



**HIGH COURT OF SIKKIM, GANGTOK**  
(Civil Appellate Jurisdiction)

**HON'BLE SHRI SUNIL KUMAR SINHA, CHIEF JUSTICE**

**RSA No.01 of 2013**

1. Smt. Karma Denka Bhutia,  
W/o Damdi Bhutia.
2. Smt. Laden Bhutia,  
W/o Indum Bhutia,  
(Both residents of Machong Busty)  
P.S. Pakyong,  
East Sikkim.

... **APPELLANTS/ PLAINTIFFS**

**Versus**

Lakpa Sherpa, S/o Late Nima Sherpa,  
died during the pendency of the Suit and  
substituted through L.Rs: -

1. Smt. Sarki Lamu,  
W/o Late Dawa Sherpa,  
Resident of Rongli,  
East Sikkim.
2. Shri Passang Sherpa,  
Son of Late Lakpa Sherpa,  
Resident of Rongli,  
East Sikkim.

... **RESPONDENTS/ DEFENDANTS**

**Appeal under Section 100 of the Code of  
Civil Procedure, 1908.**

**Appearance :**

Mr. Karma Thinlay, Sr. Advocate with Mr. D.K.  
Siwakoti, Advocate for the Appellants.

Mr. N.B. Khatiwada, Sr. Advocate with Mr. Umesh  
Ranpal, Ms. Gita Bista, Ms. Monika Rai, Ms. Kessang  
Choden Bhutia and Ms. Yeshey Ongmu Bhutia,  
Advocates for the Respondents.



## **JUDGMENT**

(13.10.2015)

**SUNIL KUMAR SINHA, CJ.**

1. The Appellants/Plaintiffs have filed this Appeal against the Judgment and Decree dated 30.11.2012 passed by the District Judge, Special Division-II, East at Gangtok in Title Appeal No. 04 of 2012 arising out of Judgment and Decree dated 28.02.2001 passed by the Civil Judge, East Sikkim at Gangtok in Civil Suit No. 31 of 1997. The suit was decreed by the trial Court, but, the said Decree has been reversed in the first Appeal.

2. During the pendency of this Appeal, the Plaintiffs had filed an Application (CMA No. 249/2015) under Order XLI Rule 27 of the Code of Civil Procedure, 1908, for producing certain additional documents, which has been dismissed simultaneously in the file of the aforesaid Application.

3. This is second round of litigation before the High Court. The facts, briefly stated, are that the Plaintiffs are real sisters, being the two daughters from the first wife of Laku Ongden Bhutia. The grandfather of the Plaintiffs, Goley Gyalpu Bhutia, according to them, owned and possessed the suit property i.e. a two storied wooden house with GCI roofing measuring about 15' x 40' situated at Rongli Bazaar, East Sikkim, described in Schedule of the plaint. Mother of the Plaintiffs, first wife of Laku Ongden Bhutia, died in the year 1969. Thereafter, their father remarried and the Plaintiffs



were brought up under the care and custody of their maternal grandfather, Cholek Dorjee Bhutia, who was appointed as 'court guardian' of the Plaintiffs by the Chief Magistrate, Sikkim at Gangtok, vide Order dated 10.08.1972, passed in Civil Misc. Case No. 41 of 1972. According to the Plaintiffs, their late father Laku Ongden Bhutia and their guardian and grandfather, Cholek Dorjee Bhutia, executed an agreement on 09.08.1973, whereby the father of the Plaintiffs undertook to divide the properties between the issues of his two wives after the same would devolve in his ownership after the death of Goley Gyalpu Bhutia, grandfather of the Plaintiffs. According to the Plaintiffs, their father then executed a sale deed (Exhibit D-1) of the suit property in favour of the original Defendant namely, Lakpa Sherpa (who died during pendency of the suit and was substituted through his L.Rs, the present Respondents) on 25.01.1979. The Plaintiffs, thereafter, filed an objection before the Registration Authority, which was allowed and the registration in favour of the Defendant was cancelled. The Plaintiffs further contended that, thereafter, their father executed a sale deed (Exhibit P-5) in their favour of the entire half portion of the dwelling house situated at Rongli Bazaar on 01.04.1980, which was registered on 13.10.1980. The Plaintiffs further contended that at that time, one Lakpa Sherpa (Sardar) was tenant of the said property and the guardian of the Plaintiffs was collecting rent from him and after the death of their guardian in the year 1994, the Plaintiffs were collecting rent from the tenant. The Plaintiffs further alleged that the sale deed executed by their father



