

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

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

RFA No.01 of 2022

Appellants : Bharat Sanchar Nigam Limited (BSNL) and Others

versus

Respondent : Sashidhar Nepal

Appeal under Order XLI Rules 1 and 2
of the Code of Civil Procedure, 1908

Appearance

Mr. Sajal Sharma, Advocate for the Appellants.

Mr. Manish Kumar Jain, Advocate for the Respondent.

Date of Hearing : 06-11-2025
Judgment reserved : 06-11-2025
Judgment pronounced & uploaded : 28-11-2025

JUDGMENT

Meenakshi Madan Rai, J.

1. The short question for consideration in the instant Appeal is;

“Whether the Appellants/Defendants have encroached on the land of the Respondent/Plaintiff bearing plot no.728, measuring an area of 0.0140 hectares as described in Schedule B to the Plaint and constructed buildings and telecom towers thereon.”

2. The Appellants were the Defendants before the Trial Court, while the Respondent was the Plaintiff. The parties shall hereinafter be referred to by their litigative status during trial.

3. The Plaintiff filed a suit for declaration, injunction, recovery of possession and other consequential reliefs before the Court of the District Judge, East Sikkim, at Gangtok, averring that he is the owner of a plot of land, bearing no.728, registered in his name and measuring an area of 0.0140 hectares, under Kambal block, East Sikkim. The Defendants in the year 1988 started

construction of their towers on an adjacent plot of land. During such process, they encroached upon a portion of the Schedule B land described hereinabove. Proceedings were initiated before the concerned authority of the District Collectorate by the Plaintiff and field verification of the land was carried out in the presence of the officers of the Defendants Company. The area *Amin* (Revenue Supervisor) who had conducted the inspection in the presence of both parties concluded that, the Defendants had indeed encroached upon the land of the Plaintiff. Nevertheless, as no settlement could be arrived at before the revenue authorities, the Plaintiff approached the Lok Adalat, Gangtok, East Sikkim. The matter remained unresolved before the Lok Adalat, upon which the Plaintiff filed the aforestated Suit before the Court of the District Judge, East Sikkim, at Gangtok, with the following prayers in the Plaintiff

- “(i) Removal of the illegal structure, building and towers from the land of the Petitioner.
- (ii) Pay compensation of Rs.10,00,000/- towards illegal occupation.
- (iii) Pay compensation of Rs.5,00,000/- towards harassment and mental tension.
- (iv) Pay compensation of ₹ 5,00,000/- towards depreciation of the valuation of land.
- (v) Handing over the peaceful and unencumbered possession of the land (Schedule-B) to the Plaintiff.
- (vi) A permanent injunction restraining the:
 - (a) Defendants from putting any cables, lines, etc upon and in the land and in the towers, houses.
 - (b) Or debarring the Defendants from making any renovation or improvement over the said schedule land.
- (vii) Costs of proceedings;
- (viii) Any other relief or reliefs as this Hon’ble Court may deem fit and proper in the interest of justice.”

4. The Defendants denied and disputed the claims of the Plaintiff and averred that, in the year 1986 the company had purchased plot No.727(P) from one Devi Bhakta Guragai who handed over vacant and peaceful possession of the land to them in the presence of the Assistant Land Record Officer. Although, the prevailing local laws prevented the Company from registering and mutating the land in their name, however the towers were constructed within the land purchased by them with no encroachment on the land of the Plaintiff. The grievance of the Plaintiff in fact arose from an apprehension of the hazardous effects of the mobile towers constructed close to his residence and was not on account of any encroachment. That, the Defendants had promised to compensate the Plaintiff which later was not necessitated as the construction did not extend beyond the property purchased by them.

5. The Trial Court settled the following issues for determination;

- (1) Whether the Defendants have encroached the plot of land belonging to the Plaintiff, if so to what extend (sic. extent)?
(Onus on both the parties)
- (2) Whether the Defendants have constructed any illegal structures/towers on the encroached land? *(Onus on the Plaintiff)*
- (3) Whether the Plaintiff is entitled for peaceful and unencumbered possession of the land from the illegal occupation of the Defendants? *(Onus on the Plaintiff)*
- (4) Whether the Plaintiff is entitled for peaceful, vacant land, clear from all structures and towers? *(Onus on the Plaintiff)*
- (5) Whether the suit of the Plaintiff is barred by law of estoppels, acquiescence and waivers? *(Onus on the Defendants)*
- (6) Whether the Plaintiff is entitled for relief or reliefs as claimed by him in his Plaint? *(Onus on the Plaintiff)*

6. In support of his case the Plaintiff examined himself and six other witnesses *viz.*; his son Parshuram Nepal, Tekchand Balmiki, William Tamang, Robin Prasad Sewa, Sonam Choejee Lachenpa and Nakul Rai. The Defendants on the other hand examined Dinesh Kumar Upadhyaya and Tenzing Dorjee.

