



THE HIGH COURT OF SIKKIM: GANGTOK

(Civil Appellate Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

R.F.A. No. 06 of 2019

1. M/s Nauratanmal Ashok Kumar,
A Hindu Undivided Firm,
Represented by its Karta,
Shri Sampatlal Bucha,
M.G. Marg, Gangtok, East Sikkim.

2. Shri Sampatlal Bucha,
S/o Late Ishwar Chand Bucha,
M.G. Marg, Gangtok, East Sikkim
Pin No. 737101.

..... **Appellants**

Versus

1. Smt. Yangzila Bhutiani,
W/o Shri Phuchung Tshering Bhutia,
R/o Development Area,
Gangtok, East Sikkim,
(Through her Constituted Attorney/Son
Mr. Sonam Gyatso Nadi).

2. The Sub-Registrar of Documents,
O/o District Collectorate,
East Sikkim,
Gangtok

..... **Respondents**

**Appeal under Order XLI, Rule 1 and 2 of the Code of
Civil Procedure, 1908.**

*Memorandum of Appeal against the judgment dated 12.04.2019 and Decree
dated 12.04.2019 passed by the learned District Judge, Special Division-I
Sikkim at Gangtok in Title Suit (Declaratory) No. 01 of 2014.*

**RFA No 06 of 2019**M/s Nauratanmal Ashok Kumar & Anr. vs. Yangzila Bhutiani & Anr.**With****RFA No 12 of 2019**M/s Nauratanmal Ashok Kumar vs. Yangzila Bhutiani**Appearance:**

Mr. Sampatlal Bucha, Appellant No.2 in person for the Appellants.

Mr. Sudipto Mazumdar, Senior Advocate with Ms. Mingma Lhamu Sherpa, Advocate for the Respondent no.1.

Mr. S.K. Chettri, Government Advocate for the Respondent no.2.

With**R.F.A. No. 12 of 2019**

M/s Nauratanmal Ashok Kumar,
A Hindu Undivided Firm,
Represented by its Karta,
Shri Sampatlal Bucha,
M.G. Marg, Gangtok, East Sikkim
Pin No. 737101.

..... **Appellant****Versus**

Smt. Yangzila Bhutiani,
W/o Shri Phuchung Tshering Bhutia,
R/o Development Area,
Gangtok, East Sikkim,
Pin No. 737101.
(Through her Constituted Attorney/Son
Mr. Sonam Gyatso Nadi).

..... **Respondent**

**Appeal under Order XLI, Rule 1 and 2 of the Code of
Civil Procedure, 1908.**

Memorandum of Appeal against the Order dated 04.10.2019 and Decree dated 04.10.2019 passed by the learned District Judge Special Division-I, Sikkim at Gangtok in the application of plaintiff under Order XII Rule 6 read with Section 151 of the Code of Civil Procedure, 1908 in the Eviction Suit No. 18 of 2013 passed against the Defendant.



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With
RFA No 12 of 2019
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Appearance:

Mr. Sampatlal Bucha, Appellant in person for the Appellant.

Mr. Sudipto Mazumdar, Senior Advocate with Ms. Mingma Lhamu Sherpa, Advocate for the Respondent.

Date of Judgment : 05.05.2025

J U D G M E N T

Bhaskar Raj Pradhan, J.

1. This judgment shall dispose two regular first appeals i.e RFA No.06 of 2019 and RFA No 12 of 2019.

2. R.F.A. No. 06 of 2019 is an appeal against judgment and decree both dated 12.04.2019 passed by the learned District Judge, Special Division-I, Sikkim at Gangtok in Title Suit (Declaratory) No.1 of 2014 filed by the appellants i.e. M/s Nauratanmal Ashok Kumar and Sampatlal Bucha. The impugned judgment and decree both dated 12.04.2019 dismissed the counter claim filed by the appellants. The counter claim sought 17 prayers all revolving around the two sale deeds dated 03.09.1996 (first

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sale deed) and 10.02.1998 (second sale deed). The two sale deeds transferred the suit property in which the appellant was a tenant firstly, by Sakuntala Devi the first owner/landlady to Azey Bhutiani and thereafter, to Yangzila Bhutiani by Azey Bhutiani.