in favour of the original Defendant was null and void as it was prohibited by the then Revenue Law, according to which the sale of immovable properties of Bhutias and Lepchas in favour of any other community was prohibited. The Plaintiffs, therefore, claiming themselves to be in continuous and peaceful possession of the suit property since 1980, first through their guardian and after his death through themselves, challenged the alleged attempt of the original Defendant, who claimed to be the owner of the suit property and started instigating the tenant to give rent to him. The Plaintiffs, thus, filed the suit for declaration that they were the absolute owners of the two storied wooden house measuring 15' x 40' situated at Rongli Bazaar and the entry in the records of rights in respect of the suit premises in the name of the original Defendant was incorrect; and for permanent injunction restraining them from interfering with their peaceful possession over the suit property.

4. The original Defendant, Lakpa Sherpa, filed his written statement denying all the allegations made in the plaint. He contended that the father of the Plaintiffs had executed a sale deed in his favour on 25.01.1979 (Exhibit D-1) which was registered on 20.03.1979, however, the possession of the wooden house was handed over to him on 12.12.1978, after which he was continuously holding the possession of the same. The wooden house was situated over an area of 30' x 40'. On 13.05.1996 he applied to the Urban Development and Housing Department,



Government of Sikkim, Gangtok for the approval of Blue Print Plan for reconstruction of the said wooden house into a RCC structure, which was approved on 10.06.1996 and a construction order No. 34(75)4781/ UD & HD dated 08.11.1996 was issued on his name and he started construction over the said area. It was further contended that the aforesaid transaction was well within the knowledge of the guardian of the Plaintiffs, who never challenged it. Besides above, the Defendant also contended that the plot number in the sale deed dated 01.04.1980 and the boundaries therein do not tally with the suit property described in the Schedule to the plaint. It was also contended that the immovable properties of Bhutias and Lepchas can be alienated or transferred to non-Bhutias and non-Lepchas community in Bazaar area. Over and above, it was contended that he was holding possession of the suit property for over 18 years and thus perfected his title by way of adverse possession. All these were in the knowledge of the guardian of the Plaintiffs, who did not object to it and also that the suit was barred by limitation. It was specifically stated that Lakpa Sherpa (Sardar) was a tenant of original Defendant since the beginning of the year 1979, after he took over the possession of the suit property from the father of the Plaintiffs.

5. The following issues were framed by the trial Court on the basis of the pleadings of the parties: -

1. Whether the suit filed by the plaintiff was barred by the law of limitation?



2. Whether the suit property was sold away by the father of the plaintiffs to the defendant vide Registered Sale Deed document? If so, whether the transaction was valid in law?
3. Whether the sale deed between the father of the plaintiffs and the defendant was cancelled by the Ld. Registrar?
4. Whether, in the year 1980 the plaintiff's father executed a sale deed in favour of the plaintiffs of the entire half of the two storied wooden house situated at Rongli Bazar?
5. Whether the entry in the records of rights is liable to be rectified?
6. Whether the defendant has perfected his right on the suit property by way of adverse possession?
7. Reliefs.

6. The trial Court after recording evidence of the parties decided all the issues in favour of the Plaintiffs, except issue No. 3, and decreed their suit for declaration and permanent injunction holding them to be the owners of the property of Schedule of the plaint.

