



IN THE HIGH COURT OF SIKKIM

CIVIL REVISION NO. 3 OF 2005

1. SRI ARJUN PRADHAN,
S/O (L) LALL BAHADUR PRADHAN;
2. SRI BIJU PRADHAN,
S/O (L) LALL BAHADUR PRADHAN;
3. MISS CHAAM KUMARI PRADHAN,
D/O (L) LALL BAHADUR PRADHAN.

ALL RESIDENTS OF MAZI GAON,
P.O. & P.S. JORETHANG,
SOUTH SIKKIM.

... PETITIONERS

- V E R S U S -

SRI RAM KUMAR MAZI,
S/O SRI JIT BAHADUR MAZI,
R/O SUMBUK, P.O. & P.S. MELLI,
SOUTH SIKKIM.

... RESPONDENT

For the Petitioners : Mr. N.K.P. Sarraf, Advocate for
the petitioners.

PRESENT: THE HON'BLE SHRI JUSTICE N.S. SINGH, CHIEF JUSTICE (ACTING).


Date of Judgment : 28th September, 2005.

J U D G M E N T

N.S. SINGH, C.J. (ACTG.),

The order dated 20.08.2005 passed by the Civil Judge,
South District at Namchi in Title suit No. 8 of 2005 is the


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subject matter under challenge in this revision petition. The facts of the case in a short compass are as follows: -

2. The plaintiff, namely, Shri Ram Kumar Mazi, respondent herein filed a civil suit being Title Suit No. 8 of 2005 before the Court below for declaration of title, ownership and title-holder in possession of suit property and other consequential reliefs by contending inter alia, that during the lifetime of Dhanrey Mazi the remaining portion of land under Plot No. 781 (old) was transferred to the plaintiff through a Registered Sale Deed and the said Dhanrey Mazi was unmarried person. It is also the case of the plaintiff that in and around 1995 and during the lifetime of the said Dhanrey Mazi, he has transferred through a registered Sale Deed a portion of plot No. 781, measuring more or less 30' x 30' to the father of the defendants and the plaintiff was present during the said transaction. However, to the utter surprise and dismay of the plaintiff, it was found that the land records reflected that a part of the property intended to be sold, measuring more or less 30' x 25', which is morefully described in Schedule B (Suit Property) was recorded in the name of the defendants and that being the position the matter was placed before the District Collector, South Sikkim at Namchi for clarification and the matter was heard by the learned District Collector, South wherein the defendants

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claimed that their father had purchased 30' x 55' and not 30' x 30' and as such the suit property belong to them. But the defendants were unable to produce the original Sale Deed despite the direction of District Collector, South Sikkim on flimsy pretext and contended that their father had misplaced the same and their claim is based on Khatiyani Parcha.

3. The case of the plaintiff was resisted by the defendants by filing written statement and by contending inter alia, that they have been in occupation of the suit land since 1995 along with their late father, who purchased the same from late Dhanrey Mazi under a registered Sale Deed. It is also the case of the defendants that late Dhanrey Mazi sold the land measuring 0.0180 Hect. to the father of the defendants, the petitioners herein.

4. A preliminary objection was raised by the defendants before the Court below that the suit is barred by limitation. Upon hearing the parties, learned Court below opined that the suit was filed on 11.11.2004 which is within the period of limitation and accordingly, the plea of limitation raised by the defendants was rejected. I have perused the impugned order. The relevant observations of the Court below is important in the case in hand and accordingly, it is quoted below: -

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“Article 58 of the Limitation Act, 1968 provides the period of limitation to be 3 years for obtaining any other declarations.

This instant suit is filed for declaration of title and ownership. In the facts and circumstances of this case, I find Article 113 of the Limitation Act would be applicable. Article 113, Limitation Act is an ‘omnibus article’ and includes all suits ‘not specifically provided’ for elsewhere in the schedule. The period of limitation under Article 113 Limitation Act is 3 years and the time begins to run when the right to sue accrues.

According to the contention made by the Defendant the Plaintiff vide his sale deed dated 22.11.1999 had knowledge of the alleged illegality. However, I find that the sale deed dated 22.11.1999 does not indicate the knowledge of alleged illegality by the Defendants.

Ld. Counsel for the Defendants mentioned that as per paragraph 15 of the plaint, the cause of action first arose on February, 2000 when the suit plot was registered in the name of plaintiff. It is submitted that the Ld. Counsel for the Defendants has omitted to read the continuation to this sentence. It continues that; “in and around the month of February, 2004 when the sale deed was presented for registration and objected by the Defendants”.

I find that in a suit for declaration of title and ownership of suit land, time begins to run when the Plaintiff becomes aware that his ownership is challenged. A right is said to accrue only when there is an actual accrual of the right asserted in the suit and its infringement or at least clear and unequivocal threat to infringe that right by the Defendant against whom the suit is instituted.

Paragraph 15 of the Plaintiff read as a whole is clear that on February, 2004, when the Plaintiff presented the sale deed for registration, it was objected by the Defendants. February 2004 is the

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first occasion when the Plaintiff became aware that his title and ownership was being challenged.

This suit filed on 11.11.2004 is within the period of limitation. Hence, the plea of limitation raised by the Defendants is rejected.”

5. In my considered view the impugned order is a reasoned order and as such no interference is called for. It is well settled that mere recording of name(s) in the records of rights including Khatian does not confer any right or title of any land. Under the law, a registered Sale Deed is a title deed. In the case in hand, the defendants could not produce related original Registered Sale Deed. It is also well settled that records of rights is revisable by the competent authority. In this regard a reference is made to a decision of the **Apex Court** rendered in **State of West Bengal and others v. Suburban Agriculture Dairy & Fisheries Pvt. Ltd. and another** reported in **AIR 1993 SC 2103** and, if the order of Revenue Officer in mutation proceedings based on untrue piece of evidence has no evidentiary value in civil suit (see **Dayaram and others v. Dawalatshah and another** reported in **AIR 1971 SC 681**). Therefore, the contention of the learned counsel for the petitioners that recording of the name of the late father of the petitioners (defendants) in the Khatian under the related mutation order is a title deed which cannot be challenged by the plaintiff, holds a little water.

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6. For the reasons, observations and discussion made above, I am of the view that the petitioners could not make out a case to justify the interference with the impugned order.

7. In the result, the petition is devoid of merit and accordingly, it is dismissed thus affirming the impugned order passed by the Court below, with a cost of Rs.3000/- (Rupees three thousand) only which shall be treated as part of the fund of the Sikkim Bar Association for which the petitioners shall deposit the same with the Registry of this Court within a period of one week from today and after such deposit the authority of Sikkim Bar Association is at liberty to withdraw the same from the Registry of this Court. A copy of this Order be communicated to the Court below. Registry is to act accordingly.



(N.S. SINGH)
CHIEF JUSTICE (ACTING)
28.09.2005