3. R.F.A. No. 12 of 2019 is an appeal against Order dated 04.10.2019 in an application filed by Yangzila Bhutiani under Order XII Rule 6 read with Section 151 of the Code of Civil Procedure, 1908 (CPC) praying for a decree on admission in Eviction Suit No.18 of 2013 filed by Yangzila Bhutiani against Nauratanmal Ashok Kumar. It was held that the appellant had admitted in the written statement that they had not paid the rent and as such was liable to be evicted under the Gangtok Rent Control and Eviction Act, 1956.

4. When the matter was taken up for hearing before this Court Sampatlal Bucha for the appellants submitted that the appellant's reply to I.A. No. 05 of 2022 filed by Yangzila Bhutiani seeking a direction upon the appellants to deposit all arrears of rent should be considered his submissions in both the appeals. A perusal of the reply filed by the appellants reflects that it is a repetition of the

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indiscriminate and unsubstantiated callous allegations made in the appeal earlier against this Court's Registry and the Sub-Registrar, East District compelling this Court to pass order dated 12.11.2020 in R.F.A. No. 06 of 2019. Although, when pointed out, Sampatlal Bucha, desired to rectify the use of inappropriate words and language in the appeal and did so in the appeal he has repeated it again in this reply. This is contumacious. The averments made therein are scandalous and does not deal with the issues relevant in the present appeals. These averments made in the reply are struck of.

R.F.A. No. 06 of 2019/COUNTER CLAIM/ TITLE SUIT (DECLARATORY) NO.01/2014

5. The necessary facts have been traced in the impugned judgment dated 12.04.2019 in paragraphs 1 and 2 passed by the learned District Judge, Special Division-I and is reproduced herein below:

“1. The case has a rather chequered history. The present suit is in essence the counter-claim filed by the present Plaintiffs as an offshoot to the eviction suit earlier filed by the Defendant No.1 Smt. Yangzila Bhutiani which was registered as Eviction Suit No.1 of 2010 (titled Mrs. Yangzila Bhutiani, Plaintiff v. M/s Nauratanmal Ashok Kumar & Shri Sampatlall Bucha, Defendants). The said suit later came to be

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withdrawn pursuant to the leave of the Hon'ble High Court of Sikkim granted in that regard vide its order dated 02.07.2012 in Civil Revision Petition (CRP) NO. 03 of 2012, Smt. Yangzila Bhutiani, Petitioner v. M/s Nauratanmal Ashok Kumar & Anr., Respondents. However, the counter-claim has continued to this date after being registered as a separate suit. In due course the Defendant No.2 came to be added as a party vide order dated 08.12.2016, at serial No.46, of this Court.

2. *Shorn of unnecessary details, the facts relevant for the determination of issues involved in the present suit are as follows. It pertains to a plot of land measuring 100 ft x 28 ft on which a three storied RCC building stands. It is situated at a prime location at Gangtok viz., M.G. Marg, Gangtok, East Sikkim (hereinafter referred to as "the suit properties" and /or "suit premises"). The present Plaintiffs are admittedly the tenants in a portion of the said building. They have been continuing as such since the said premises were owned by one Smt. Sakuntala Devi (since deceased), wife of late Banshilal Agarwalla. The suit properties were earlier sold by her (Sakuntala Devi) to one Smt. Azey Bhutiani (also deceased) vide a registered sale deed dated 03.09.1996 (hereinafter also referred to as "the first sale deed"). The said sale was unsuccessfully challenged by the present Plaintiffs (tenants) by approaching the concerned registering authorities (under Def. No.2) as well as by filing a Writ Petition before the Hon'ble High Court of Sikkim being Writ Petition No.109 of 1998, Sampatlal Bucha & Anr., Petitioners v. Union of India & Ors., Respondents, Late Sakuntala Devi and late Azey Bhutiani were the*

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Respondent Nos. 9 & 10 in the said Writ Petition. Vide its judgment dated 19.03.2001 the Hon'ble High Court was pleased to dismiss the said Writ Petition with costs. It was also held by the Hon'ble High Court that the Plaintiffs (tenants) had no locus to challenge the validity of the above sale deed. Subsequently, late Azey Bhutiani sold the suit premises to the present Defendant No.1 Smt. Yangzila Bhutiani vide another sale deed dated 10.02.1998 (exhibit D2/(G) (hereinafter also referred to as "the second sale deed"). That is how the present Defendant No.1 came to be involved in this prolonged litigation which has rather taken a slumberous course."