7. Being aggrieved with the aforesaid Judgment and Decree, passed by the trial Court, the Respondents herein filed First Appeal No. 01 of 2002, which was allowed by the District Judge, Special Division-I, Sikkim at Gangtok, vide Judgment and Order dated 27.06.2003 and the Decree of the trial Court passed in Civil Suit No. 31 of 1997 was set aside and the Plaintiffs suit was dismissed. Among the other issues decided in favour of the Respondents, the said Court also held that the suit filed by the



Plaintiffs was barred by limitation as per Sikkim State Judicial Department Notification No. 1067/J dated 10.05.1932 and that the Defendants have been in continuous and uninterrupted possession of the suit premises since 12.12.1978.

8. The aforesaid Judgment and Decree passed in First Appeal No. 01 of 2002 was challenged by the Plaintiffs before this Court in Regular Second Appeal No. 04 of 2003. The said Appeal was disposed of by this Court vide Judgment dated 11.08.2004. This Court held that the Limitation Act, 1963 was extended to the State of Sikkim with effect from 01.09.1984. The suit was instituted on 30.06.1997 by which time the Limitation Act, 1963 has already come into force in the State, which governs the field. Therefore, the issue whether the suit was barred by limitation had to be decided on the basis of period of limitation prescribed for the purpose under the Limitation Act, 1963. It was held that the First Appellate Court had clearly fallen into legal error in holding that the period of limitation would be governed by Notification No. 1067/J dated 10.05.1932 of the Sikkim State Judicial Department. The said notification was not in force on the date of filing of the suit. Therefore, question of applying it to the suit does not arise. It was further held that on a previous decision of this Court, it was clear that the period of limitation prescribed in the Notification was not rigid and in a given case it could be relaxed. Taking the above view, the Judgment dated 27.06.2003 passed by the District Judge was set aside and the matter was remitted to the said Court for



fresh disposal in accordance with law and the observations made in the said Judgment.

9. After the remand, the matter came before the District Judge, Special Division-II, East Sikkim at Gangtok vide Title Appeal No. 4 of 2012. The learned District Judge decided Issue No. 1, 2 and 6 in favour of the Plaintiffs. It was held that the suit filed by the Plaintiffs was well within limitation and the transaction between the father of the Plaintiffs being 'Bhutia' and the original Defendant being 'Sherpa' was not permissible, being of two different communities and the disputed land being not proved as falling in Bazaar area. It was held that the original Defendant had not perfected his right by way of adverse possession. After holding so, the appellate Court further held that the suit property, in fact, was throughout recorded as a property belonging to the State of Sikkim as 'Sarkar Bazaar Area', as also the identity of the suit property which was under transfer vide Exhibit P-5 was not established at all. According to the First Appellate Court, in the contents of Exhibit P-5, there was no specific plot number tallying with the plot number of the schedule to identify the half structure of the wooden house situated at Rongli Bazaar. The boundaries mentioned therein also do not tally either with Exhibit D-1 or with Exhibit D-2. Thus, in absence of proof of all these facts, the decision on issue No. 4 of the trial Court in favour of the Plaintiffs was not correct. According to the First Appellate Court, the suit property was belonging to the State and the State was a necessary party,



therefore, suit of the Plaintiffs was liable to be dismissed for want of necessary parties as also for non-establishing the identity of the suit property or the property under transaction vide Exhibit P-5. The Appeal, therefore, was allowed and the suit was dismissed by the First Appellate Court on the said accounts.

**10.** Being aggrieved with the Judgment and Decree passed by the First Appellate Court on 30.11.2012, the Plaintiffs have filed this Second Appeal. This Appeal was admitted for hearing on the following substantial questions of law: -

- (1) Whether the appellate court below erred in giving its finding on an issue other than those framed by the trial court and also by the appellate Court, thereby, depriving the appellant/plaintiff to tender subsequent evidence and documents on an issue apart from the illegality and infirmity attached therewith.
- (2) Whether the Ld. Appellate Court had wholly ignored P-5 (gift deed), Exhibit P-6 (tenancy agreement) and Exhibit P-7 (tenancy agreement) in pursuant to which the appellants/plaintiffs were owners of the disputed property, thereby, wrongly discarding admissible evidence and giving weightage to only one document i.e. D-2 of the respondent/defendant and thereby, coming to a conclusion that impleadment of State Government as a party was necessary to determine the matter in issue. In other words, the findings of the Ld. Appellate Court is vitiated for non-consideration of relevant documents and evidences, as such, the

approach of the Ld. Appellate Court has been erroneous while giving its findings.