(i) The Trial Court on consideration of the evidence furnished by both parties, including the documentary evidence, opined in issue no.1 that, the Defendants Company had encroached upon the land of the Plaintiff being plot no.728, measuring an area of 0.0140 hectares and that any construction made by the Defendants is liable to be dismantled, demolished and removed from the Plaintiff's land and peaceful and vacant possession handed over to him. In issue no.2 it was observed that, the survey report placed on record indicated that the Defendants had constructed structures and towers on the land of the Plaintiff. In issue no.3 it was found that there was encroachment on the land of the Plaintiff, consequently the Plaintiff was entitled to peaceful and encumbered possession of the land. In issue no.4 the same conclusion as issue no.3 was arrived at. In issue no.5 it was found that the Plaintiff had not waived his rights nor was he barred by the principles of estoppel and acquiescence. In issue no.6 the Court concluded that, the Plaintiff had successfully established his case. Consequently, the Defendants were directed to remove all illegal structures/building/towers from the land of the Plaintiff and hand over to him peaceful and vacant possession. The Defendants were ordered to pay the Plaintiff a sum of ₹ 10,00,000/- (Rupees ten lakhs) only, as compensation for illegal encroachment and occupation since 2012. The Defendants

were also directed to pay a sum of ₹ 2,00,000/- (Rupees two lakhs) only, as compensation towards harassment and mental torture meted out by the Defendants to the Plaintiff.

7. Learned Counsel for the Defendants (the Appellants herein), advanced the argument that the Plaintiff suffered from lack of specificity and that the Trial Court could not have decreed the suit in favour of the Plaintiff on the basis of vague and uncertain pleadings and evidence. The Plaintiff failed to file the deed of conveyance to establish title. The exact details of the boundaries and extent of encroachment are unclear. Relying on the decisions in ***P. Kishore Kumar* vs. *Vittal K. Patkar***¹ and ***M.T.W. Tenzing Namgyal and Others* vs. *Motilal Lakhotia and Others***², it was urged that it is now settled law that entries in revenue records do not prove title. The evidence of the son of the Plaintiff, Parsuram Nepal, is that the mobile towers are not standing on the entire area of plot no.728, PW Tekchand Balmiki, too deposed that the building of BSNL was standing partially upon plot no.728, but failed to mention the exact area of the land encroached. PW William Tamang in his evidence, did not mention about the encroachment, while PW Sonam Choejee Lachenpa testified that, certain portion of the building fell on the land of the Defendants. The evidence of PW Nakul Rai points to Ext-U which does not seem to be a joint inspection report as a joint inspection report is signed by the parties and the concerned surveyor, whereas Ext-U was only signed by the surveyor. The evidence of DW Tenzing Dorjee indicates that, the complaint was against installation of towers by the Defendants and he submitted a report to the effect that the land on which the towers were

¹ 2023 SCC OnLine SC 1483

² (2003) 5 SCC 1

constructed were purchased by the Department of Post and Telegraph in the year 1981-82 but the Defendants did not mutate or register the land in their name. The dispute stemmed from the hazardous effects of the towers and was not a land dispute. That, the Plaintiff has to prove his own case and cannot rely on the weakness of the Defendants case as held by the Supreme Court in ***Union of India and Others vs. Vasavi Cooperative Housing Society Limited and Others***³. The Plaintiff has not exhibited a single document from the year 2000 till 2012 complaining of encroachment on his land by the Defendants. Before the Lok Adalat there was no question of encroachment and there is no prayer for declaration and possession in the Plaint. Relying on ***Anathula Sudhakar vs. P. Bucchi Reddy (dead) by LRS. and Others***⁴, it was urged that the Plaintiff must necessarily file a suit for “declaration” if there is a cloud over title. It was next urged that the suit is barred by limitation as the building was constructed in the year 1988 and the period of limitation is three years from the date when the cause of action first arose. The Trial Court order for payment of compensation was without any averments in the Plaint and the amount of compensation is unjustified. Hence, the Appeal be allowed and the Judgment and Decree of the Trial Court be set aside.

8. Learned Counsel for the Respondent for his part submitted that no grounds arise for setting aside the impugned Judgment as the necessary evidence furnished by the Plaintiff has been given due consideration and the Suit decreed. No evidence was furnished by the Defendants to disprove the case of

³ (2014) 2 SCC 269

⁴ (2008) 4 SCC 594

encroachment, whereas the Plaintiff has by furnishing relevant documents established his case of title and possession. Hence, the impugned Judgment be upheld and the Appeal be dismissed.

