.
4. Shri Lalit Rai @ Leela Bdr. Rai,  
S/o Late Hasta Bdr. Rai,  
R/o Nandok Busty,  
East Sikkim. .... **Revisionists/Petitioners**

**Versus**

1. Shri Golman Rai
2. Shri Santaman Rai
3. Shri Birman Rai
4. Shri Tikaram Rai  
(All sons of Late Dal Bdr. Rai  
Residents of Pabik Naitam,  
P.O. & P.S. Ranipool,  
East Sikkim.
5. Anil Rai
6. Pradeep Rai (minor)  
(being represented by his mother  
Smt. Lalita Rai,  
W/o Late Garjaman Rai,  
R/o Pabik Busty, Naitam Block,  
P.O. Naitam, P.S. Ranipool,  
East Siikkim.
7. Padam Bdr. Rai

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8. Chattur Singh Rai
9. Dhan Kumar Rai
10. Rajen Rai  
(Sons of Late Birjaman Rai,  
Residents of Pabik Busty,  
Naitam Block,  
P.O. Naitam, P.S. Ranipool,  
East Sikkim.

.... ***Respondents.***

For the Revisionists/ : Mr. K. T. Bhutia, Senior Advocate  
Petitioners with Ms. Bandana Pradhan,  
Advocate.

For the Respondents : Mr. B. Sharma, Senior Advocate  
with Mr. Jagat Rai, Advocate.

**Present : The Hon'ble Mr. Justice S. P. Wangdi, Judge.**

**Date of last hearing : 23.07.2009**

**Date of Order : 27.07.2009**

## **ORDER**

**S. P. Wangdi, J.**

This Revision Petition has been filed against an order dated 01.07.2008 passed by the learned District Judge, East and North Sikkim at Gangtok, in Title Suit No.19 of 2005 rejecting an application under Order 7 Rule 11 Civil Procedure Code for rejection of the plaint on the ground that the suit appeared to be barred by the law of limitation.

**2.** In order to dispose of this petition, it would not be necessary to delve into the details of the facts involved in the suit except to the extent that Title Suit No.19 of 2005 was filed by a set of descendents of one late Dhan Bir Rai, who



are the respondents herein against another set, who are the petitioners, seeking to stake claim over certain landed properties under the possession and enjoyment of the latter. During the proceedings of the suit before the learned trial Court, written statement appears to have been filed and evidence recorded to some extent after framing a number of issues, one of which was "whether the suit is barred by law of limitation". As it appears from the records and also from the impugned order, that a statement appears to have been made by the plaintiff No.1 in his cross-examination which reads as follows :-

**"it is true immediately after the death of our father late Dal Bahadur Rai in the year 1986, we demanded share in the suit property but the defendants flatly turned down our demand. Demand was made by us in the year 1986."**

Following that, the petitioners filed an application dated 26.04.2008 for rejection of the plaint, on the ground that the suit was barred by the law of limitation. The learned District Judge, after hearing the parties, rejected the petition relying upon the judgment passed by this Court in RFA No.2 of 2007, which reiterated the settled position in the Hindu Law that possession by a co-sharer is not ordinarily an adverse possession as against undivided interest of another co-sharer.



**3.** During the course of arguments, Mr. K. T. Bhutia, learned Senior Advocate appearing on behalf of the revisionists argued that in view of the categorical admission made by the plaintiff No.1 (who is the respondent No.1 in the present petition) in his cross-examination, there was no necessity to proceed further in the suit as the suit stood barred by the law of limitation and that the plaint of the suit deserved to be rejected in terms of clause (d) of Order VII Rule 11 of the Civil Procedure Code. Mr. K. T. Bhutia, learned Senior Advocate, also drew my attention to the provisions of Section 3 of the Limitation Act, 1963 and submitted that as the suit had been filed after the prescribed period, the learned trial Court ought to have dismissed the suit. It was further submitted that the learned trial Court ought to have dismissed the suit also by virtue of Order XIV Rule 2(2)(b) C.P.C. Mr. B. Sharma, learned Senior Advocate appearing on behalf of the respondents, on the other hand, while supporting the judgment of the learned District Judge, submitted that the revision petition was not maintainable and deserved to be dismissed. It was submitted by him that once issues have been framed, the Court is required to pronounce judgment on all those.

**4.** I have heard and considered the rival submissions raised at the bar and have also perused the records of the case and the impugned order dated 1.7.2008 and I am



inclined to concur with the view of the learned trial Court that the petitioners have not been successful in making out a case for dismissal of the plaintiffs' suit as being time barred, but for reasons quite different from his and more fundamental.

**5.**           Plaint shall be liable to be rejected under Order VII Rule 11 more specifically under clause (d) only if from the statement in the plaint it appears that the suit is barred by any law (in the present case, the law of limitation). In other words the sole determining factor for such consideration would be the statement in the plaint and nothing further. Once written statement has been filed and issues have been framed, procedure laid down under Order XIV Rule 2 of the Civil Procedure Code would then come into play requiring the Court to pronounce judgment on all issues except where a preliminary issue has been framed.

**6.**           In the present case, it is an admitted position as is also reflected in paragraph 10 of the revision petition that the occasion for seeking for rejection and/or dismissal of the suit arose only after the cross-examination of the plaintiffs (who are the respondents in the present proceeding). When enquired from the learned Senior Counsel for the petitioners as to whether any preliminary issue on the question of limitation was framed by the Court below, it was answered by him in the negative.




7. The admitted facts and circumstances giving rise to the filing of the application for rejection of the plaint and/or dismissal of the suit quite apparently conflict with the requirements of the law, a position fairly conceded by Shri Bhutia.

8. In the above facts and circumstances and the legal position obtaining in the matter, the revision petition stands hereby dismissed. It is however left open for the petitioners to raise the issue of limitation at the time of final hearing of the case in the Court below. It is also made clear that the findings in the present proceeding may not be construed as an expression on the merits of the case.

No orders as to costs.

Records of the lower court be sent back forthwith.

  
( **S. P. Wangdi** )  
**Judge**  
27.07.2009

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