



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

Dated : 31st May, 2023

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

RSA No.02 of 2021

Appellants : Purna Kumar Pradhan and Others

versus

Respondents : The Secretary, Land Revenue Department and Others

Appeal under Section 100 read with Section 151
of the Code of Civil Procedure, 1908

Appearance

Mr. A. Moulik, Senior Advocate with Mr. Ranjit Prasad, Advocate for the Appellants.

Mr. Thinlay Dorjee Bhutia and Mr. Yadev Sharma, Government Advocates for Respondents No.1 and 2.

Mr. Jorgay Namka, Senior Advocate with Mr. Simeon Subba, Advocate for Respondent No.3.

Mr. Vivek Chandra Rai, Advocate for Respondent No.4.

J U D G M E N T

Meenakshi Madan Rai, J.

1. This second appeal impugns the Judgment and Decree, dated 29-07-2021, of the Learned District Judge, South Sikkim, at Namchi, in Title Appeal No.05 of 2018, which upheld the Judgment of the Learned Trial Court in Title Suit No.07 of 2017, dated 24-11-2018, observing that there was no infirmity or illegality therein.

2. It is necessary to delve briefly, into the facts of the case to comprehend the matter in its correct perspective. Before the Trial Court, the case of the nine Plaintiffs, in Title Suit No.07 of 2017 (Appellants herein), was that they all are the surviving legal heirs and successors, of one late Savitri Pradhan, who they claim was the absolute owner of landed property, bearing plot no.177(P), measuring about 0.3040 hectares, as per the records of 1950, vide *Parcha Khatiyon* no.8, situated at Samardung, South Sikkim. It is



their case that in the 1979-80 records, the plot number was changed from '177' to '117', vide *Parcha Khatiyon* no.133. Following the demise of Savitri Pradhan in the year 1968, they decided to partition the landed property. During such process, they came to learn that, as per the survey operations of 1981-82, plot no.117(P), measuring 0.3040 hectares, was reduced by an area of 0.1640 hectares. Spot verification was conducted by the Revenue Supervisor of the area, pursuant to an application filed by the Plaintiffs, before the concerned SDM apprising him of the above circumstance. Report of the Revenue Supervisor in this context was submitted on 15-05-2015, with the observation that the 1951-52 records showed late Savitri Pradhan as the absolute owner of plot no.177(P), measuring about 0.58 acres, but the records of 1979-80 showed the same plot number was changed to '117' and an area of 0.1640 hectares mistakenly recorded in the name of Defendant No.3 (Respondent No.3 herein) of Phongla Block. The same property was then sold by Defendant No.3, to the Defendant No.4 (Respondent No.4 herein). Consequent upon the verification, the Plaintiffs filed a case against the Secretary, Land Revenue Department, the Defendant No.1 (Respondent No.1 herein), before the SDM, Namchi, South Sikkim. The SDM, vide Order dated 10-07-2015, ordered a resurvey of the suit land, to be conducted on 25-07-2015. The resurvey reiterated the facts as detailed in the report dated 15-05-2015. The SDM concluded that the dispute pertained to ownership of land and advised the parties to approach the appropriate forum for settlement, hence, the suit. The Schedule of the property was described in the plaint, as follows;

**"SCHEDULE OF THE PROPERTY**

All that land standing in the name of Defendant No.4 situated at Samardung, Karek, South Sikkim bearing Khatiyan Plot No.117, having its total area measuring about .1640 Hectare which is bounded and butted as follows:

East :- LMB Private Ltd.

West :- Land of Ganesh Khati

North :- LANCO road

South :- Land of Ganesh Khati"

3. The Defendants No.1 and 2 (Respondents No.1 and 2 herein) in their written statement, averred that although the spot verification revealed that the disputed property was recorded in the name of Savitri Pradhan in 1950-52 records, but in the 1979-80 records, it was in the name of Kharka Bahadur Dahal, Defendant No.3. That, when the sale transaction of the plot of land bearing no.117 took place between the Respondent No.3 (Defendant No.3 before the Trial Court) and Respondent No.4 (Defendant No.4 before the Trial Court), the Plaintiffs raised no objection. Accordingly, the Plaintiffs were not entitled to the reliefs claimed.