- 6.** Three issues were framed:-
- (i) Whether Yangzila Bhutiani's claim is based on collusive, void and fraudulent documents?
 - (ii) Whether the documents, if fraudulent, are liable to be impounded?
 - (iii) What relief is the appellants entitled to?
- 7.** Seventeen witnesses were examined by the appellants. Three witnesses were examined by Yangzila Bhutiani. The State-respondent did not adduce evidence.
- 8.** The counter claim raised challenges to the two sale deeds by which the suit property was transferred from Sakuntala Devi to Azey Bhutiani and thereafter from Azey Bhutiani to Yangzila Bhutiani. Appellant no.2 sought to

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allege collusion in making the two sale deeds and submitted that they were void and fraudulent.

9. Appellant no.2 filed his evidence on affidavit in which he alleged that Sakuntala Devi had not sold the suit property to Azey Bhutiani and therefore, the question of right and obligation of monthly tenancy passing to Azey Bhutiani and Yangzila Bhutiani did not arise. Rest of his evidence on affidavit is argumentative. He raised doubts about the signature of Yangzila Bhutiani. He stated that the two sale deeds, rectification deed (exhibit B) and the deed of release (exhibit C) were forged documents and made his submission as to why he thought that they were forged. He did not provide any details as to who had committed the forgery and in what manner. He made allegations and raised doubts on various officers, advocates involved in the process of registration of the sale deed. However, he did not make any specific allegation of how they were involved in the forgery. A perusal of the evidence on affidavit which ran into 60 paragraphs reflects that he had sought to raise doubts on every official act done during the process of registration of the two sale deeds including making unverified allegations against the officers. He raised doubts on the lawyers, the

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Registry of this Court, the District Court and the Registering Officer.

10. During cross examination the appellant no.2 admitted that Sakuntala Devi was the owner of the suit property and he was her tenant; that they had filed writ petition challenging the said transaction between Sakuntala Devi and Azey Bhutiani; that they had been served a notice by Yangzila Bhutiani intimating him about the purchase of the suit property by her and for payment of rents; that he had met Sakuntala Devi last in the year 1965 and although he had been sending rent to her through money order the same were being returned; that he had not inquired from Sakuntala Devi or her legal heirs as to whether she had disposed of her suit property; that he had never asked Azey Bhutiani or her legal heirs whether the second sale deed bears the signature of Yangzila Bhutiani; that he had not lodged any First Information Report (FIR) against this Court's Registry, the District Court, the learned District Judge, Special Division-I and the Sub-Registrar, East District alleging forgery; that he had no personal knowledge regarding the specific particulars of the forgery and suppression of material facts which he had alleged in the

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evidence on affidavit; that he had made an offer to Sakuntala Devi to purchase the suit property which was not accepted; that he had made various averments in his evidence on affidavit which were not pleaded in the counter claim; that he was occupying the suit property as a tenant; that he had not given any particulars of fraud and forgery in his counter claim; that he could not identify the signature of the persons who had attested the documents exhibited by him; that he had no knowledge as to who had prepared the deed of rectification (exhibit-B) and deed of release (exhibit-C); that he was still to confirm whether the information regarding forgery made by him is genuine or not; that he did not know whether there was a document of sale between Azey Bhutiani and Yangzila Bhutiani.

11. During cross examination by the State-respondent the appellant no.1 admitted that he could not say whether Sakuntala Devi had appeared before the State-respondent during the time of registration although the copies of the note sheet (exhibit-5 in nine pages) indicated that she was in fact present when she sold the property to Azey Bhutiani; that he had never seen the first sale deed executed by Sakuntala Devi.

