



**THE HIGH COURT OF SIKKIM : GANGTOK**

(Civil Extraordinary Jurisdiction)

Dated : 16<sup>th</sup> June, 2023

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

WP(C) No.40 of 2018

**Petitioner** : Sem Sodeun Wangdi

**versus**

**Respondents** : Meena Lama and Others

Application under Article 227 of  
the Constitution of India

**Appearance**

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

Mr. N. Rai, Senior Advocate with Mr. Yozan Rai, Advocate for the Respondents No.1 to 13.

Mr. Zangpo Sherpa, Additional Advocate General with Mr. Sujan Sunwar, Assistant Government Advocate for the State-Respondents No.14 to 18.

Ms. Rita Sharma, Government Advocate and Ms. Norzila Tamang, Legal Officer for the Respondent No.14.

**J U D G M E N T ( O R A L )**

Meenakshi Madan Rai, J.

**1.** By filing this Petition under Article 227 of the Constitution of India, the Petitioner impugns the Order dated 02-05-2017 in Title Suit No.03 of 2015, on grounds that issues no.9, 10 and 13 in the said Suit are issues which have already been decided in Title Suit No.433 of 2013, vide Judgment, dated 12-09-2014, against which the co-Defendants in the instant petition had preferred an Appeal before this High Court in RFA No.13 of 2014 (*The Secretary, Forest, Environment and Wildlife Department, Government of Sikkim and Others vs. Smt. Sem Sodeun Wangdi and Another*). That, before the High Court, the matter was compromised and the decree modified in terms of the



compromise. That, the Respondents No.1 to 13, the Plaintiffs in the Title Suit had sought for declaration of adverse possession and title, however, the issues settled for determination being issues no.9, 10 and 13 may resettle the rights that have already accrued to the Petitioner.

**2.** Heard the rival contentions of Learned Counsel for the parties.

**3.** Issue no.1 in Title Suit No.433 of 2013, and issues no.9, 10 and 13 in Title Suit No.03 of 2015, are extracted hereinbelow for easy reference;

**"Title Suit No.433 of 2013"**

1. Whether the Nam-Nang area at Gangtok Block upon which the suit land is located was at any time declared as the Government Reserve Forest? If so, how?"

**"Title Suit No.03 of 2015"**

9. Whether the suit properties or any portion thereof fall under Nam-Nang Reserve Forest (as per the Survey Operation of 1950-54 and 1979-80)?
10. Whether the suit properties can be regarded as public premises under the Sikkim Public Premises (Eviction of unauthorised and Rent Recovery) Act, 1980 and whether the notices issued to the Plaintiffs under it were valid?
13. Whether the suit properties were recorded in the name of the Government as per the Survey Settlement Records of 1951-52 and were under the care and custody of the Defendant No.3?"

**4.** Learned Senior Counsel for the Petitioner while reiterating the grievance of the Petitioner contends that there is a repetition of the issue no.1 which was determined in Title Suit No.433 of 2013 in issues no.9, 10 and 13 of Title Suit No.03 of 2015. It is his specific contention that as the suit land in Title Suit No.433 of 2013 fell in the Nam-Nang area as does the dispute in Title Suit No.03 of 2015, this matter has already been given a



quietus by the compromise affected between the parties. That, the settlement was arrived at between the Forest, Environment and Wildlife Department, Government of Sikkim and the Petitioner herein, as reflected in the Order of this High Court, dated 08-11-2016, in RFA No.13 of 2014. Hence, it cannot be re-agitated by way of the three issues *supra* settled for determination in the Title Suit No.03 of 2015.

**5.** *Per contra*, Learned Senior Counsel for the Respondents No.1 to 13 submits that a bare reading of the issues in both the suits indicate that there is no repetition of the issues, for the reason that the disputed properties in both suits differ, as they bear different plot numbers, although admittedly the suit properties in both the Title Suits are located in the Nam-Nang area. That, the Respondents No.1 to 13 herein, were not parties in the Title Suit No.433 of 2013, which in any event was decided between the Petitioner and other Defendants.

**6.** Learned Additional Advocate General for the State-Respondents No.14 to 18 endorses the submissions put forth by Learned Senior Counsel for the Respondents No.1 to 13.

**7.** Having heard the opposing submissions of Learned Counsel for the parties it emanates that, the suit properties in Title Suit No.433 of 2013 and Title Suit No.03 of 2015 are both located in the Nam-Nang area. There is no ambiguity in issue no.1 of Title Suit No.433 of 2013 and issues no.9 of Title Suit No.03 of 2015 with regard to the location of the suit properties which are both in Nam-Nang but in different areas. The plot numbers in dispute in Title Suit No.03 of 2015 are plots no.1303, 2673, 1628, 2674, 1674, 1630 and 2675 situated below the Legislative Assembly and above the Big Bazaar Shopping Complex, at Nam-Nang. This area



is admittedly completely distinguishable from the area of the previous adjudication and settlement. The plot numbers in both the suits referred to above differ from each other as can be culled out from the submissions advanced although both are situated in Nam-Nang area, which comprises of a large expanse and is not limited only to the portion which was disputed and settled in Title Suit No.433 of 2013.

**8.** Thus, on meticulous perusal of the pleadings and documents on record and the issues settled for determination in Title Suit No.03 of 2015 and Title Suit No.433 of 2013, the question of repetition of issues does not arise for the reason that the suit properties are located in different areas of Nam-Nang. The parties are required to prove their respective cases with regard to the disputed properties and plot numbers as per the issues settled for determination.

**9.** Writ Petition stands disposed of accordingly.

**10.** Stay of the proceedings in Title Suit No.03 of 2015 granted vide Order of this Court, dated 14-09-2018, stands vacated accordingly.

**11.** In light of this Judgment, pending applications also stand disposed of.

**12.** Copy of this Judgment be transmitted to the Learned Trial Court for information.

**( Meenakshi Madan Rai )**  
**Judge**  
16-06-2023

Approved for reporting : **Yes**