

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

DATED : 12th September, 2025

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

RFA No.07 of 2024

Appellant : Som Kumar Subba

versus

Respondents : State of Sikkim and Others

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

Appearance

Mr. N. Rai, Senior Advocate (Legal Aid Counsel) with Ms. Tara Devi Chettri, Advocate for the Appellant.

Mr. S. K. Chettri, Government Advocate for the Respondents No.1 to 5.

None present for Respondents No.6A , 6B, 9, 10 and 11.

Mr. Umesh Ranpal, Advocate (Legal Aid Counsel) for the Respondent No.7.

Mr. Meg Nath Dhungel, Advocate (Legal Aid Counsel) for the Respondent No.8.

ORDER (ORAL)

Meenakshi Madan Rai, J.

1. By the impugned Order dated 30-08-2023, the Court of the Principal District Judge, Gangtok, Sikkim, in Title Suit No.10 of 2018 (*Som Kumar Subba vs. The Secretary, Urban Development Department, Government of Sikkim and Others*), non-suited the Plaintiff (Appellant herein), on a Petition filed by the Defendant No.1 (Respondent No.1 herein) under Order VII Rule 11(a) and 11(d) of the Code of Civil Procedure, 1908 (hereinafter, the "CPC"). In the impugned Order, the Trial Court went on to discuss the facts as disclosed in the Plaint and observed *inter alia* that though the Appellant would claim that the properties of Namphok (sic.,

Nampong) Block, under Lingdok Circle, fell in the share of his father, there is no Partition Deed on record which would support his claim. That, the Complaint consciously did not mention which properties fell into the share of the other three sons of Late Chandra Man Limboo and if there were some more properties at Phodong, those properties were not detailed. The Complaint also mentioned that the Appellant's father had sold some lands, but neither the vendee nor the time of such transaction was known. The Complaint was silent as to why the properties were not yet mutated or recorded in the name of the Appellant or his five siblings. As the Appellant is not the title holder or in possession of the said properties, the Court could not deal with his vague claims that since plot nos. 329 and 330 were once registered in the name of his grandfather, he would have a right (after more than 60 years) to agitate and question the manner in which it was transferred to the State Government. It was thus concluded that the Complaint did not disclose a cause of action to proceed further. Under Order VII Rule 11(d) of the CPC; Whether the Suit is barred by any Statute, the Trial Court observed that in the words of the Appellant himself at Paragraph 26 "*..... the cause of action first arose on July 2012 when*". If this be so, then, according to Article 58 of the Limitation Act, 1963 (hereinafter, the "Limitation Act"), the Complaint ought to have been filed within three years, i.e., within July, 2015, but it was filed only in August, 2018, i.e., six years after the right to sue first accrued. The Trial Court went on to discuss the decision of the Supreme Court in ***Khatri Hotels Private Limited and Another*** vs. ***Union of India and Another***¹ which discussed the provisions of Article 58 of the Limitation Act. The

¹ (2011) 9 SCC 126

Court also was of the view that the claim of the Appellant that Articles 64 and 65 of the Limitation Act would apply in this case could not be countenanced, since these provisions dealt with adverse possession. The Court opined that the claim of the Appellant against the State Government was an attempt to disturb the peaceful possession of the Defendants No.6A, 6B, 7 and 8 (Respondents No.6A, 6B, 7 and 8 herein) and hence, held that the Suit is barred both for lack of cause of action and by the law of limitation.

2. Learned Senior Counsel for the Appellant while assailing the observations made by the Trial Court, advanced the argument that, the Appellant has indicated adequate cause of action for the reason that the property being plot nos.329, 330 and 331, fell in his partition share from 1998, of which he has been in possession. That, the Respondent No.1 (Secretary, Urban Development Department) however has recorded plot nos. 330, 329 and 331 in the name of the Government in 1979-80, without any document indicating the mode of transfer of the said properties to the Respondent No.1. The office notings of the District Collector (Respondent No.3 herein), reveal that, a joint inspection and verification of the disputed land between the Appellant and Respondent No.1 (Secretary, Urban Development Department) was conducted on 02-05-2015. After the joint verification, it was seen that as per the 1950-52 survey records, the land in question was recorded in the name of Chandra Bahadur Subba, son of Farasman Subba (Limboo), bearing plot nos.330 and 329, measuring a total area of 0.51 acres. Pointing to Misc. Case No.101/DM/E, Learned Senior Counsel urged that the Sub-Divisional Magistrate

