

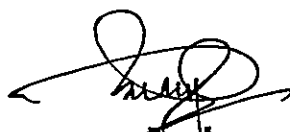


Serial No.	Date	Orders (s) with Signature (s)
1	2	3
03.	29.08.2012	<p style="text-align: center;"><u>BEFORE</u></p> <p style="text-align: center;">HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE</p> <p>Present : Mr. B. Sharma, Senior Advocate with Mr. Bhola N. Sharma and Ms. Pranika Tamang, Advocates for the Appellant.</p> <p>Mr. B. K. Rai, Advocate with Ms. Karishma Chettri, Advocate for the Respondent.</p> <p style="text-align: center;">-----</p> <p>The question of law although not specifically formulated by the Appellant but on a perusal of the memo of appeal and upon hearing the Learned Counsel for the parties, the following question is formulated:-</p> <p style="padding-left: 40px;">"Whether the impugned judgment of the Learned Appellate Court is bad for not having decided on all the issues and as to whether decision on only one of the issues while disposing of the Appeal is legal and valid in the light of Order IV Rule 2 of the Code of Civil Procedure, 1908."</p> <p>I have perused the impugned judgment and at paragraph 11 the Learned Appellate Court has set out the issues which are as follows:-</p> <p style="padding-left: 40px;">"(a) Whether the Plaintiff had <i>locus-standi</i> to file the present suit?</p> <p style="padding-left: 40px;">(b) Whether the 'Gumpa' was a juristic person which could sue or be sued?</p> <p style="padding-left: 40px;">(c) Whether the suit property/'Gumpa' was the ancestral property of defendant or whether it was public property and whether defendant's great grandfather was the sole owner of the suit property?</p> <p style="padding-left: 40px;">(d) Whether the Plaintiff was entitled to the relief(s) claimed?"</p> <p>However, at paragraph 14 of the impugned judgment of the Learned Appellate Court, I find that it has disposed of the</p>



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		<p>Appeal only on issue (c) which is apparent from the bare reading of the paragraph which is reproduced below:-</p> <p>"14. The only question for determination before this Court is whether the suit property/'Gumpa' was the ancestral property of the Respondent/Defendant or whether it is public property."</p> <p>Under Order XIV Rule 2 CPC, it has been prescribed that the Court shall subject to the provisions of sub-rule (2), pronounce judgment on all issues. Of course, this position is notwithstanding that the case may be disposed of on a preliminary issue. In the present case, it is not the case of the parties that the case has been disposed of on the preliminary issue. Undeniably an Appeal is a continuation of the suit and, therefore, it was incumbent for the Learned Appellate Court to have considered all the issues and pronounced judgment on each of those.</p> <p>Mr. B. K. Rai, Learned Advocate, appearing for the Respondent, fairly concedes that, apart from what have been stated in paragraph 12 which only sets out the submission made on behalf of the Appellant to the effect that the other issues would be rendered redundant if the decision is given on the issue (b) above, i.e., whether the issue Rishum Gumpa was a juristic person capable of holding properties in its name as this would strike the root of the suit, other two essential issues have not been dealt with an, therefore, renders the impugned judgment of the Learned Appellate Court incomplete.</p> <p>In view of the fair concession of Mr. B. K. Rai, Learned Counsel and in view of the position of law set out above, it would be in the interest of justice if the case is remitted back to the Learned Appellate Court to decide on all the issues and render judgment on each of them.</p>



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		<p>In the result, the impugned judgment is quashed and set aside.</p> <p>The Appeal is remitted back to the Learned Appellate Court with the direction to hear the Appeal <i>de novo</i>. Parties are at liberty to raise all questions that may be felt relevant for the purpose of disposal of the Appeal.</p> <p>Considering the fact that this is a very old case which had commenced in the year 2001 the Appeal be disposed of not later than 30-11-2012.</p> <p>With the above directions, this Appeal stands disposed of.</p> <p>No order as to costs.</p> <p>Let a copy of this Order be transmitted to the Learned District Judge, South and West Sikkim at Namchi forthwith for its due compliance.</p> <div data-bbox="906 1329 1193 1505"> Judge 29-08-2012</div> <p>Index : Yes/No Internet : Yes/No</p>

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