4. The Defendant No.3 in his written statement while denying that plot no.117 measuring 0.1640 hectares was mistakenly recorded in his name, asserted that the said plot number measuring 0.2600 hectares, was purchased by his father from one Dhatri Rajalakshmi on 03-03-1957, at a consideration value of ₹ 850/- (Rupees eight hundred and fifty) only. The said plot of land fell in his share, vide *Banda Patra* (Partition Deed), Exhibit D/3-6, executed between him and his brothers and hence, the plot of land was registered in his name. That, the suit of the Plaintiffs therefore deserves a dismissal.

5. The Defendant No.4 contesting the claims of the Plaintiffs averred that he had purchased the plot of land from the



Defendant No.3 after verifying and being satisfied that the plot of land belonged to the Defendant No.3. Thereafter, all legal formalities pertaining to sale/purchase and transfer of the land took place and *Parcha Khatiyon* no.134, for plot no.117, in his name was issued by the Office of the Defendant No.1. That, the suit was filed with the intention of causing wrongful loss to the Defendant No.4 and for wrongful gain to the Plaintiffs. That, despite allegation of encroachment on the property of late Savitri Pradhan, the Plaintiffs raised no objection at the time of registration of land and thereby having waived their right cannot now raise a belated claim, hence the suit be dismissed.

6. The Learned Trial Court settled four issues for determination;

- (i) *Whether the suit land bearing the new plot no.117(P) measuring 0.1640 hectares is the ancestral property of the Plaintiffs?*
- (ii) *Whether the suit land bearing the new plot no.117(P) measuring 0.1640 hectares was purchased by Shri Dhan Bahadur Dahal, father of Defendant No.3 from Dhatri Rajalakshmi, daughter of Late Bal Krishna Newar?*
- (iii) *Whether the Plaintiffs raised any objection at the time of registration of the suit land in the name of the Defendant No.4?*
- (iv) *Whether the Plaintiffs are entitled to the reliefs prayed for in the plaint?*

7. In issue no.1, the Trial Court after examining the entire documents relied on by the parties concluded that the Plaintiffs had failed to prove that the suit land bearing the new plot no.117(P), measuring 0.1640 hectares, was their ancestral property.

(i) In issue no.2, the Trial Court considering Exhibits D/3-2, D/3-3, D/3-4 and D/3-6, observed that the documents do not reveal that the suit land bearing plot no.117(P), measuring 0.1640



hectares, was purchased by the father of Defendant No.3 from Dhatri Rajalakshmi. Hence, issue no.2 was decided against the Defendant No.3.

(ii) In issue no.3, the Trial Court while discussing the provisions of Section 114 and Section 58 of the Indian Evidence Act, 1872, and taking into consideration Exhibit 13 relied on by the Plaintiffs, concluded that the Plaintiffs had failed to examine other boundary holders as witnesses who could have deposed in their favour. Hence, the issue was decided in favour of the Defendants.

(iii) In issue no.4, after weighing the evidence of the parties, it was concluded that the Plaintiffs were not found entitled to any of the reliefs prayed for by them and the suit was dismissed.

8. Dissatisfied with the findings of the Trial Court, the Plaintiffs were in appeal before the Court of the Learned District Judge in Title Appeal No.05 of 2018. The First Appellate Court after examining the evidence and documents on record, upheld the findings of the Trial Court and dismissed the Appeal.

9. Aggrieved thereof, the Appellants are before this Court in second appeal, where one substantial question of law was formulated for determination;

(i) Whether the Judgment of the Learned First Appellate Court is based on mis-conception and mis-interpretation of the documents exhibited?