9. Having given due consideration to the facts and circumstances placed before this Court, perused the pleadings and the evidence on record as also the impugned Judgment, in the first instance, it is worthwhile noticing that there was no requirement for settling six issues for determination. All that is in dispute are; whether the Defendants had encroached upon the land of the Plaintiff and constructed structures upon it. Whether the Plaintiff had established his ownership over the property in dispute and finally whether the Plaintiff was entitled to the reliefs claimed. It is also noticed that in issue no.1, the onus was fixed on both parties. The onus for proving an issue cannot be on both parties. The burden of proof rests before evidence is gone into, upon the party, asserting the affirmative of the issue. To simplify it, the burden of proof in the sense of establishing a case is on a party, be he the Plaintiff or the Defendant, who substantially asserts the affirmative of the issue.

(i) Be that as it may, the evidence on record furnished by the Plaintiff in the first instance reveals that, he claims to be the owner of the Schedule B land, described in the Plaint, upon which he alleges that the Defendants have constructed some structures including mobile towers. The argument of Learned Counsel for the Appellants was that the deed of conveyance was not furnished by the Plaintiff to fortify his case and that the documents of title i.e., *parcha khatian* do not suffice to establish title as held in a plethora of Judgments of the Supreme Court. It is worth

remarking that it is not the case of the Defendants that they did not have an opportunity of cross-examining the Plaintiff on the points agitated in the arguments (*supra*). On perusal of the cross-examination of the Plaintiff by the Defendants it is clear that no cross-examination on that count was in fact carried out. The Plaintiff asserted that the schedule of the property mentioned in the Plaint is correct and that the Defendants had taken possession of his land between the years 2000-2010. None of the other witnesses of the Plaintiff were also cross-examined with regard to the deed of conveyance of the Plaintiff. In his evidence the Plaintiff is categorical in his statement that, he relies upon the documents, reports, maps and note sheets filed by the office of the District Collectorate, which reveals that plot no.728 is recorded in his name and the portion of the area measuring 0.0140 hectares has been encroached by the Defendants. Ext-1 the *parcha khatiyani* indicates that the property in dispute is recorded in the name of the Plaintiff. In the absence of any documentary evidence to the contrary or contradictory verbal evidence furnished by the Defendants or cross-examination to demolish the Plaintiff's case, these documents are presumed to be correct, having been issued by a Government authority and having remained undecimated under cross-examination. The witness of the Plaintiff, PW Tekchand Balmiki, working as a revenue supervisor under the Land Revenue and Disaster Management Department, deposed that he went to conduct the joint inspection of plot no.728, on 09-12-2019. As per this witness, after verification of the records, it was found that, plot no.728 measuring an area of 0.0140 hectares stood recorded in the name of Sashidhar Nepal (the Plaintiff) under

Kambal block, East Sikkim. He found that, there was encroachment on the land of the Plaintiff by the BSNL Telecom, the Defendants, by constructing a building and two small towers on it. Under cross-examination, he admitted that on 09-12-2019, only he and the Plaintiff were present, there was no court commissioner but he could recollect that the BSNL building was standing partially on plot no.728 and partially on their own land. PW William Tamang was appointed as Advocate Commissioner and went to inspect plot no.728 on 13-12-2019. He was accompanied by the revenue surveyor, PW Sonam Chojee Lachenpa and one representative of the Defendants Company S.S. Dora (DGM, BSNL). Inspection was completed and a verification report prepared at the spot, where the signatures of the representatives of the Plaintiff, the Defendants and the surveyor were obtained on the said report, which he claimed was Ext-Z. On such inspection, the revenue surveyor opined that there was encroachment upon the land of the Plaintiff by the Defendants. Indeed, as pointed out by Learned Counsel for the Appellants, it is true that the said witness has not recorded anything about the encroachment in Ext-Z, but the fact that the witness upon such inspection opined that, there was encroachment upon the land of the Plaintiff, by the Defendants, was not decimated during his cross-examination. PW Robin Prasad Sewa, was the Sub-Divisional Magistrate, at the time when the dispute arose, he supported the evidence of the previous witness pertaining to encroachment of the Plaintiff's land by the Defendants and deposed that, as per the joint inspection report, dated 09-12-2019, the representatives of the Defendants, BSNL were absent, however it was found that plot no.728, with an area of 0.0140

hectares, was recorded in the name of Sashidhar Nepal of Kambal Block and that there was encroachment by BSNL Telecom by constructing a building and two small mobile towers. The witness thus concluded that there was encroachment as claimed by the Plaintiff.

