

IN THE HIGH COURT OF SIKKIM

ORDER SHEET

R.F.A. No. 4 of 2004

LAXMI BHANDARI Petitioner / Appellant

Versus

SECRETARY, UD&HD & ANOTHER Respondent

Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
1.	25-11-2004	<p>Heard Mr. B. Sharma, learned counsel for the appellant.</p> <p>Admit the appeal.</p> <p>Call for the records. Let usual notice be issued upon the respondents to show cause as to why the impugned judgment and order passed by the learned District Judge, East & North Sikkim in Title Suit No.12 of 2003 should not be set aside as prayed for or why any such order or orders should not be passed as ^{This Court} deems it fit and proper. No formal notice is called for in respect of the respondent No.1 as the learned Govt. Advocate receives notice. However, Mr. Sharma, learned counsel for the appellant shall supply a copy of memo of appeal to Mr. Pradhan, learned Govt. Advocate during the course of the day and the appellant is required to take steps for service of notice upon the respondent No.2 within three days, and the notice is made returnable on 22-12-2004.</p> <p>List this case on 22-12-2004 for necessary orders.</p> <p style="text-align: right;"><i>N.S. Singh</i></p>	<p>Records called for on 25-11-04. <i>see case 25/11/04</i></p> <p>notice issued <i>of the</i></p> <p>Records received <i>of the</i></p> <p>A.D. card not received from respondent no 2 <i>of the</i></p>

(N.S. Singh)
Acting Chief Justice



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2. 22-12-2004

Heard Mr. B. Sharma, learned counsel for the appellant. Mr. J.B. Pradhan, learned Govt. Advocate for respondent No.1 and also Mr. P.B. Sunar, respondent No.2 who is present in person.

The appellant shall prepare the Paper Book within a period of one month. After preparation of the Paper Book, the appellant shall supply the copies of it to the parties as well as to the Registry of this Court.

The matter be listed for hearing on 11-3-2005.

N. S. Singh
(N. Surjamani Singh)
Chief Justice (Actg.)

*Paper Book not filed.
10/3/05*

rsr/

3. 11-3-2005

Heard Mr. B. Sharma, learned counsel for the appellant, Mr. S.P. Wangdi, learned Advocate General assisted by Mr. J.B. Pradhan, Govt. Advocate for respondent No.1 and Mr. N. Rai, learned counsel for respondent No.2.



Heard in part.

The matter be listed on 15-3-2005 for further hearing. In the meantime, status quo with regard to the suit land as on today shall be maintained by the parties.

N. S. Singh
(N. Surjamani Singh)
Chief Justice (Acting)

rsr/



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4. 15-3-2005		<p>Heard learned counsel for the parties.</p> <p>This matter pertains to single bench headed by Hon'ble Shri Justice N.S. Singh. His Lordship is out of station on official tour. List this matter on 18-3-2005 for further hearing.</p> <p><u>C.M.A. No.10/2005.</u></p> <p>Mr. B. Sharma, learned counsel for the appellant has filed an application under Order 26 read with Section 151 of the C.P.C. for appointment of an Amin Commissioner. Copy of the application has been served on the respondents through the learned counsel. The learned counsel for the respondents may file reply, if any, before the next date of hearing.</p> <p style="text-align: right;">  (A.P. Subba) <u>Judge</u> </p>	
5. 18-3-2005		<p>rsr/</p> <p>Heard Mr. B. Sharma, learned counsel for the appellant, Mr. Karma Thinlay and Miss G. Gajmer, learned Govt. Advocates for respondent No.1 and Mr. N. Rai, learned counsel for respondent No.2.</p> <p>As prayed for by the learned counsel for the parties, the matter be listed on 7-4-2005 for hearing.</p> <p style="text-align: right;">  (N. Surjmani Singh) <u>Chief Justice (Acting)</u> </p> <p>rsr/</p>	



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6. 7-4-2005		<p><u>C.M.A. No.10/2005.</u></p> <p>Heard Mr. B. Sharma, learned counsel for the appellant, plaintiff in the original suit (Title Suit No.12/2003) and also Mr. Karma Thinlay Bhutia, learned Govt. Advocate appearing for respondent No.1 and Mr. N. Rai, learned counsel for respondent No.2.</p> <p>In this application, a prayer has been made by the appellant to appoint Amin Commissioner for ascertaining the identity of the suit land by contending inter alia, that the respondent/defendant No.1 allotted the schedule 'B' land to the defendant No.2 and the defendant No.2, respondent No.2 herein, illegally started raising construction in the suit land which forms part and parcel of plot No.416 as per old survey record 364 and, 365 as per new survey record and whereas, the case of the respondents is</p>	