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12. The appellants examined 16 other witnesses. Kessang Rinzing Lachungpa (P.W.2) the daughter of Ajey Bhutiani confirmed that her mother had purchased the suit property. She deposed that she had applied for mutation of the suit property on behalf of her mother and identified the application (exhibit-7). She identified the original sale deed dated 10.12.1998 (exhibit-D). She identified the signatures of her brothers therein. She also deposed that her mother had sold the suit property to Yanzila Bhutiani.

13. Ngudup Phuntshog (P.W.3) posted as the Assistant Registration Clerk at the District Collectorate examined the file concerning the registration proceedings with respect to the sale deed executed by Azey Bhutiani. He identified the note sheets and the officers who had made them including himself. He deposed that necessary mutation of the suit property was done in favour of Azey Bhutiani who had purchased it from Sakuntala Devi on the basis of sale deed dated 03.09.1996. He identified the signature of V.B. Pathak the then District Collector. He confirmed that he had gone to the residence of Azey Bhutiani and obtained her thumb impression on the second page of the sale deed dated

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10.02.1998. He identified the sale deed dated 10.02.1998 (exhibit-D2/G) and the thumb impression of Azey Bhutiani.

14. Mohan Kumar Rai (P.W.4)-the Registration Clerk in the District Collectorate examined the file pertaining to the sale transaction between Sakuntala Devi and Azey Bhutiani. He confirmed that the sale deed dated 03.09.1996 was duly registered after following the procedure. He identified his note sheets as well as signatures thereon during the process of registration. He confirmed that there had been a no forgery and tampering with the concerned noting or any other official records.

15. L.N. Pokhrel (P.W.5)-Head Surveyor in the District Collectorate, East also confirmed the execution of the sale deed dated 03.09.1996 between Sakuntala Devi and Azey Bhutiani.

16. Kinzang Choden (P.W.6)-Assistant Registrar, Judicial, High Court of Sikkim examined various documents i.e. exhibits-17, 18 and 19 and confirmed that pursuant to the order dated 17.03.2005 passed by this Court in Civil Revision No.01 of 2005 she had written a letter to the Sub-Registrar, East District requiring her to send the original sale deed registered in the year 1996 as directed by this

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Court. She identified exhibit-7 as the certified copy of the correspondence that was sent under her signature. She submitted that in compliance thereof the Sub-Registrar forwarded the concerned sale deed vide letter dated 19.03.2005. She also deposed that on 14.06.2005 the original sale deed was returned to the Sub-Registrar vide letter dated 14.06.2005 and the concerned sale deed had been duly placed before this Court.

17. Tej Bahadur Thapa (P.W.7)-Lawyer for Azey Bhutiani confirmed that he was a lawyer and acted as per her instructions before the District Collectorate in the mutation proceedings. He made it clear that he had nothing to do with the registration proceedings between Sakuntala Devi and Azey Bhutiani and had only filed an application for some certified copies under her instructions. He deposed that he had no part in any collusion or misdoings or other criminal activities as alleged with respect to the concerned documents or proceedings.

18. Sherap Shenga (P.W.8)-the then Sub-Divisional Magistrate, Gangtok examined the official records of the District Collectorate and deposed that sometime in 2001 a power of attorney instrument dated 10.02.2000 was

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submitted for registration executed by Azey Bhutiani constituting Phuchung Tshering Bhutia as her constituted attorney with respect to the suit property and that it was mutated later on. He also identified the concerned mutation order (exhibit-D1/A) under his signature. He identified the notings made by V.B. Pathak the then District Collector on the basis of which the necessary mutation was done in favour of Azey Bhutiani who has purchased the suit property from Sakuntala Devi vide sale deed dated 03.09.1996 registered on 04.10.1996. He also identified the various officers and their signatures concerning the registration of the sale deed dated 10.02.1998.