- (3) Whether the Courts below were justified in holding that the transaction of the suit property in between Plaintiffs' father, being Bhutia, and Defendant, being Sherpa, was not permissible under the Revenue Order No. 1 dated 17.05.1917.

11. Mr. Karma Thinlay, learned Senior Counsel appearing on behalf of the Appellants, firstly contended that the first Appellate Court fell into error while holding that the State was a necessary party. While holding so, it travelled beyond jurisdiction as also beyond the scope of remand order inasmuch as no issue was framed on this point. He further contended that even if it was held by the said Court that State was a necessary party, it could not have directly dismissed the suit of the Plaintiffs and could have granted an opportunity to amend the plaint by impleading the State and then could have decided that issue by calling upon the parties to lead evidence either before it or before the trial Court. He prayed that in the above facts and circumstances, this Appeal may be allowed on the first question of law and the matter may be remitted back to the trial Court for adding State as a party and to take further actions in accordance with law. He relied on the decisions of *Union of India vs. E.I.D. Parry (India) Ltd. : (2000) 2 SCC 223*; *Bondar Singh and others vs. Nihal Singh and others : (2003) 4 SCC 161*; *Jamshed Hormusji Wadia vs. Board of*





*Trustees, Port of Mumbai and another : (2004) 3 SCC 214* and  
*Vishwanatha Achari vs. Kanakasabapathy : (2005) 6 SCC 56.*

12. The said arguments were vehemently opposed by Mr. N.B. Khatiwada, learned Senior Counsel appearing on behalf of the Respondents. He contended that there was no infirmity in the finding that the State was a necessary party. He referred to many documents filed and proved by the parties. While arguing on this point he also submitted that the first Appellate Court did not dismiss the suit only on account of non-joinder of party, though it was one of the grounds for dismissal. His submission was that, in fact, the first Appellate Court considered the case of the Plaintiffs on merit and found that the sale deed (Exhibit P-5) allegedly executed by the father of the Plaintiffs did not transfer a valid title of the suit property in their favour and it was mainly on this account their suit was dismissed. Instantly, he also argued that if the Plaintiffs suit was otherwise liable to be dismissed on merits for not proving the transfer of title in their favour by the impugned document, then the procedural anomaly in not giving an opportunity to the Plaintiffs to make State as a party would make no difference, as the result would be simple dismissal of the suit even after doing the said exercise.

13. Among the above Judgments cited by learned counsel for the Appellants, **Bondar Singh** (supra), in which paragraph 4 was relied, is on a different point. There, it was held that if the findings of the subordinate courts on facts are contrary to the



evidence on record and are perverse, such findings can be set aside by the High Court in Appeal under Section 100 CPC, as the High Court cannot shut its eyes to perverse findings of the Courts below.

14. In ***Jamshed Hormusji Wadia*** (supra), the Supreme Court had remanded the matter to the High Court to resolve it within the specific bonds. But the High Court assumed a wider field of jurisdiction than the one which had been permitted by the Supreme Court and entered into examining the whole controversy afresh and as if all the contentions of all the parties were open before it. It was held that the said view of the High Court cannot be countenanced on a reading as a whole of the order of remand passed by the Supreme Court.

15. In ***Vishwanatha Achari*** (supra), the trial Court had framed several issues, including one as to whether the suit property belonged to the Plaintiff, on their pleadings. The trial Court ultimately dismissed the suit. The Appellate Court allowed the Appeal by recording the finding that the Plaintiff had perfected the title by adverse possession. It was held by the Supreme Court that in such circumstances, the Appellate Court was not justified in recording a finding that the Plaintiff had perfected his title by adverse possession, as no issue to this effect was framed and the Defendant had no opportunity to adduce evidence on this question.