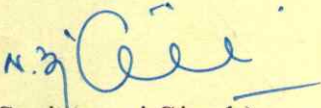


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		<p>that the suit land is part and parcel of the plot No.409. Supporting the case of the appellant, Mr. B. Sharma learned counsel contended that without knowing the identity of the suit land, the trial Court had come to the conclusion that the suit land formed part of plot No.409. As the identity of the suit land was not properly verified by the trial Court, the suit of the plaintiff was dismissed Mr. Sharma contended. According to Mr. Sharma, learned counsel, the trial Court should have got identity of the property established by issuing survey commission but in the case in hand, the trial Court failed to do it and as such survey commission is necessary for ascertaining the identity of the suit land. Supporting his submission, Mr. Sharma relied upon the decision of the Apex Court rendered in Shreepat - Appellant versus Rajendra Prasad & Ors. - Respondents reported in 2000(4) CCC 68(SC) and he further contended that in a similarly situated case, the Apex Court set aside the</p>	



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		<p>concurrent findings of the trial Court as well as High Court as the Courts below failed to get the identity of the property established by issuing survey commission and the Supreme Court remanded the case to the trial Court for disposal of it afresh.</p> <p>I have perused the decision/order of the Apex Court rendered in Shreepat – Appellant versus Rajendra Prasad & Ors.- Resopondents (supra). In my considered view, this order of the Apex Court does not help the case of the appellant/petitioner herein with the following reasons and order:-</p> <p>A bear perusal of the Exhibit 2 document which is trace map of the area concerned shows that eastern portion of the land under plot No.416 is Govt. land, but, the plaintiff claims the entire land under plot No.416 belongs to her. Be that as it may, before the allotment of ,the site was made, the authority concerned namely Urban Development & Housing Department, Govt. of Sikkim verified about the ownership of the land i.e. the suit land at Ranipool.</p>	



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		<p>The document marked Exhibit J-1 established the factum of the identity of the suit land and this document is supported by the evidence of Smt. Diki Choden, DW No.4 who was working in the office of the District Collector, East as a Revenue Officer at the relevant time. Be that as it may, the plaintiff did not make any attempt before the trial Court for issuing survey commission as she sought for under this C.M.A. No.10/2005 before this appellate Court, and, over and above this, I am of the view that the appellant/petitioner could not make out a prima facie case for issuing the survey commission at this stage. In view of the above position, this Misc. Application is devoid of merit and accordingly, it is rejected. It is made clear that this order shall not give any effect to the merit of , the related appeal.</p> <p style="text-align: center;">  (N. Surjamani Singh) <u>Chief Justice(Acting)</u> </p>	



Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
		<p>List this appeal on 1905^{1/2}2005 for hearing as prayed for by the learned counsel for the parties.</p> <p><i>N. S. Singh</i></p> <p>(N. Surjamani Singh) Chief Justice(Acting)</p>	
7. 19-5-2005	5-2005	<p>Heard in part.</p> <p>The matter be listed on 20-5-2005 for further hearing.</p> <p><i>N. S. Singh</i></p> <p>(N. Surjamani Singh) Chief Justice(Acting)</p>	



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8.	20-5-2005	<p>Heard Mr. B. Sharma assisted by Mr. Jagat Rai, learned counsels for the appellant, Mr. Karma Thinlay, learned counsel for respondent No.1 and Mr. N. Rai, learned counsel for respondent No.2.</p> <p>Today the parties have filed a deed of compromise in the following order:-</p> <p style="text-align: center;"><u>“DEED OF COMPROMISE</u></p> <p>This deed of Compromise is made this the 19th day of May, 2005 at Gangtok.</p> <p style="text-align: center;">BETWEEN</p> <p>Shri Purna Bahadur Sunar, son of Shri Lal Bahadur Sunar, resident of Ranipool, P/O- Ranipool, East Sikkim (hereinafter referred to as the 1st party) on the one part.</p> <p style="text-align: center;">AND</p> <p>Smt. Laxmi Bhandari, wife of late G.R. Bhandari, resident of Chota Singtam, P/O- Ranipool, East Sikkim (hereinafter referred to as the 2nd party) on the other part.</p> <p>Whereas the 1st party and the 2nd party have been under the litigation and the 2nd party has filed the R.F.A. No.4 of 2004 before the Hon'ble High Court of Sikkim which is pending for disposal.</p> <p>And whereas some good sense prevailed upon the parties and hence the 1st party and the 2nd party have settled the matter amicably out side the Hon'ble Court on the following terms and conditions:-</p>	