(Respondent No.4 herein), East, Gangtok, vide Order dated 29-09-2016, clarified therein that the plot nos. 330 and 329 claimed by the Complainant/Appellant and mentioned in the Schedule to the Plaint were divided into six plots, i.e., 328, 329, 330, 331, 290/1828 and 332/1829. That, when the plots were initially numbered as 330 and 329 it measured a total area of 0.51 acres which was divided into smaller areas as detailed in the Order of Respondent No.4 (Sub-Divisional Magistrate) (*supra*). The Order further reveals that, the Respondent No.1 (Secretary, Urban Development Department) has stated that, plot nos.330 and 329 were recorded in the name of the Government as per the 1979-80 survey records and pillars constructed as boundary, however, admittedly, no records with regard to the acquisition of the said landed property could be traced out. Learned Senior Counsel while hinging on this point, adverted to the Order of the Respondent No.4 (Sub-Divisional Magistrate), and further canvassed that there are no records of any compensation paid to the Appellant's ancestors, i.e., his father or grandfather in lieu of the lands. In such circumstances, the Appellant cannot be denied of his property without the Government having adhered to the due process of law. On this point, reliance was placed on ***Vidya Devi* vs. *State of Himachal Pradesh and Others***². That, as the Appellant has been wrongfully dispossessed of certain portions of his lands, where allotments were made without his knowledge, he has to be granted a fair opportunity of proving his case.

(i) On the point of limitation, it was argued that the Court below erred in only considering Article 58 of the Limitation Act and failed to take into consideration that, the Suit is not only for

² (2020) 2 SCC 569

declaration but also for recovery of possession and as per Article 64 of the Limitation Act, the Appellant was well within the period of limitation as he came to learn only in the year 2015, that, the lands in the name of his late grandfather was mutated in the name of Sikkim *Sarkar* after making enquiries, consequent upon the Amin from the Office of the Respondent No.3 coming to his house in the year 2012 and informing him that certain portions from Plot no.329 had been allotted by the Respondent No.2 (Town Planner, Urban Development Department), to some private persons. The Plaint was filed well within the period of limitation, in the circumstances the impugned Order be set aside and the Plaintiff be permitted to prove his case in trial. To buttress his submissions, succour was drawn from ***Sarad Ghaley vs. Chewang Lhamu Bhutia and Others***³, ***Dhan Kumari Pradhan vs. Bigyan Pradhan and Others***⁴ and ***Smt. Shanti Subba and Others vs. Shri Jashang Subba***⁵, wherein the principles pertaining to Order VII Rule 11 of the CPC have been elucidated by this Court. Reliance was also placed on the decision of the Supreme Court in, ***D. B. Basnett (Dead), through Legal Representatives vs. Collector, East District, Gangtok, Sikkim and Another***⁶.

3. *Per contra*, Learned Government Advocate while reiterating the arguments as agitated before the Trial Court, that, there is no cause of action revealed by the Appellant, sought to rely on ***Dahiben vs. Arvinbhai Kalyanji Bhanusali (Gajra) Dead through Legal Representatives and Others***⁷ which lays down the parameters of the powers of the Court under Order VII Rule 11 of the CPC. While on the point of limitation, it was argued that the Appellant himself has

³ 2024 SCC OnLine Sikk 10

⁴ 2024 SCC OnLine Sikk 34

⁵ SLR (2020) Sikkim 482

⁶ (2020) 4 SCC 572

⁷ (2020) 7 SCC 366

admitted that from July 2012, he had knowledge of his dispossession after the Amin informed him of the site verification. The Suit having been filed in 2018, Article 58 of the Limitation Act would come into play, which prescribes only three years as limitation. That, as correctly held by the Trial Court, Articles 64 and 65 of the Limitation Act do not apply to the facts and circumstances of the instant case, resultant no interference is warranted in the impugned Order.

4. Learned Counsel for the Respondent No.7 while endorsing the arguments advanced by the Learned Government Advocate, also drew the attention of this Court to Paragraph 8 of the Complaint to establish that the period of limitation would begin from July, 2012. As the Appellant failed to prove that he was dispossessed of the suit properties, or as to when he was in possession of the property, Article 64 of the Limitation Act would not be relevant for the present purposes. Strength was drawn on this count on the decision of ***Khatri Hotels Private Limited (supra)***. It was contended that no error emanates in the impugned Order.

5. Learned Counsel for the Respondent No.8 also endorsed the submissions advanced by Learned Government Advocate and Learned Counsel for the Respondent No.7 and urged that as correctly canvassed by Learned Counsel (*supra*) the Complaint not only failed to disclose the cause of action but was also barred by limitation, there was thus no error in non-suited of the Appellant.

6. The rival contentions of the parties were heard at length, averments in the Complaint and the documents annexed thereto perused.

7. The Suit of the Appellant before the Trial Court was for Declaration, Recovery of Possession, Injunction and other Consequential Reliefs. The Suit was valued at ₹ 36,02,000/- (Rupees thirty six lakhs and two thousand) only.