16. In ***E.I.D. Parry (India) Ltd.*** (supra), there was no pleading that the Rule upon which reliance was placed by the



Respondent was ultra vires the Railways Act, 1890. No issue was framed on this account. The High Court of its own proceeded to consider the validity of the Rule and ultimately held that it was not in consonance with the relevant provisions of the Railways Act, 1890 and, consequently, held that it was ultra vires. The Supreme Court held that the question which did not form part of the pleadings or in respect of which the parties were not at variance and which was not the subject-matter of any issue, could not be decided by the Court and the scope of the suit was limited. The High Court, therefore, travelled beyond the pleadings in deciding the Rule to be ultra vires and the Judgment cannot be sustained.

17. I have no doubt about the propositions laid down by the Supreme Court in the above Judgments, but the facts of this case are slightly different. Here, as would be clear from the remand order of this Court, the matter was not remitted for any limited purpose. This Court while remanding the matter by Judgment dated 26.07.2004, expressing views relating to the issues of limitation and adverse possession, lastly held in paragraph 8 that all these aspects would require fresh look by the lower Appellate Court and then had remitted the matter to the said Court for fresh disposal according to law and the observations made in the Judgment. Thus, on this account, where the order of remand was not limited, the Judgment rendered in ***Jamshed Hormusji Wadia*** (supra) would be of no assistance to the Appellants.



18. As far as other two Judgments, i.e. ***Vishwanatha Achari*** and ***E.I.D. Parry (India) Ltd.*** (supra) are concerned, they are also distinguishable on facts. In the instant matter, as I have already stated, the suit was not dismissed for non-joinder of necessary party alone. On the contrary, it was dismissed on merits as, according to the first Appellate Court, no valid title had passed to the Plaintiffs through the sale deed (Exhibit P-5). Therefore, even if we take that the lower Appellate Court travelled beyond the pleadings and took a decision on the issue which was not raised by any party, it shall not make any difference to that finding which says about non-transfer of valid title in favour of the Plaintiffs.

19. Now, let us examine as to whether the first Appellate Court had rightly held that the State was a necessary party? If we look into the revenue records relating to the suit property, it would be clear that the suit property was recorded on the name of State Government, showing it as falling in "Sarkar Bazaar Area, Rongli". The Plaintiffs did not file any documentary evidence to show that the suit property was recorded on the name of any private person like their grandfather or father, as they claimed, at any point of time. Even no document relating to ownership of their grandfather or father was filed by them. No other evidence was also adduced. It is in these circumstances, the first Appellate Court recorded the finding that the land in question was throughout recorded on the name of State Government and the State Government was a necessary party which finding appears to be justified.



20. The first Appellate Court held that the suit was liable to be dismissed for want of necessary party. This was held without giving any opportunity to the Plaintiffs to amend their suit or to call upon them to file an Application for impleadment of the State as a Defendant. Order I Rule 10 CPC enables the Court to add any person as party at any stage of the proceedings if the person whose presence before the Court is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of multiplicity of proceedings is also one of the objects of the said provision in the Code. (***Vide: Savitri Devi vs. District Judge : (1999) 2 SCC 577***).

21. The language of this provision would show that the Court has ample power to direct a necessary party to be added in the suit even without any Application filed by the concerned party making prayer to this effect. In the instant case, the Defendants had not taken any objection regarding non-impleadment of necessary party in their written statement. I am of the view that if the first Appellate Court came to the conclusion that the State was a necessary party and it should have been joined by the Plaintiffs as one of the Defendants, it was incumbent upon the said Court to grant them an opportunity for such impleadment either on its own motion or on an Application to be filed by the Plaintiffs, and a direct dismissal of the suit on this account was not justified.



22. Now the question arises as to whether the matter may be remanded to the first Appellate Court or to the trial Court with a direction to give an opportunity to the Plaintiffs to add the State as a party-Defendant and give due opportunity to the parties to be heard on this account?