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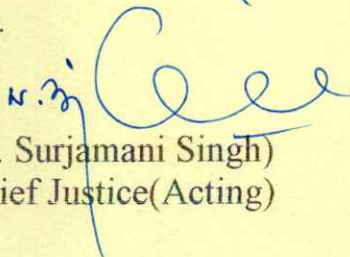
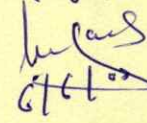
1. That the 1st party shall pay a sum of Rs.6,000/- (Rupees six thousand) only to the 2nd party as the token compensation. The 2nd party by execution of this Deed has acknowledged the receipt of the said sum of Rs.6,000/-(Rupees six thousand) only.
2. That the 2nd party or any other persons on her behalf shall have no claim whatsoever, over the building construction site allotted to the 1st party by the Urban Development and Housing Department, Government of Sikkim, Gangtok vide allotment Order No.53/UD and HD dated 24-6-2002.
3. That 1st party and 2nd party jointly pray to the Hon'ble High Court of Sikkim for disposal of R.F.A. No.4 of 2004 in terms of this Deed of Compromise making this document as part of record.
4. The 1st party and the 2nd party put their respective hands on the date, month, and the year hereinabove first mentioned.

Sd/- Illigible
First Party.

Sd/- Illigible
Second Party.”

Apart from the deed of compromise, the learned counsel appearing for the parties as well as the parties who are present today submitted that they had settled the matter amicably out side the Court for which they have submitted the deed of compromise.



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		<p>This deed of compromise is hereby formed part of record and marked as 'X' for identification. After proper application of my mind in this matter, this Court accept this deed of compromise entered between the parties. At the same time, this Court hereby recalled the old saying "Do not quarrel with the neighbours". The wise man finds his or her wealth in contentment not in terms of money. This Court, hope and trust that the parties shall follow this old saying and lead good relationship and harmony amongst themselves in the years to come. I am of the view that this Court is rendering substantial justice to the parties. Law should be flexible sometimes and it should not be read or interpreted rigidly in the matters which deserve for amicable settlement amongst the parties. Keeping in view of it, this Court accept this deed of compromise between the parties and accordingly, the case is closed with the above observations.</p> <p style="text-align: center;">No order as to costs.</p> <p style="text-align: center;">  (N. Surjamani Singh) Chief Justice(Acting) </p>	<p><i>Final Court record forwarded on 6-6-05.</i> </p>

DEED OF COMPROMISE

This Deed of Compromise is made this the 19th. day of May, 2005 at Gangtok.

BETWEEN

Shri Purna Bahadur Sunbar, son of Shri Lal Bahadur Sunbar, resident of Ranipool, P/O-Ranipool, East Sikkim (hereinafter referred to as the 1st. party) on the one part.

AND


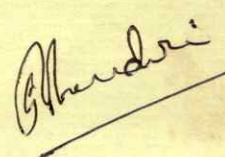
Smt. Laxmi Bhandari, wife of late G.R.Bhandari, resident of Chota Singtam, P/O-Ranipool, East Sikkim (hereinafter referred to as the 2nd. party) on the other part.

Whereas the 1st. party and the 2nd. party have been under the litigation and the 2nd. party has filed the R.F.A. No. 4 of 2004 before the Hon'ble High Court of Sikkim which is pending for disposal.

And whereas some good sense prevailed upon the parties and hence the 1st. party and the 2nd. party have settled the matter amicably out side the Hon'ble Court on the following terms and conditions:-

1. That the 1st. party shall pay a sum of Rs. 6,000/- (Rupees six thousand) only to the 2nd. party as the token compensation. The 2nd. party by execution of this Deed has acknowledged the receipt of the said sum of Rs. 6,000/- (Rupees Six thousand) only.

2. That the 2nd. party or any other persons on her behalf shall have no claims whatsoever, over the building construction site allotted to the 1st. party by the Urban Development and Housing Department, Government of Sikkim, Gangtok vide allotment Order No. 53/UD and HD dated 24/6/2002.

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3. That 1st. party and 2nd. party jointly pray to the Hon'ble High Court of Sikkim for disposal of R.F.A. No. 4 Of 2004 in terms of this Deed of Compromise making this document as part of record.

The 1st. party and the 2nd. party put their respective hands on the date, month, and the year hereinabove first mentioned.

A handwritten signature in blue ink, appearing to be 'Fey', is written above the text 'First Party'.

First Party.

A handwritten signature in blue ink, appearing to be 'Ghendari', is written above the text 'Second Party'.

Second Party.