10. The parties shall hereinafter be referred to in their order of appearance before this Court.

11. Learned Senior Counsel for the Appellants canvassed the contention that the property in the name of Savitri Pradhan was 0.58 acres under plot no.177, as per the old survey records of 1951-52 which translated to plot no.117(P), measuring 0.3040 hectares,



in the new survey operations. The facts of the case were reiterated before this Court and it was contended that the First Appellate Court disregarded Exhibit 14, the verification report which found that an area of 0.1640 hectares of plot no.117(P), was wrongly surveyed and recorded in the name of the father of Respondent No.3, on grounds that the Revenue Supervisor P.W.2 stated that the verification took place on 25-06-2018, when it had taken place on 16-06-2018. That, Exhibit 15 the Advocate Commissioner's report, reveals that the verification took place on 16-06-2018, but the report thereof was dated 25-06-2018. That, the minor discrepancy in the evidence of P.W.2 Bishnu Prasad Chettri pertaining to the dates, could well have been ignored by the Court, as it did not effect the crux of the case. That, the parties were present when the spot verification took place and Respondent No.4 had put forth an objection, however it was not found tenable. On the query of the Trial Court as to how plot no.'177' became '117', as Exhibit 14 was devoid of such explanation, the Revenue Supervisor D.W.6, clarified in his deposition that when the cadastral maps of the suit land of 1950-52 and 1979-80 were compared, the suit land was identified as old '177' which became new '117'. That, the verification reports being Exhibits 6, 7, 14 and 15 are corroborative of each other. On this aspect, it was reiterated that P.W.2 and D.W.6 were Government witnesses who had prepared Exhibits 6, 7 and 14, while P.W.3 was the Advocate Commissioner appointed by the Court of Civil Judge, South Sikkim, on 07-06-2018 to conduct spot verification which took place on 16-06-2018. His report is Exhibit 15. That, in fact, Exhibit 14, dated 25-06-2018, was prepared by P.W.2 in the presence of the Respondents No.3 and 4, one Kishore



Diyali, Assistant Revenue Supervisor, Mohan Pradhan and Milan Pradhan the nephew of Appellant No.1 and the Advocate Commissioner. That, the Respondents did not raise any objection at the time of the spot verification and preparation of the report or in the Court of the SDM, where Respondents No.3 and 4 were present. That, Exhibit 14 confirms that the Plaintiffs/Appellants are in possession of the disputed property.

(i) To augment his submissions, he placed reliance on ***M/s. Lightwalas vs. Bank of India and Another***¹ wherein it was observed that the report of the surveyor has to be given due weightage and on ***S. Rajendra Rao vs. G. Vanaja and Another***² where the High Court of Madras held that the evidentiary value of the surveyor's report cannot be brushed aside, in the absence of acceptable evidence on the side of the Appellant/Claimants.

(ii) Learned Senior Counsel urged that the missing portion from the total area of 0.3040 hectares comprising of 0.1640 hectares was allotted a new plot no.117, as it came under a new owner. That, although Respondent No.3 claims that his father had purchased plot no.117 from Dhatri Rajalakshmi, no document buttresses such transfer as Exhibit D/3-2 relied on by the Respondent No.3 is not a sale deed, but merely an unregistered document indicating payment of earnest money, if at all, it was paid. Moreover, the Learned Trial Court also observed that the land was not purchased by Respondent No.3. That, Exhibit D/3-3 *Parcha Khatiyani* in the name of the father of Respondent No.3, reveals that the property came from Krishna Bahadur Chettri, but does not reveal its transfer from Dhatri Rajalakshmi to the father of

¹ 2014 SCC OnLine NCDRC 956

² 2007 (1) TN MAC 106



Respondent No.3. Besides, plot numbers of the land recorded therein are '180/321' and '122'. There is no mention whatsoever of plot no.'117', which he claims to have sold to Respondent No.4. That, Exhibit D3/6 which is the *Banda Patra* (Partition Deed) reveals that it was executed on 12-05-2011, whereas Exhibit D/4(A) the Sale Deed document between the Respondents No.3 and 4 was executed on 16/11/2010, leading to an anomalous situation as Respondent No.3 had apparently sold the property to the Respondent No.4, before it was partitioned, allotted and received as his share, rendering the evidence of Respondent No.3 unreliable.

