

IN THE HIGH COURT OF SIKKIM

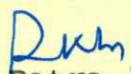
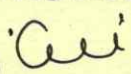
ORDER SHEET

Writ Petition (C) No. 12 of 2004

PARSURAM POUDYAL Petitioner / Appellant

Versus

MANORATH POUDYAL Respondent

Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
1.	16.7.2004	<p>Shri N. B. Khargta, learned Counsel for the petitioner is directed to produce a copy of the judgment rendered in Civil Suit No.21 of 2000.</p> <p>Put up on 20.7.2004 for admission.</p> <p style="text-align: right;">  (R. K. Patra) Chief Justice  (N. S. Singh) Judge </p>	
2.	20.7.2004	<p>The petitioner is the defendant in T.S.No.6 of 2003 in the Court of Civil Judge (East) at Gangtok. The respondent is the plaintiff in the said suit. The petitioner prayed the trial Judge to frame the following issue :-</p> <p>Whether the suit is barred by the provisions of the Benami Transactions (Prohibition) Act, 1988.</p> <p>Vide order dated 12.3.2004, the trial Judge rejected the prayer because the aforesaid issue had been finally heard and decided between the same parties in respect of the same disputed property in Civil Suit No.21 of 2000. In this writ petition, the validity of the said order has been challenged by the</p>	



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petitioner.

We have heard Shri N. B. Kharga, learned Counsel for the petitioner.

It is an admitted fact that the petitioner had filed Civil Suit No.21 of 2000 against the present respondent in the Court of Civil Judge (East), Gangtok for declaration of title, injunction and other reliefs. The disputed property in the said suit is the subject matter of the present suit. By judgment dated 24.7.2000, the aforesaid suit, 21 of 2000, was dismissed. The petitioner filed Civil Appeal No.8 of 2000 against the decree. The District Judge by judgment dated 16.4.2001 dismissed the appeal. Thereafter, the petitioner filed Second Appeal in this Court which was dismissed. SLP filed before the Apex Court met with the same fate. One of the issues framed in that suit was as follows :-


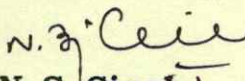
Whether by virtue of the provisions of the Benami Transactions (Prohibition) Act, 1988 the defendant is debarred from claiming any right over the suit land ?

The trial Judge decided the issue by holding as follows :-

“..... Therefore since it is an admitted position that plaintiff is the son of the defendant, and in the absence of any other evidence, I find it under Sub-section 3(b) section 4 of the Benami Transactions (Prohibition) Act 1988, the defendant is not barred from claiming the suit property.”

In appeal the learned District Judge recorded his finding in the matter as follows :-



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		<p>“..... Therefore, I find that contention of appellant/plaintiff is not tenable and the plea of the respondent/defendant that his contention is saved by exception clause (3)(b) of section 4 of Benami Transaction Act, 1988 is a valid proposition in law and cannot be rejected.”</p> <p>In view of what has been stated above, we have no doubt that in the previous suit between the same parties, the issue in question has already been decided. The disputed property of that suit is also the subject matter of the present suit. The finding recorded in the previous suit has reached finality. Therefore, the learned trial Judge rightly refused to frame the very issue which has already been decided between the parties.</p> <p>For the reasons aforesaid, we do not find any merit in the writ petition which is accordingly dismissed.</p> <p>No costs.</p> <p style="text-align: right;">  (R. K. Patra) Chief Justice </p> <p style="text-align: right;">  (N. S. Singh) Judge </p>	