



Case No.....**CRP No.3 of 2009**

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07.	23.09.2009	<p style="text-align: center;"><u>PRESENT</u></p> <p style="text-align: center;">HON'BLE MR. JUSTICE A. P. SUBBA, JUDGE</p> <p>Heard Mr. A. Moulik, learned senior counsel assisted by Mr. N. G. Sherpa and Mr. Manish Kumar Jain, learned counsel for the petitioners. Also heard Mr. Jorgay Namka, learned counsel for the respondent No.1 and Mr. Karma Thinlay, learned State counsel assisted by Mr. Santosh Kumar Chettri, Assistant State counsel for the respondent No.2.</p> <p>This is an application filed under Section 115 of the Code of Civil Procedure, 1908 read with Article 227 of the Constitution of India.</p> <p>The facts which gave rise to the present revision, stated briefly, are that the present respondent No.1 filed a Civil Suit bearing number 1/1996 against the present petitioners in the Court of Civil Judge, West at Sikkim at Gyalshing for declaration, cancellation and other consequential reliefs duly valuing the suit at Rs.4001. On hearing the parties on the preliminary objection raised by the defendants regarding undervaluation and limitation, the Court came to the conclusion that the suit was under valued and accordingly vide order dated 22-08-1997 returned the plaint for presentation before the appropriate Court. However, the plaintiff, the respondent No.1 herein instead of presenting the plaint before the appropriate Court in terms of the direction instituted a fresh civil suit being Title Suit No.7/2008 against the present petitioners in the Court of District Judge (South and West) at Namchi in the year 2008 for declaration, cancellation of the sale deed, recovery of possession etc. putting the valuation of the suit at Rs.1 lakh. On a preliminary objection raised by the petitioner-defendant</p>



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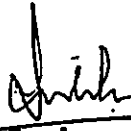
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		<p>regarding valuation and limitation, the following two preliminary issues were taken up and both parties were heard:-</p> <p>(a) Whether the Plaintiff has under valued the suit? And if so, is the Plaintiff required to revalue the suit and pay the ad valerum Court fee?</p> <p>(b) Whether the Plaintiff's suit is barred by limitation?</p> <p>After hearing the parties on the above issues, the learned Court came to the finding that the suit was under valued. However, on the basis of the Sikkim Darbar Notice No.436/J dated 27-05-1928 cited at the bar the learned court further came to the conclusion that the plaintiff was exempted under the said notice and accordingly observed that the issue stood decided in favour of the plaintiffs. As regards the other issue relating to limitation, the Court having found the same to be mixed question of law and fact left it open for decision at the trial of the suit.</p> <p>Against the above backdrop the main contention advanced by Mr. Moulik, learned senior counsel appearing for the petitioners is that the learned Court after having come to the conclusion that the suit was under valued ought to have taken recourse to provisions contained in Order VII Rule 11(b) of CPC. However, instead of following the said procedure the learned Court proceeded further thereby coming to the conclusion that the plaintiff was exempted from the payment of Court fees under the above notice and posted the matter for filing of W.S.</p> <p>The relevant part of Order VII Rule 11(b) of CPC reads as follows:-</p> <p>"11. Rejection of plaint.- The plaint shall be rejected in the following cases :-</p> <p>.....</p>



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		<p>(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the court, fails to do so;"</p> <p>A bare perusal of the above provision clearly shows that when the Court comes to the finding that the suit is undervalued the next step such Court is required to take is that it should direct the plaintiff to correct the valuation within a specific time frame. The proviso appended to the Rules makes it clear that if no such correction is made within such specific time frame, the Court may proceed further and reject of the plaint. It is hardly necessary to say that the provisions of this Rule are mandatory. Mr. Jorgay Namkha, learned counsel appearing for the respondent No.1 without disputing the above provisions of law and its binding nature very fairly conceded that he had no objection to the matter being remanded to the learned trial Court for reconsiderations of the issues raised herein.</p> <p>In view of the above, this matter stands disposed of with the following order:-</p> <p>The impugned order dated 28-02-2009 passed in Title Suit No.7/2008 so far it relates to exemption from payment of Court fees stands set aside and the matter is remanded to the learned trial Court.</p> <p>Since the Court has already come to the finding that the suit is undervalued it shall now follow the rest of the procedure laid down under Order VII Rule 11(b) of CPC. In other words, the Court shall determine the correct valuation on the basis of the materials on record and if necessary require the plaintiff to make up the deficiency in Court fees within a reasonable time frame. On the revaluation of the</p>



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	ds	<p>suit by the plaintiff, the Court shall hear the parties on the remaining preliminary issues including the question as to whether the plaintiff was exempted under the related Government notice and proceed further according to law.</p> <p>The lower Court record be sent forthwith.</p> <div> Judge 23-09-2009</div>