(ii) PW Sonam Choejee Lachenpa, an official under the Land Revenue and Disaster Management Department, Government of Sikkim, lent credence to the case of the Plaintiff by stating that on 13-12-2019, he along with the son of the Plaintiff, officials from the BSNL office and the Commissioner, inspected the site. As per the records maintained in their office, plot no.728 measuring a total area of 0.0140 hectares was shown to be recorded in the name of the Plaintiff. During their inspection of the site, it was found that, BSNL had encroached upon the entire land of plot no.728 on which they had constructed buildings and had also erected mobile towers. He placed reliance on Ext-U, the report prepared by him after the site inspection and on Ext-V, the map prepared by him on such site inspection. It was his further evidence that he had signed on Ext-Z, the compliance report, prepared by PW William Tamang. His entire testimony pertaining to encroachment of the land of the Plaintiff, by the Defendants, has not been decimated in cross-examination. He clarified under cross-examination that the Defendants have their land adjacent to Plot no.728, where a certain portion of the building belonging to the BSNL stands. PW Nakul Rai, another official working under the Land Revenue and Disaster Management Department, Government of Sikkim, identified Ext-2 as the map issued in the name of the Plaintiff for plot no.728 and Ext-1 as *parcha khatiyon* recorded in

the name of the Plaintiff. He was aware of the inspection reports and the finding that the Defendants had encroached on the land of the Plaintiff. A prolix cross-examination could not demolish the evidence in chief of this witness pertaining to the encroachment described above. The evidence of the son of the Plaintiff also supported the Plaintiff's case with regard to encroachment of scheduled property by the Defendants. Although under cross-examination it came to be extracted from him that the building constructed by the Defendants does not cover the entire area of plot no.728. Having thus perused the evidence of the Plaintiff, his son and the other independent witnesses being officials of the District Collectorate, it emerges therefrom that the schedule property was entered into by the Defendants and encroached upon by construction of towers. The evidence of PW Sonam Choejee Lachenpa, who conducted the inspection, specifies that the entire plot being plot no.728 was encroached by the Defendants.

(iii) To support their case, the Defendants examined DW Tenzing Dorjee, Additional District Collector, then posted as Block Development Officer, in 2012. According to him, during the year 2012, on the direction of the District Collector, East, a public hearing and enquiry was conducted with regard to a complaint against installation of BSNL towers wherein three members of the Samdung Kambal Gram Panchayat Unit along with representatives of the BSNL i.e., General Manager and the SDO (T) and one SDE were present before him. Admittedly, the land was purchased by the Defendants from Devi Bhakta Guragai which continues to remain registered in the sellers name and he still pays the land

rent. His evidence as can be gauged was of no assistance to the Defendants case.

(iv) The evidence of DW Dinesh Kumar Upadhyay put forth the case of the Defendants as averred in their Written Statement and he admitted that no documents pertaining to sale, lease or any other transaction was filed by the Defendants. His evidence on affidavit at Paragraph 11 reflected that a revenue officer from the Land Revenue and Disaster Management Department had categorically deposed that the cadastral map of the '*Defendants*' Company is genuine and further clarified that cadastral map is issued under the signatures of three officers from their office. On careful perusal of the evidence of the Plaintiff's witnesses it is apparent that no such statement has been made by any of the said witnesses. PW Sonam Choejee Lachenpa has merely stated that the department used a cadastral map, which is the official government records and they also used off-set scale method he has not stated that the cadastral map is of the Defendants. It has erroneously been stated in the evidence of DW Dinesh Kumar Upadhyay that the local commissioner did not support the case of the Plaintiff, when it is clearly evident from the deposition of the Plaintiff's witnesses already discussed hereinabove, that, they have testified that there was encroachment on the land of the Plaintiff. The cross-examination of the Defendants witness established that they had not filed any sale deed document, lease deed document or any other document to indicate that the Defendants had purchased plot no.730(P) from Devi Bhakta Guragai. The witness also admitted that no mention of payment for the purchase, to the said seller, has been made in his evidence on affidavit. He

admitted under cross-examination that, the cadastral map Ext-C does not mention the name of BSNL on it and it is a rough sketch map pertaining to plot no.730(P) land which belongs to Devi Bhakta Guragai. His statement also evidently lends no succour to the case of the Defendants.