(iii) It was further contended that, the Respondent No.3 claims that all documents pertaining to his property were destroyed in a fire but neglected to explain why he did not obtain a second copy of the documents, which are available in the Revenue Courts. That, although the Appellate Court, in Paragraph 56 of its impugned Judgment observed that the Appellants had failed to examine the boundary holders as their witnesses, the Sikkim State Rules Registration of Document 1930 nowhere requires that notice is to be issued to boundary holders when the owner sells his land. Even if it is a practice adopted by the Revenue Authorities, it must be proved that the notice, if issued, had reached the person concerned as it is not a Gazette Notification. The Appellants did not receive any notice of sale of land by Respondent No.3 to Respondent No.4 to enable them to raise any objection. In light of the submissions advanced and evidence and documents on record, the Appellants be granted the reliefs enumerated in the plaint.

12. Learned Government Advocate appearing for the Respondents No.1 and 2 submitted that they were impleaded as



parties being the authority in possession of land records and responsible for necessary entries in the land records. No specific submissions on the dispute were advanced by the Learned Government Advocate.

13. *Per contra*, Learned Senior Advocate for the Respondent No.3 submitted that, the Appellants relied on Exhibit 3 to establish their case, which reflects three plots of land being plot no.169, 177 and 179. The total area covered by these plots of land are 1.90 acres, which when converted into hectares, amounts to 0.7689 hectares. There is no plot no.117 reflected in Exhibit 3, neither is there any property, measuring 0.3040 hectares therein. That, Exhibit 4 relied on by the Appellants in fact reveals that Savitri Pradhan had property bearing plot no.109, measuring 0.0980 hectares and plot no.118 measuring, 0.3040 hectares. There is no plot number '117', measuring 0.3040 hectares, even in Exhibit 4. Besides, it is claimed that plot no.177 was later converted to '117', but plot no.177 comprises of 0.58 acres, which converted into hectares, would measure 0.2347 hectares and not 0.3040 hectares. Hence, even the measurement of the properties put forth by the Appellants are erroneous, as according to them, plot no.177 measuring 0.58 acres, would convert to 0.3040 hectares from which an area of 0.1640 hectares is missing. That, the evidence of the Revenue Supervisor P.W.2 and D.W.6 fails to explain as to how the plot no.177 came to be altered to '117'. That, Exhibit 5 reveals that the Plaintiff no.5 had filed an application before the SDM, Namchi, complaining that his grandmother Savitri Pradhan was the owner of plot no.177, measuring 0.58 acres, in 1951-52, but in 1981-82 the area measured less by 0.1640 hectares and the SDM was requested



to rectify the errors. However, as already pointed out, Exhibits 3 and 4 *supra* clearly reveals that neither the measurement of the land nor the plot numbers as alleged by the Appellants correspond to each other.

(i) Inviting the attention of this Court to the evidence-on-affidavit of the Plaintiff No.7, it was contended that this witness has given evidence without knowledge of the facts of this suit, for the reason that Savitri Pradhan died in the year 1968, whereas he was born in 1971 and hence he was not in a position to make the statements pertaining to the suit land, as put forth in his evidence-on-affidavit. That, P.W.4 Bir Bahadur Chettri, who was the cultivator of the landed property of late Savitri Pradhan from 1960 to 1979 claims that the suit property measured 0.58 acres/0.3040 hectares. His cross-examination contrarily indicates his ignorance of the measurement of the land nor was he aware of any land being transferred to any other person. P.W.5 is Ram Kumar Kami, cultivator residing in the property from 1980. He claimed that the disputed property measures 0.58 acres/0.3040 hectares, but he did not know the plot number of the suit land or of the landed properties of late Savitri Pradhan, although he was aware that the Respondent No.3 was one of the boundary holders.