19. Thukchuk Lachungpa (P.W.9)-Ajey Bhutiani's son-in-law confirmed that Azey Bhutiani and Sakuntala Devi had executed the sale deed dated 03.09.1996 and that he had not purchased the suit property in the name of Azey Bhutiani. He confirmed that subsequently Azey Butianin had sold the suit property to Yangzila Bhutiani and that the money receipt (exhibit-D2/L) was given by Azey Bhutiani on receipt of the consideration amount for the sale of the suit property from Yangzila Bhutiani who had purchased the suit

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property. He identified the witness in the money receipt to be his wife Kessang Rinzing.

20. Karma Loday Bhutia (P.W.10)-Head Surveyor, in the District Collectorate, East examined the note sheets relating to sale deed executed between Azey Bhutiani and Yangzila Bhutiani. He confirmed that they had applied for mutation of the suit property and that after verification it had been processed by him. He confirmed that the entire process can safely be presumed to have been done properly. He also deposed that as these documents are kept in safe custody of the Sub-Divisional Magistrate it is not at all possible for anyone to resort to malpractice, tampering, forgery or change of documents.

21. A.K. Chettri (P.W.11)-Joint Secretary, Land Revenue Department also could not say if the sale deed between Sakuntala Devi and Azey Bhutiani was tampered with. He confirmed that there was no chance of any document being tampered in any way in the District Collectorate office, the registration department or the land revenue department as the security and preservation there is of high standards.

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22. Dawa Tashi Bhutia (P.W.12)-Dispatcher/Lower Divisional Clerk in the District Collectorate, East deposed that the original sale deed registered in the year 1996 was sent to this Court and returned and after that it had gone missing and although he was directed to search for it, it could not be traced.

23. V. B. Pathak (P.W.13)-District Collectorate, East examined the notings of the District Collectorate under his signature and confirmed that he had directed the mutation of land in favour of Azey Bhutiani on the basis of the sale deed. He identified the various note sheets concerning the sale deed executed between Sakuntala Devi and Azey Bhutiani. He also could not say if the sale deed dated 03.09.1996 between Sakuntala Devi and Azey Bhutiani (exhibit-20) was a forged document. He confirmed that all objections taken by appellant no.2 regarding the mutation of the suit property in favour of Azey Butiani was exhaustively heard, rejected and consequently mutation in favour of Azey Bhutiani allowed on 21.05.2001.

24. Urvashi Poudyal (P.W.14)-Sub-Divisional Magistrate/Sub-Registrar, East confirmed that the rectification deed (exhibit-B) and the deed of release (exhibit-

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C) were registered in the office of the Sub-Divisional Magistrate/Sub-Registrar. She identified her signatures on those deeds and deposed that it was registered only after she was fully convinced and satisfied that they were in proper order, legal and valid and all the procedural requirements were complete. She confirmed that there was no fraud, malpractice or any illegality committed in registering them.

25. Ganga Pradhan (P.W.15)-Sub-Divisional Magistrate/Sub-Registrar in the District Collectorate, East could also not depose anything that would substantiate the allegation of forgery or tampering made by the appellants.

26. Phuchung Tshering Bhutia (P.W.16)-husband of Yangzila Bhutiani confirmed that he had been appointed constituted attorney by Azey Bhutiani to file a suit on her behalf against the appellants and in fact he had done so. He confirmed that Sakuntala Devi had affixed her thumb impression in the rectification deed (exhibit-B) and the deed of release (exhibit-C) in his presence and in the presence of an Advocate in Kalimpong. He confirmed that the sale deed dated 10.02.1998 (exhibit-D2/G) executed between Azey Bhutiani and Yangzila Bhutiani was presented for

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registration. He identified the money receipt (exhibit-D2/L) issued by Azey Bhutiani acknowledging the receipt of the consideration amount of the suit property from Yangzila Bhutiani and that it was executed in his presence. He also explained the delay in the registration process. He denied that there was any malpractice, tampering or forgery with regard to the sale deed dated 10.02.1998. He confirmed that it was duly executed and property presented for registration.

