



CRP No. 4 of 2018

ASHOK KUMAR SUBBA

PETITIONER (S)

VERSUS

KAMAL KUMARI SUBBA AND OTHERS

RESPONDENT(S)

Date: 16.08.2018

CORAM :

THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, A.C.J.

For Petitioner : Ms Pramila Rai and Ms. Rachna Rai,
Advocate.

For Respondents No. 1 & 2 : Mr. C. K. Kumai, Mr. Vivek Anand
Basnett and Ms Mina Bhusal, Advocate.

For Respondent No. 3 : Mr. Thinlay Dorjee, Govt. Advocate with
Mr. S.K. Chettri and Mrs. Pollin Rai,
Asst. Govt. Advocates.

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ORDER

1. Heard on I.A. No. 1 of 2018 and the instant Petition under Article 227 of the Constitution of India.

2. The prayer in I.A. No 1 of 2018 is for stay of the Title Suit No. 33 of 2014, pending before the Court of the learned Civil Judge, East Sikkim at Gangtok. That, the issues involved in Title Suit No. 412 of 2013, decided by the learned Civil Judge, East Sikkim at Gangtok, on 31.08.2017, now pending disposal before the learned District Judge, East Sikkim at Gangtok, as Title Appeal No. 14 of 2017 are similar to issues involved in the Title Suit No. 33 of 2014.

3. In the Petition under Article 227 of the Constitution of India, the prayer is for setting aside the impugned Order dated 14.02.2018 of the learned Civil Judge, East Sikkim at Gangtok, in Title



Suit No. 33 of 2014, wherein an Application under Section 10 read with Section 151 of the Code of Civil Procedure, 1908 filed by the Plaintiff, was rejected by the learned Court. The Petition also sought stay of Title Suit No. 33 of 2014 during the pendency of the Appeal being Title Appeal No. 14 of 2017 before the learned District Judge, East Sikkim at Gangtok.

4. It is evident, that in sum and substance, the prayer in the I.A. is the same as the prayer in the Petition under Article 227 of the Constitution of India and is, therefore, superfluous. Nevertheless, both are taken up for hearing.

5. During the course of such hearing, learned Counsel for all the Respondents submitted that they have no objection to the Order of the learned Trial Court dated 14.02.2018, being set aside and Title Suit No. 33 of 2014 pending before the same Court being stayed as the issues involved in both the matters are the same and the property is common in both the disputes. That, the stay would prevent multiplicity of suits.

6. Having heard learned Counsel for the parties, it is essential to peruse the issues framed in both the Title Suits which are reproduced herein below;

| TITLE SUIT NO. 412 OF 2013 | TITLE SUIT NO. 33 OF 2014 |
|---|---|
| a) Whether the defendant no 1 is the absolute owner of suit property being the purchaser of the same with her own monetary source? (<i>onus on defendant no.1</i>) | Whether the plaintiff is the absolute owner of the suit property having bought the same from his earnings; onus on the plaintiff; |
| b) Whether the document “agreement for sale” dated 27/03/2008 between the Plaintiff and def. no.1 is null and void and against the law of the land? (onus on defendant no. 2) | Whether the defendant no 1 is the bonafide and absolute owner of the suit property having purchased the same from her Stridhan; onus on defendant no. 1; Whether the defendant no 1 has the right to sale the suit property to defendant |



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| <p>c) Whether the suit property suit was purchased by defendant no 2 from his earnings in the benami of his wife, Defendant no 1? (onus on Defendant no. 2)</p> <p>d) Whether the defendant no. 2 has <i>locus standi</i> to file the counter claim against the plaintiff with respect to the suit premises? (onus on defendant no. 2)</p> | <p>no 2; onus on defendant no.1.</p> <p>Whether the sale deed dated 21.04.2014 and other related documents with respect to transaction of the suit property are illegal, void, in-operative and against the law of the land; onus on the plaintiff;</p> <p>Whether the defendant no 2 is a bonafide purchaser of the suit property having paid consideration amount for the same and whether he is not prevented from schedule (<i>sic</i>) caste and schedule (<i>sic</i>) tribes laws in Sikkim; (onus on def. no. 2)</p> <p>Whether the plaintiff has the sole authority to deal with the suit property in the capacity of karta of the family; onus on the Plaintiff;</p> <p>g. Whether the plaintiff is the absolute owner of the suit property having purchased the same with his personal earnings in the benami of his wife, i.e. defendant no 1; (onus on Plaintiff).</p> |
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9. Title Suit No. 33 of 2014 is stayed till the decision in the Title Appeal No. 14 of 2017.

10. Title Appeal No. 14 of 2017, shall be decided by the learned District Judge, East Sikkim at Gangtok, within three months from today.

11. CRP No. 4 of 2018 stands disposed of as also the Interlocutory Applications.

12. Copy of this Order be transmitted to the Court of the learned District Judge, East Sikkim at Gangtok and the Court of the Learned Civil Judge, East Sikkim at Gangtok, for compliance.

Acting Chief Justice
16.08.2018

Index : Yes / No
Internet : Yes / ~~No~~
Jk/bp