23. We must keep in mind that this is not a case in which the suit was dismissed only on account of non-joinder of necessary party. Here the suit has been dismissed on merits as well, *inter alia*, holding, though not in so many words, that no valid title was transferred in favour of the Plaintiffs by their sale deed (Exhibit P-5).

24. Order XLI Rule 24 provides that where the evidence upon the record is sufficient to enable the Appellate Court to pronounce the Judgment, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the Judgment of the Court from whose Decree the Appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

25. The aforesaid provisions of Order XLI Rule 24, thus, envisages that before remanding the matter to the Courts below, the Appellate Court should make an endeavour to give a finding on the basis of the materials on record and dispose of the Appeal itself and it would be proper for the Appellate Court to remand the matter only when some further enquiry is necessary to be made





and not when the Appeal can be disposed of on the evidence already available on record.

**26.** Therefore, it is to be seen that if there is sufficient material in this matter and the Appeal can be disposed of by this Court by passing an effective Decree, in my opinion, it would not be appropriate to remand the matter only for adding State as a party and to give an opportunity to all the parties to address thereafter, as prayed by counsel for the Appellants.

**27.** This leads to consideration of the second question of law framed in the Appeal and if the answer to the said question of law comes in favour of the Plaintiffs then only a question of remand may further arise, otherwise the remand would be a futile exercise if the result would be the same which can be arrived at in this Appeal itself.

**28.** The Plaintiffs claimed to be the joint owners of the suit property on the basis of sale deed (Exhibit P-5) dated 01.04.1980 registered on 13.10.1980. The contents of this document would show that it was executed by late Laku Ongden Bhutia in favour of the Plaintiffs, and was in relation to plot Nos. 247, 253 and 252/851. The four corners of the land under transaction were also described in the sale deed. If we look into the plaint, it would be clear that none of these plot numbers have been mentioned either in the schedule or in any part of pleadings in the plaint. While showing the four corners of two storied wooden house, it has been



mentioned in the schedule of the plaint that half portion of the wooden house under plot No. 432, was situated on the east of the disputed land. The Plaintiffs have not proved that, in fact, what was the plot number of the suit property which was transferred in their favour by the said sale deed (exhibit P-5). Even, the four corners of the scheduled property do not tally with the four corners mentioned in the sale deed. For example, in the sale deed there is mention of a road on the eastern side of the suit property, whereas in the schedule, as stated above, it has been shown that half portion of the wooden house under plot No. 432 was situated on the eastern side of the suit property. Other details relating to four corners are also not tallying. The first appellate Court has also found that the boundary mentioned in the sale deed (Exhibit P-5) does not tally with the sale deed of the Defendant (Exhibit D-1) and the identity of the property mentioned in the sale deed (Exhibit P-5) remains unestablished.

**29.** That apart, neither the scribe nor the witnesses mentioned in the sale deed were examined by the Plaintiffs to prove the contents of the sale deed. Simply the sale deed was filed and was exhibited by Plaintiff No. 1 in her evidence. Plaintiff No. 1, Smt. Karma Denka (PW-2) was aged about 32 years on the date of recording of her evidence on 13.10.1999. Likewise, Plaintiff No. 2, Smt. Laden Bhutia (PW-1) was aged about 29 years on the same date when her evidence was recorded. Thus, both were in between 10 to 13 years on the date of execution of the sale deed (Exhibit P-



5). They do not claim that the sale deed was executed before them. They have simply produced the sale deed which was marked Exhibit P-5 by the trial Court. The Defendant has denied the execution of the sale deed (Exhibit P-5). Thus, the fact remains that the factum of execution of such sale deed (Exhibit P-5) in favour of the Plaintiffs and contents thereof were not established by them. The Plaintiffs did not file any document to show that the suit property was belonging to their father or grandfather. As held by the first Appellate Court, the suit property was throughout recorded on the name of the State Government. Thus the alleged transfer made by the father of the Plaintiffs vide sale deed - Exhibit P-5 of the said property becomes doubtful and the origin of title itself becomes shadowed.