(ii) While addressing the allegation made by Learned Senior Counsel for the Appellants that an anomalous situation had arisen with regard to the dates reflected on the *Banda Patra* and the Sale Deed document, it was clarified that admittedly the *Banda Patra* Exhibit D/3-6 was executed on 12-05-2011 and Exhibit D/4(A) the Sale Deed document was executed between Respondent No.3 and Respondent No.4, on 16-11-2010 but the reverse page of the



document reveals that the document was presented for registration only on 18-08-2011 and registered on 19-01-2012. Hence, no discrepancy arises with regard to the dates on Exhibit D/4(A) and Exhibit D/3-6. That, Exhibit D/3-3 reveals that the Respondent No.3 owned a total of 0.61 acres of land being plot no.180/321 which when converted to hectares would be 0.2468. The entire land was sold out to the Respondent No.4 and a new plot number being '117' was allotted to the said land. That, when the transaction took place between Respondent No.3 and Respondent No.4, no objection was raised in the year 2011. That, in fact, Savitri Pradhan admittedly died in the year 1968, but no documentary evidence supports the averment and contention of the Appellants that, they decided to partition the suit property only in the year 2015.

14. Learned Counsel for the Respondent No.4 endorsed the submissions put forth by Learned Senior Counsel for the Respondent No.3 and reiterated that when the property was purchased by Respondent No.4 from Respondent No.3 no objection was raised. Besides, no proof whatsoever has been furnished to establish that the disputed property ever belonged to the Appellants, hence their case deserves a dismissal.

15. The submissions advanced by Learned Counsel for the parties were heard *in extenso* and duly considered. The pleadings, all evidence, documents on record and the Judgments of the Learned Courts below have been carefully perused.

16. In the first instance, we may briefly look at the provisions of Section 100 of the Code of Civil Procedure, 1908 (for short, "CPC") to understand its scope and ambit. The section is extracted hereinbelow;



"100. Second appeal.—(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal may lie under this section from an appellate decree passed *ex-parte*.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question."

(i) In ***Hasmat Ali vs. Amina Bibi and Others***³ the Supreme Court observed *inter alia* that, an appeal is judicial examination by a higher court of a decision of a subordinate court, to rectify any possible error(s) in the order under appeal. The law provides the remedy of an appeal because of the recognition that those manning the judicial tiers too commit errors.

(ii) The legal limitations prescribed in determining a second appeal under Section 100 of the CPC have been succinctly illuminated in ***Narayan Sitaramji Badwaik (Dead) through Legal Representatives vs. Bisaram and Others***⁴ wherein the Supreme Court held as follows;

10. It is a settled position of law that a second appeal, under Section 100 of the Code of Civil Procedure, lies only on a substantial question of law [refer *Santosh Hazari v. Purushottam Tiwari* [(2001) 3 SCC 179]]. **However, this does not mean that the High Court cannot, in any circumstance, decide findings of fact or**

³ 2021 SCC OnLine SC 1142

⁴ (2021) 15 SCC 234



interfere with those arrived at by the courts below in a second appeal. In fact, Section 103 of the Code of Civil Procedure explicitly provides for circumstances under which the High Court may do so. Section 103 of the Code of Civil Procedure is as follows:

"103. Power of High Court to determine issues of fact.—In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal—

(a) which has not been determined by the lower appellate court or both by the court of first instance and the lower appellate court, or

(b) which has been wrongly determined by such court or courts by reason of a decision on such question of law as is referred to in Section 100."