(v) It was argued by Learned Counsel for the Appellants that the case of the Plaintiff was on the basis of vague and uncertain pleadings and evidence, to the contrary, in my considered view there is no ambiguity in the averments or prayers in the Plaint and the plot of land has been identified by the Plaintiff and his witnesses by way of documentary and verbal evidence. It is true that the boundaries of the land have not been mentioned in the Plaint, however it is also noticed that the Defendants have not raised any objection to the non-mentioning of the boundaries in their Written Statement nor resorted to cross-examination on this point, hence this shortcoming cannot be raised belatedly at the time of Appeal. In this context, we may beneficially turn to the ratio in ***Sham Lal alias Kuldip* vs. *Sanjeev Kumar and Others***⁵, where the Supreme Court observed as follows;

"21. One of the documents relied upon by the learned District Judge in coming to the conclusion that the plaintiff is the son of the deceased Balak Ram is Ext. P-2, the school leaving certificate. The learned District Judge, while dealing with this document has observed:

"On the other hand, there is a public document in the shape of school leaving certificate, Ext. P-2 issued by Head Master, Government Primary School, Jabal Jamrot recording Kuldip Chand alias Sham Lal to be the son of Shri Balak Ram. In the said public document as such Kuldip Chand alias Sham Lal was recorded as son of Shri Balak Ram."

The findings of the learned District Judge holding Ext. P-2 to be a public document and admitting the same without formal proof cannot be questioned by the defendants in the present appeal since no objection

⁵ (2009) 12 SCC 454

was raised by them when such document was tendered and received in evidence.

22. It has been held in *Dasondha Singh v. Zalam Singh* [(1997) 1 PLR 735 (P&H)] that an objection as to the admissibility and mode of proof of a document must be taken at the trial before it is received in evidence and marked as an exhibit."

[emphasis supplied]

(vi) It was also urged that the Trial Court in the impugned Judgment had stated that the land of the Plaintiff was encroached but the extent of the encroachment is not identified. In this context relevant reference may be made to the evidence of PW Sonam Choejee Lachenpa the Plaintiff's witness who has categorically stated that "*..... During our inspection of the site it was found that there was encroachment by BSNL. However, as per verification, the BSNL has encroached the entire plot pertaining to Plot No.728 on which they have constructed a building and also have erected mobile towers.*"

In his cross-examination he has deposed as follows;

"..... It is not a fact that the BSNL has not encroached the entire Plot No.728. It is true that BSNL also have their land adjacent to Plot No.728. It is not a fact that more than half portion of the building belonging to the BSNL does not fall/stand upon Plot No.728. It is true that certain portion of the said building belonging to the BSNL also fall/stand upon their own land"

Every other witness of the Plaintiff has also given categorical evidence to establish that there was encroachment by the Defendants on the land of the Plaintiff. As PW Sonam Choejee Lachenpa was the one who conducted the inspection, his evidence has been cited specifically above. The Defendants witnesses failed to disprove the assertion of encroachment.

(vii) The Plaintiff is required to prove his case adhering to the standard of preponderance of probabilities and not beyond reasonable doubt which is the bar set for criminal cases. The

evidence furnished by the Plaintiff establishes that he is the owner of plot no.728 as detailed in Schedule B to the Plaint. The documentary evidence furnished by him supports this, the absence of deed of conveyance does not demolish the Plaintiff's case as his ownership over the property has not been contradicted by any other documentary evidence or evidence of witnesses. Ext-V as already discussed hereinabove relied on by Defendants only pertains to the land of Devi Bhakta Guragai and does not support the Defendants case of non-encroachment. The question of limitation has also been raised only at the stage of Appeal and in my considered view cannot be taken up at the Appellate stage. In any event the suit is not barred by limitation as the encroachment is said to have occurred in the year 2010-2012 and the suit was filed in the year 2018 well within the period of limitation. The arguments raised by Learned Counsel for the Defendants pertaining to recovery of possession as observed above is a frivolous argument as prayer (v) to the Plaint already extracted hereinabove is revelatory of the fact that the Plaintiff had indeed sought "recovery of suit land".

10. Consequently, for the foregoing reasons, the Appeal is dismissed and disposed of.

11. The Defendants shall hand over peaceful and vacant possession of the entire plot no.728 measuring an area of 0.0140 hectares to the Plaintiff by March 31, 2026.

12. However, the orders for payment of compensation of ₹ 10,00,000/- (Rupees ten lakhs) only, towards illegal encroachment and occupation by the Defendants and payment of compensation of ₹ 2,00,000/- (Rupees two lakhs) only, towards harassment and

mental torture meted out to the Plaintiff due to the act of the Defendants are set aside in totality.

13. Copy of this Judgment be transmitted to the Learned Trial Court forthwith along with its records.

14. Pending applications, if any, also stand disposed of.

(**Meenakshi Madan Rai**)
Judge
28-11-2025

Approved for reporting : **Yes**