27. Govind Mohan (P.W.17)-the District Collectorate, East District examined the notings from the case records and recollected that the sale deed document executed between Sakuntala Devi and Azey Bhutiani had been submitted for registration before the Sub-Registrar/District Collectorate on 03.09.1996. He also deposed that the appellants had made some objections to the registration mainly on the ground that there was no income tax clearance filed by Sakuntala Devi. When the matter was placed before him he examined it and ordered the reopening of the matter and its re-examination. Pursuant thereto fresh notices had been issued and after the parties appeared he had heard them and passed his order (exhibit-D2/V) overruling the appellants objections. He denied the

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suggestion made that during these proceedings the sale deed had not been placed before him. Although he confirmed that he had in fact recorded and examined the various objections regarding the registration process of the sale deed between Sakuntala Devi and Azey Bhutiani, he could not confirm the allegations of fraud, forgery, tampering and malpractice alleged by the appellants. He confirmed that he had followed the due process of law while dealing with the concerned files during his tenure.

28. These witnesses produced by the Appellants did not support or prove the allegation of forgery, collusion, tampering and fraud alleged by the appellants. In fact the appellants' witnesses confirmed that the two sale deeds were validly transacted and registered.

29. It is trite that in respect of relief claimed by the plaintiff he has to stand on his own legs by proving his case. The appellants assertions in the counter claim filed by them remained unproved in spite of production of 17 witnesses and exhibiting numerous documents. The counter claim therefore must fail on this ground alone as the appellants have failed to establish their case even by preponderance of probabilities.

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30. When Sakuntala Devi sold the suit property to Azey Bhutiani on 03.09.1996 through the registered first sale deed registered on 04.10.1996, the sale was challenged by the appellants in Writ Petition (C) No 109 of 1998 before this Court. In the writ petition, amongst the 11 respondents arrayed, Sakuntala Devi and Azey Bhutiani were respondent nos. 09 and 10 therein. The appellants sought quashing of the first sale deed on the ground that it was void, illegal and non-est; that it was registered in violation of the provisions of laws enforced in Sikkim. A Division Bench of this Court disposed of the writ petition by dismissing it with cost payable to the respondents therein. It was found that the appellants were tenants under Sakuntala Devi. The Division Bench of this Court recorded the submissions made in the writ petition by the appellants with regard to the grounds for declaring the sale deed as void, invalid, inoperative and illegal and disposed the writ petition holding:

“4. It would thus appear that the petitioners wanted to purchase the property but the land lady did not sell the same to them. Therefore, they want the cancellation of the sale deed purported to have been executed by respondent no.9 in favour of respondent no.10. The remedy of writ is not meant in respect of disputes of title where the parties seek to

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litigate under ordinary civil law. Remedy of writ is available against a public authority or anyone performing public duty for the enforcement of a fundamental right or performance of a constitutional or statutory duty. We are of the view that, in the instant case, the dispute before the Court is not appropriate to the writ jurisdiction and, therefore, there is no question of entering into disputed questions of fact.

5. *Besides, the petitioners have no locus standi to bring the petition as they are the tenants. A tenant has no locus to challenge the validity of a sale deed which his landlords execute in favour of another person. On the execution of the sale deed only the landlord changes and not the rights and obligations under the lease. As such, we do not see any merit in the submission made on behalf of the petitioners that they have locus standi to raise the dispute about the validity of the sale deed as has been done in this case.”*

31. The appellants have sought to challenge the second sale deed between Azey Bhutiani and Yangzila Bhutiani on identical grounds as they have challenged the first sale deed once again raising the same issues as raised in the writ petition. The appellants did not provide any details or particulars about the alleged forgery, collusion, fraud and tampering allegation made once again.

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32. The appellants have therefore not been able to question the derivative title of Azey Bhutiani and Yangzila Bhutiani even to the limited extent permissible under Section 116 of the Indian Evidence Act, 1872.

33. In *Tika Khawas vs. Pashupati Nath*¹ this Court held that the expression 'landlord' as used in the Gangtok Rent Control and Eviction Act, 1956 is to be construed in its ordinary sense and there is no warrant for the contention that 'landlord' means 'owner'. Yangzila Bhutiani, quite evidently was the landlady of the suit property in which the appellants were tenants.

34. The appellants who were admittedly tenants were seeking to challenge ownership of Yangzila Bhutiani and Azey Bhutiani in the counter claim filed by them to defend the suit for eviction.

