



THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Revisional Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

C.R.P. No.06 of 2023

1. Mr. Phulman Limboo,
Aged about 39 years,
S/o late Budha Singh Limboo,
R/o Tikjek, Gyalshing, Sikkim-737 111.
 2. Master Itnim Hang Limboo,
Aged about 14 years,
S/o Mr. Phulman Limboo,
R/o Tikjek, Gyalshing, Sikkim-737 111,
Represent by his father Mr. Phulman Limboo.
 3. Miss Phungnima Limboo,
Aged about 9 years,
D/o Mr. Phulman Limboo,
R/o Tikjek, Gyalshing, Sikkim-737 111,
Represent by her father Mr. Phulman Limboo.
 4. Mr. Ku Hang Limboo,
Aged about 25 years,
S/o late Budha Singh Limboo,
R/o Tikjek, P.O. & P.S. Gyalshing,
Sikkim. 737 111.
- Revisionists

Versus

1. Mrs. Som Maya Limboo,
Aged about 45 years,
Alleged w/o late Budha Singh Limboo.
R/o Tikjek, P.O. & P.S. Gyalshing,
Sikkim 737 111.
2. Miss Monu Hangma Limboo,
Aged about 26 years,
D/o late Budha Singh Limboo.
R/o Tikjek, P.O. & P.S. Gyalshing,
Sikkim 737 111.
3. Mrs. Aita Rani Limboo,
Aged about 34 years,
W/o Mr. Sagar Limboo,
R/o Thingling, Kheciperi, Sikkim,



4. The Sub-Divisional Magistrate,
District Administrative Centre,
Gyalshing, Sikkim, 737 111.

.....Respondents

**Petition under Section 115 of the Code of Civil
Procedure, 1908.**

*Challenging impugned orders dated 02.05.2023 and 23.05.2023
passed by the learned District Judge, Gyalshing, West Sikkim in
Title Suit No. 01 of 2023.*

Appearance:

Mr. Hissey Gyaltzen, Advocate for the Revisionists.

Respondent nos. 1 to 3 : None

Mr. S.K. Chettri, Government Advocate for
Respondent No.4

Date of hearing : 21.08.2023

Date of order : 21.08.2023

ORDER

Bhaskar Raj Pradhan, J.

1. This petition under section 115 of the Code of Civil Procedure, 1908 (CPC) seeks to assail two orders dated 02.05.2023 and 23.05.2023 passed by the learned District Judge, West Sikkim at Gyalshing in Title Suit No. 01 of 2023.

2. The learned District Judge registered the Title Suit, issued summons to the defendants and listed it on 23.05.2023 for appearance of the defendants and for filing



written statements vide impugned order dated 02.05.2023.

It is this order that the revisionists are aggrieved by.

3. On 23.05.2023 the learned District Judge directed the parties to maintain status quo and the defendant no.1 to ensure that she maintains status quo with regard to the bank accounts bearing numbers specified therein in the UBI Bank, Canara Bank and IndusInd Bank at Gyalshing. It was further directed that the Branch Managers of the respective banks shall ensure that defendant no.1 is restrained from operating the accounts. Although the revisionists have impugned the order dated 23.05.2023 no grievance on merits is made against it in the petition or at the time of hearing. According to the learned counsel since the learned District Judge could not have registered the title suit itself for non payment of the requisite court fees the passing of the order dated 23.05.2023 was wrong.

4. The revisionists are the defendant nos. 1 to 4 in the title suit. The respondent no. 1, 2 and 3 are the plaintiffs who are all women. The respondent no. 4 is the Sub-Divisional Magistrate and defendant no. 5 in the title suit.

5. Heard Mr. Hissey Gyaltsen learned counsel for the revisionists. It is argued that only plaintiff nos. 1 and 2 have been granted legal aid and exempted from paying the requisite court fees and consequently the plaintiff no. 3 who had engaged a private lawyer had not been granted



legal aid or exempted from paying court fees. It is submitted that therefore, the learned District Judge could not have registered the title suit as plaintiff no.3 had not paid the requisite court fees as per the Sikkim Court Fees (Exemption and Miscellaneous Provisions) Act, 1983 (the Court Fees Act) as amended. The plaintiffs had valued the title suit at Rs.4 crores for the purpose of court fees and jurisdiction and the Court Fees Act requires payment of fees in advance.

6. From the records filed by the revisionists it is clear that the learned counsel Mr. Pujan Kharka had filed Vakalatnama on behalf of all the three plaintiffs. It is seen that plaintiff no.3 is also represented by three other advocates who have also filed a separate joint Vakalatnama. The two communications dated 06.07.2022 and 05.05.2022 reflects that plaintiff no. 1 and 2 have been provided legal aid by the Sikkim State Legal Services Authority. There is no document which reflects that the plaintiff no.3 has not been provided legal aid. The learned District Judge in the order dated 02.05.2023 records that since the suit had been filed through legal aid counsel Mr. Pujan Kharka court fee was exempted.

7. The revisionists has invoked section 115 of the CPC which provides that the High Court shall not, under the section, vary or reverse any order made, or any order



deciding in issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings. The impugned order dated 02.05.2023 which merely registers the title suit, issue summons upon the defendants including the revisionists and records that since the title suit has been filed by a legal aid counsel court fee is exempted, is thus not a revisable order.

8. Furthermore, Section 7 of the Court Fees Act provides that no Court Fee shall be payable for suits, appeals, writ petition, revisions, reviews, miscellaneous petitions etc. filed by a person who has been provided with legal services or aid under the provisions of Legal Services Authority Act, 1987 (Legal Services Act) and the rules and regulations framed there under. Section 12 of the Legal Services Act provides that every person who has to file or defend the case shall be entitled to legal services under the Act if that person is, inter alia, a woman. It is clear that the plaintiff no.3 being a woman was entitled to legal services and consequently exempted from court fees.

9. Thus this Court is of the opinion that the learned District Judge has not exercised jurisdiction not vested in it by law, or had failed to exercise a jurisdiction so vested, or have acted in exercise of its jurisdiction illegally or with



material irregularity while passing the impugned order dated 02.05.2023.

10. In the circumstances, the revision petition is not entertained and is accordingly dismissed. No orders as to costs.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting : **Yes**
Internet : **Yes**
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