11. A bare perusal of Section 103 CPC clearly indicates that it provides for the High Court to decide an issue of fact, provided there is sufficient evidence on record before it, in two circumstances. *First*, when an issue necessary for the disposal of the appeal has not been determined by the lower appellate court or by both the courts below. And *second*, when an issue of fact has been wrongly determined by the Court(s) below by virtue of the decision on the question of law under Section 100 of the Code of Civil Procedure. This Court in *Municipal Committee, Hoshiarpur v. Punjab SEB* [(2010) 13 SCC 216], held as follows: (SCC pp. 228-29, paras 26-28)

"26. Thus, it is evident that Section 103 CPC is not an exception to Section 100 CPC nor is it meant to supplant it, rather it is to serve the same purpose. Even while pressing Section 103 CPC in service, the High Court has to record a finding that it had to exercise such power, because it found that finding(s) of fact recorded by the court(s) below stood vitiated because of perversity. More so, such power can be exercised only in exceptional circumstances and with circumspection, where the core question involved in the case has not been decided by the court(s) below.

27. *There is no prohibition on entertaining a second appeal even on a question of fact provided the court is satisfied that the findings of fact recorded by the courts below stood vitiated by non-consideration of relevant evidence or by showing an erroneous approach to the matter i.e. that the findings of fact are found to be perverse.*

28. *If a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then the finding is rendered infirm in the eye of the law."*

(emphasis supplied)"



(iii) Hence, the contours for determining a second appeal have been clearly laid down in the above citations to which this Court is to adhere.

17. Having perused and considered the entire documents on record and the impugned Judgment, I am of the considered opinion that nothing perverse arises in the Judgment of the First Appellate Court or for that matter the Trial Court and the Judgments of both Courts cannot be said to be based on mis-conception and mis-interpretation of the documents exhibited, for the following reasons;

(i) The case of the Appellants is confined to plot no.177(P), allegedly measuring 0.3040 hectares, as per the survey records of 1950, vide *Parcha Khatiyan* no.8. In 1979-80 records, according to the Appellants, plot no.177 was renumbered as plot no.117, measuring 0.3040 hectares. It is relevant to note that this averment mentions only plot no.177 and has omitted the "(P)". In the survey of 1981-82, plot no.117 was found to have reduced by 0.1640 hectares. It is not specified in the averments or evidence as to on which date the Appellants discovered the reduction of the area described *supra*. It is also essential to notice that they have claimed that on 15-05-2015 the verification report Exhibit 6 prepared by the Revenue Supervisor reveals that, as per the records of 1951-52, late Savitri Pradhan was the absolute owner of the landed property, situated at Samardung, South Sikkim, bearing plot no.177(P), measuring about 0.58 acres, but as per the records of 1979-80, the same plot number was altered to '117' and the same portion of land, i.e., measuring 0.1640 hectares, was recorded in the name of the Respondent No.3.



(ii) While examining these claims, a perusal of Exhibit 3, which bears *Parcha Khatiyan* no.8, with no ambiguity reveals that in the first instance, plot no.177 measuring 0.58 acres is recorded in the name of Savitri Pradhan and not plot no.177(P) as averred and claimed by the Appellants. An area of 0.58 acres in plot no.177, would translate to 0.2347 hectares and not 0.3040 hectares, as erroneously claimed by them. Exhibit 3 also reveals that the total area under three plots of land owned by late Savitri Pradhan, viz. plots no.169 (0.22 acres), 177 (0.58 acres), 179 (1.10 acres), amounted to 1.90 acres, which when converted into hectares, would amount to 0.7689 hectares. That having been said, Exhibit 4 is *Parcha Khatiyan* bearing no.133. The Appellants claim that plot no.177 was changed to '117' with land measuring 0.3040 hectares, wherein Savitri Pradhan was shown as the absolute owner. Perusal of Exhibit 4 reveals that, Savitri Pradhan was in possession of plot no.109, measuring 0.0980 hectares and plot no.118, measuring 0.3040 hectares. The area in plot no.118 is shown as 0.3040 acres, however, it is not the Appellants' case that there was a reduction in the area from plot no.118, measuring 0.3040 hectares. This area vide Exhibit 4 is intact and the Appellants have raised no grievance on this count. Thus, neither Exhibit 3 nor Exhibit 4 correspond to the claims of the Appellants as both documents do not show plot no.117 by any stretch of the imagination. The evidence of P.W.7 reveals that after the passing away of Savitri Pradhan in the year 1968, her legal heirs and successors initiated the process of mutation in their respective names, after two years of her death, which revealed the reduction of the land. Surprisingly verification of the property was sought only in the year 2015. Strong reliance was



