



**IN THE HIGH COURT OF SIKKIM AT GANGTOK**  
(CIVIL REVISIONAL JURISDICTION)

**DATED: 23-06-2011**

**CORAM**

**HON'BLE MR. JUSTICE P.D. DINAKARAN, CHIEF JUSTICE**

**Civil Revision Petition No.03 of 2011**

Smt. Yangzila Bhutiani,  
Wife of Mr. P.T. Bhutia,  
Resident of Development Area,  
Gangtok, East Sikkim.

.... Petitioner/Plaintiff

-versus-

1. M/s. Nauratanmal Ashok Kumar,  
M.G. Marg, Gangtok,  
East Sikkim.

2. Mr. Sampatlal Buccha,  
Resident of M.G. Marg,  
Gangtok, East Sikkim.

...Respondents/Defendants

For the Petitioner : Mr. Sudipto Majumdar, Advocate.

For the Respondents : Mr. Gulshan Rai Nagpal, Advocate.



## **JUDGMENT**

**Dinakaran, CJ**

Heard Mr. S. Majumdar, learned counsel for the revision petitioner/plaintiff and Mr. Gulshan Rai Nagpal, learned counsel for the respondents/defendants.

2. The above revision petition is directed against the order dated 05-02-2011 of the learned District Judge (Special Division-I).

3. By order dated 05-02-2011, which is challenged in the above revision petition, the learned District Judge (Special Division-I) refused to reject the counter claim filed by the respondents/defendants. Hence, the above revision petition.

4. According to Mr. Majumdar, learned counsel for the revision petitioner/plaintiff, even though by an earlier order of this Court dated 04-10-2010 in CRP No.05 of 2009, the right of the respondents/defendants to file a claim above has already got concluded in his favour, as observed by the learned District Judge (Special Division-I), the right of the revision petitioner/plaintiff to adduce his evidence in the main Civil Suit No.2 of 2003 filed before the learned District Judge (East & North) which was re-numbered as under: -

- (i) Civil Suit No. 03 of 2003 before the learned District Judge (Special Division),



8

- (ii) Title Suit No. 04 of 2004 before the learned District Judge (Special Division-I),
- (iii) Eviction Suit No.19 of 2005 before the learned District Judge (East & North) and <sup>which</sup> ~~was~~ again re-numbered as
- (iv) Eviction Suit No.01 of 2010 on the file of the learned District Judge (Special Division-I) ought not to have been curtailed by the order dated 05-02-2011.

5. Mr. Majumdar, learned counsel for the revision petitioner/plaintiff invites my attention to the operative portion of the order dated 05-02-2011 of the learned District Judge (Special Division-I) permitting the respondents/defendants to examine his evidence-in-chief in the main suit and thereby curtailed the right of the revision petitioner/plaintiff to examine the plaintiff's evidence in the main suit and contends that the revision petitioner/plaintiff is, therefore, prejudiced by the order dated 05-02-2011. Learned counsel for the petitioner has not pressed the other points raised in the revision petition.

6. Per contra, Mr. Gulshan Rai Nagpal, learned counsel for the respondents/defendants submits that the revision petitioner/plaintiff also filed an application under Order XXIII read with section 151 of the Code of Civil Procedure, 1908 to withdraw the main suit and, therefore, he has no right to adduce his evidence once again. Inter-alia, Mr. Nagpal, learned counsel for the respondents/defendants



contends that the revision petitioner/plaintiff should not in any event be permitted to protract the proceedings.

7. I have given my careful consideration to the contentions of both the sides.

8. I find from the order sheet dated 20-11-2007 of the learned District Judge, East & North that even though the revision petitioner/plaintiff filed an application under Order XXIII read with section 151 of the Code of Civil Procedure, 1908 to withdraw the main suit, the said application was dismissed as follows:-

"20-11-07 .....

Ld. Counsel submits that the plaintiff had filed an application under order XXIII read with section 151 of the C.P.C. on 27.07.2006, which is still pending. Ld. Counsel, however, submits that plaintiff does not want to press the same. In the result, said application stands dismissed as not pressed.

....."

9. In that view of the matter, the main suit namely the Civil Suit No.02 of 2003 which was re-numbered as

- (i) Civil Suit No. 03 of 2003 before the learned District Judge (Special Division),
- (ii) Title Suit No. 04 of 2004 before the learned District Judge (Special Division-I),



(iii) Eviction Suit No.19 of 2005 before the District Judge  
(East & North),

and now again re-numbered as Eviction Suit No.01 of 2010 is still pending on the file of the learned District Judge (Special Division-I). The above factual position is not disputed by both the sides.

**10.** If that be so, in my considered opinion, the revision petitioner/plaintiff is entitled to adduce his evidence-in-chief to substantiate his case in the main suit and the same shall be defended by the respondents/defendants herein. It goes without saying that the respondents/defendants are also entitled to adduce their evidence to substantiate their counter claim, which the revision petitioner/plaintiff is entitled to be defended in accordance with law. Except to clarify the above position, no further orders are required in the above revision petition.

**11.** The revision petition is disposed of accordingly with further direction to the learned District Judge(Special Division-I) to complete the trial on day to day basis and pass appropriate judgment in the light of the evidence proposed to be adduced by both the parties. The trial shall commence from 17-08-2011 as agreed by the learned counsel of both the sides. Both the revision petitioner/plaintiff and the respondents/defendants are entitled to file their affidavit of evidence afresh, if they are so pleased. They are also entitled to raise all legal contentions relating to the limitation as well as for the



jurisdiction of the Court and the same shall be decided and disposed of by the learned District Judge(Special Division-I).

The above revision petition is disposed of accordingly. No order as to cost.

**(P.D. Dinakaran, CJ)**  
**23.06.2011**

Index : Yes/No

Internet : Yes/No

rsr/