**30.** Mr. Karma Thinlay, in light of the second question of law, has very much emphasized upon the contents of the two documents (Exhibits P-6 and P-7), which, according to him would prove that the Plaintiffs were the absolute owners of the suit property. These two documents are tenancy agreements. There is no date mentioned in the agreement, Exhibit P-6, whereas the agreement, Exhibit P-7, is dated 14.01.1994. These agreements, as it appears from their contents, were executed between the Plaintiffs and their so called tenant, Lakpa Sherpa (Sardar). The contents of these agreements would show that the Plaintiffs have shown themselves to be the owners of the suit premises therein. According to Mr. Karma Thinlay, this was sufficient proof to hold



that on the date of execution of the agreements, the Plaintiffs were the joint owners of the suit property. Lakpa Sherpa (Sardar) was examined by the Defendant as D.W.-4. He denied entering any agreement with the Plaintiffs, as contained in Exhibits P-6 and P-7. He also denied to be the tenant of the Plaintiffs at any point of time. On the contrary, he deposed that for some time he was tenant of the father of the Plaintiffs and thereafter he became the tenant of the Defendant, when the property was purchased by the Defendant. These two documents (Exhibit P-6 and P-7) were sent for expert examination in which the expert opined that Lakpa Sherpa (Sardar) had signed over these documents.

**31.** Whether the status of the Plaintiffs mentioned in the tenancy agreements as owners would be sufficient evidence to hold that they were owners of the suit property or a valid title had transferred in their favour by way of sale deed (Exhibit P-5) which was denied by the Defendant?

**32.** In my opinion, simply on mentioning the Plaintiffs as owners of the suit property in the two agreements (Exhibits P-6 and P-7) would not be held as sufficient proof of their title and they would not be dispensed with proving their title by independent evidence. The Plaintiffs should have proved the transfer of a valid title in their favour through their sale deed (Exhibit P-5) as pleaded by them in the plaint. In fact, the Plaintiffs want to establish their title on the strength of the contents of the documents of collateral



transactions which also appear to be shadowed on the evidence of Lakpa Sherpa (Sardar) (D.W.-4).

33. In ***Union of India and others vs. Vasavi Co-op. Housing Society Ltd. And others : AIR 2014 SC 937***, it was held by the Hon'ble Supreme Court that in a suit for declaration of title and possession the Plaintiff could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the Defendants have proved their case or not. It was held that even if the title set up by the Defendants is found against, in the absence of establishment of Plaintiff's own title, Plaintiff must be non-suited.

34. In ***Karnataka Board of Wakf vs. Government of India and Others : (2004) 10 SCC 779***, it was held that a Plaintiff filing a title suit should be very clear about the origin of title over the property. He must specifically plead it and the origin of title so pleaded must be proved by admissible evidence and records.

35. In the instant case, burden of proving their title was on the Plaintiffs, which they would have proved by adducing independent evidence relating to transfer of title in their favour by proving the sale deed (Exhibit P-5). The Plaintiffs did not discharge the said burden as per the provisions of the Evidence Act. Therefore, their suit for declaration of title was liable to be dismissed.



**36.** In view of the above findings recorded by me, I do not deem it appropriate to remit this matter once again, which was filed as back as on 30.06.1997, to the first appellate Court simply for giving an opportunity to the Plaintiffs to implead the State Government as a party-Defendant, as it would yield no positive result in favour of the Plaintiffs in the facts and circumstances of this case.

**37.** In view of the above findings, it is not necessary to discuss upon the third question of law, which would be only academic.

**38.** The Appeal, therefore, is liable to be dismissed and is hereby dismissed with no orders as to cost.

**39.** A decree be drawn accordingly.

Sd/-  
**Chief Justice**  
13.10.2015

Approved for Reporting : Yes/~~No~~.  
Internet : Yes/~~No~~.