placed by the Appellants on Exhibit 14, said to have been prepared by Revenue Supervisor, Bishnu Prasad Chettri, P.W.2, however this witness admitted that there were no records to indicate that plot no.177 was renumbered as plot no.117. That, plot no.117 was in fact property measuring 0.2600 hectares in the name of Respondent No.3. That, as per the survey records of 1979-80, the suit land was recorded in the name of the father of Respondent No.3 and Exhibit 9, the map showing the land holdings of Respondent No.3, reveals that it was sold to Respondent No.4.

(iii) The evidence of D.W.6 Karma Choden Bhutia, was with regard to Exhibit 6, the spot enquiry report submitted by P.W.2 Bishnu Prasad Chettri, Exhibit 7 the verification report dated 25-07-2015 and Exhibit 9 the map discussed *supra*. However, it was also his admission under cross-examination that, there was no detailed report or document to prove that plot no.177 was later re-numbered as plot no.117. According to the witness, when the cadastral maps to the suit land as per 1950-52 and 1979-80 were compared, the suit land came to be identified. How this exercise was completed by the concerned authorities and who undertook the responsibility went unexplained. Learned Senior Counsel had urged that the old and new maps were juxtaposed and the suit property was thus identified, but the details were neither exhibited nor explained nor the persons who completed the task ever examined as a witness. The reasons put forth for changing of plot numbers thus bear no weight, in consideration of the fact that no concrete/substantial reasons have been afforded by the witnesses. The Court cannot embark on a mission of divesting Respondent No.4 of his property, sans identification of the disputed land.



18. Exhibit 7 is the verification report dated 25-07-2015 allegedly prepared by a Revenue Supervisor. P.W.2 has in his exuberance to support the Appellants' case identified Exhibit 7(a) to be his signature when it is apparently of one Thiru Psd. Sharma, which is the name that appears below the signature and identified by D.W.6 as such. In paragraphs 3 and 4 of Exhibit 7, it is recorded that out of plot no.117(P) Respondent No.3 has sold an area of 0.2600 hectares to Respondent No.4. That, out of the 0.2600 hectares area, 0.1640 hectares is still in the possession of the successors of late Savitri Pradhan in whose name it was recorded in 1950-52 survey. This report contradicts the case of the Appellants who claim that their land measuring 0.3040 hectares was reduced by 0.1640 hectares.

19. The Schedule to the plaint too does not identify the suit land inasmuch as meticulous perusal of Exhibit 8, sketch map, showing the property of late Savitri Pradhan, does not correlate with the boundaries shown in the Schedule to the plaint. There is no document which establishes that her property bore plot no.177 (P) which was changed to plot no.117 and recorded in the name of Respondent No.3 erroneously.

20. It is clear from the foregoing discussions that the Appellants have not only failed to establish ownership of property over plot no.117(P), measuring an alleged area of 0.3040 hectares, but they have also failed to describe and identify the land correctly in the Schedule to the plaint. The Learned Courts below have correctly reached a finding that the Appellants do not deserve the reliefs claimed. The entire suit appears to be based on a figment of the imagination of the Appellants.



21. Hence, in consideration of all the documentary evidence furnished before this Court, I am of the considered opinion that the appeal lacks in merit and thereby deserves to be and is accordingly dismissed.

22. In view of the circumstances of the suit, let the Appellants pay costs of ₹ 7,000/- (Rupees seven thousand) only, each, to the Respondents No.3 and 4, within one month from today.

23. Copy of this Judgment be forwarded to the Learned Courts below for information, along with all records received.

(Meenakshi Madan Rai)
Judge

31-05-2023

Approved for reporting : **Yes**

ds