35. It is therefore, held that the appellants have failed in their attempt to establish that Yangzila Bhutiani's claim was based on collusive, void and fraudulent documents. It is also held that as these documents including the two sale deeds, the rectification deed (exhibit-B) and the deed of

¹ AIR 1986 Sikkim 6

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release (exhibit-C) have not been proved by the appellants to have been fraudulent they are not liable to be impounded. In these circumstances, the appellants are held not entitled to any of the reliefs prayed for in the counter claim. The three issues framed by the learned District Judge are accordingly decided as above.

36. Thus, this Court is of the firm view that the impugned judgment dated 12.04.2019 dismissing Title Suit No.01 of 2014 i.e. the counter claim filed by the appellants requires no interference. The decree dated 12.04.2019 is upheld.

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37. Yangzila Bhutiani-the respondent and the plaintiff in Eviction Suit No. 18 of 2013 filed the suit for eviction against the M/s Nauratanmal Ashok Kumar-the appellant and the defendant. She also prayed for a decree of arrears of rent amounting to Rs.54,800/- from December, 2001 till May 2013 as well as mesne profit @ Rs.400/- per month from December, 2002 till recovery of possession. She specifically pleaded that the appellant in spite of receipt of letter dated 03.01.2002 (exhibit-O) and subsequent letter dated 06.04.2002 (exhibit-P) refused to pay the rents of the

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suit premises to her. Yangzila Bhutiani pleaded that the appellant was liable to pay arrears of rent from the month of December, 2001 which it had neglected to pay in spite of repeated request and demands. She specifically pleaded that the appellant was a defaulter under the Gangtok Rent Control and Eviction Act of 1956.

38. The appellant filed a written statement against the suit. In the written statement the appellant specifically pleaded that it had not made any payment to Yangzila Bhutiani as she was not the owner of the suit premises. The appellant further pleaded that Yangzila Bhutiani had never acquired any title to the suit property and consequently she had not become the land lady of the appellant and therefore, not entitled to any rent.

39. During the pendency of the title suit the Yangzila Bhutiani filed an application under Order XII Rule 6 read with Section 151 of the CPC praying for a decree on admission. Order XII Rule 6 read with Section 151 of the CPC permits the court, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, to make such order or give such judgment as it may think fit

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having regard to such admission when admissions of fact have been made either in the pleading or otherwise, whether orally or in writing. The learned District Judge allowed this application filed by Yangzila Bhutiani holding that the appellant had in fact admitted in the written statement that they had not paid the rent and as such they were liable to be evicted under the Gangtok Rent Control and Eviction Act, 1956.

40. Section 4 of the Gangtok Rent Control and Eviction Act, 1956 permits the landlord to evict the tenant “*when the rent in arrears amount to four months or more*”. Yangzila Bhutiani had clearly pleaded that the appellants who were the tenants were in arrears of rent from December 2001. Admittedly, the appellants have not paid rent nor deposited the same in court till date. The non payment of rent was for more than four months. Thus, Yangzila Bhutiani is entitled to the reliefs she seeks in the eviction suit as she was the landlady. The eviction decree passed by the learned District Judge is confirmed. Yangzila Bhutiani is entitled to the arrears of rent from December, 2001 till date of vacation of the suit property by the appellants.

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41. Having examined the pleadings exchanged between the parties and the clear and unequivocal admission made by the appellant in the written statement, this Court is of the firm view that the impugned Order dated 04.10.2019 cannot be faulted. It is accordingly upheld. It is therefore ordered that the appellant shall vacate and handover the suit property within a period of three months. It is further ordered that the appellant shall pay the rents payable from December, 2001 till the vacation of the suit property to Yangzila Bhutiani within the said periods of three months.

42. Consequently, both appeals i.e. Regular First Appeal No. 06 of 2019 and Regular First Appeal No. 12 of 2019 are dismissed and its respective interim applications disposed.

43. The respondents are also entitled to the cost incurred by them which shall be borne and paid by the appellants for both the appeals.

**(Bhaskar Raj Pradhan)
Judge**

Approved for reporting: **Yes**
Internet: **Yes**

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