8. A brief summation of the Appellant's case is that, his grandfather, late Chandra Bahadur Limboo, owned properties in Phodong, North Sikkim and Namphong, Lingdok, East Sikkim. He partitioned his properties amongst his four sons sometime in the year 1958-59. The father of the Appellant, Late Panchaman Subba, inherited the properties from his father Chandra Bahadur Limboo. On the demise of Panchaman Subba in 1998, the Appellant and his brothers inherited the properties of which Plot Nos.329 and 330 measuring 0.33 and 0.18 acres in the survey operation of 1950-52 fell in the share of the Appellant. The said two plots were divided into six plots and renumbered as Plot Nos.328, 329, 330, 331, 290/1828 and 332/1829. The Appellant claims that in the survey operation of 1979-80, these plots of land came to be illegally recorded in the name of Sikkim *Sarkar*, which fact he came to learn only in the year 2015. Earlier, in July, 2012, an Amin from the Office of the Respondent No.3 (District Collector) came to the house of the Appellant and informed him that the Respondent No.1 (Secretary, Urban Development Department) had allotted a site, measuring 0.0380 hectare, to the Police Department (Respondent No.5 herein), from Plot No.329 and he had accordingly been deputed for spot verification. The Appellant on such information, initiated enquiries into the acquisition and allotment and complained to the office of the Respondent No.3 (District Collector) on 02-08-2012 and 06-08-2012, requiring the Government to refrain from

constructing anything on the disputed land. He informed them that, the Government could not have acquired the lands without his or his father's knowledge and consent. He also filed an application on 06-08-2012, before the Respondent No.1 (Secretary, Urban Development Department), whereupon he received a reply on 03-09-2012. The Respondent No.1 (Secretary, Urban Development Department) in correspondence had enclosed a map which indicated clearly the land holdings of the Appellant's grandfather and that the Government was proposing to make a block of houses illegally on the land of the Appellant. The Appellant was then called by the Revenue Officer of the Respondent No.3 (District Collector) department, for clarification regarding the land that had been proposed to be allotted to Respondent No.5 (Police Department), on 16-08-2012 and 23-11-2012. The Revenue Officer directed the Respondent No.1 (Secretary, Urban Development Department) to produce necessary papers to indicate the acquisition of the Appellant's land, which they failed to do. The Revenue Officer then referred the case to the Respondent No.4 (Sub-Divisional Magistrate), who registered the case and summoned the Respondent No.1 (Secretary, Urban Development Department) to enquire whether any compensation was paid to the Appellant or the Appellant's grandfather. No records on this facet were found. In the year 2015, the Appellant then came to learn that the land in the name of his late grandfather was mutated in the name of Sikkim *Sarkar*. As construction was going on the disputed land, the Respondent No.4 (Sub-Divisional Magistrate), vide Order dated 05-11-2015, directed the Respondent No.2 (Town Planner, Urban Development Department) to keep the construction works in

abeyance. The case was reopened in the year 2016 and the inspection of the land fixed on 21-04-2016, however the land in dispute could not be identified and the Appellant was given time to file documents, to substantiate his claim. On 19-01-2017, the Appellant filed a Petition along with documents, to substantiate his claim over the disputed property. On 13-02-2017, the Respondent No.4 (Sub-Divisional Magistrate), pronounced the Order, stating that, the disputed land was recorded in the name of the Appellant's grandfather and the Respondent No.1 (Secretary, Urban Development Department) was unable to furnish documents pertaining to the acquisition of the property and hence the Appellant was advised to approach the higher forum for better adjudication of the matter. Despite such orders the Respondent No.1 continued constructing the building and allotment was made to the three private Respondents, who the Appellant alleges are involved in the construction for the Respondent No.1.

9. Before embarking on a consideration of the impugned Order, it is essential to put forth the principles governing an application under Order VII Rule 11 of the CPC. In ***Dahiben (supra)***, while discussing the parameters of Order VII Rule 11 of the CPC, it was expounded *inter alia* that, remedy under Order VII Rule 11 is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision. The provision of Order VII Rule 11 is mandatory in nature and the Plea is to be rejected if any of the grounds specified in clauses (a) to (e) are

made out. In other words, if the Court finds that the Complaint does not disclose a cause of action, or that the Suit is barred by any law, the Court has no option, but to reject the Complaint. The Judgment however cautions that, the power conferred on the Court to terminate a civil action is a drastic one, and the conditions enumerated in Order VII Rule 11 are required to be strictly adhered to. That, while determining the aforementioned circumstances, it is not permissible to cull out a sentence or a passage, and to read it in isolation. The Complaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the Complaint prima facie show a cause of action, the Court cannot embark upon an enquiry as to whether the allegations are true or not. It is also worth noticing that while dealing with an application under Order VII Rule 11, only the averments made in the Complaint and the documents produced therewith are required to be considered. The defense of the opposing parties or pleas taken by the defense in their written statement cannot be looked into. The Supreme Court has stated as much in ***Saleem Bhai and Others*** vs. ***State of Maharashtra and Others***⁸ where while considering Order VII Rule 11, emphasized that, a perusal of the provision makes it clear that, the relevant facts which need to be looked into for deciding an application thereunder, are the averments in the Complaint. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7, the averments in the Complaint are germane; the pleas taken by the Defendant in the written statement would be wholly irrelevant at that stage.

⁸ (2003) 1 SCC 1232

(i) In ***Sopan Sukhdeo Sable and Others*** vs. ***Assistant Charity Commissioner and Others***⁹, the Supreme Court on the same aspect held as follows;

"15. There cannot be any compartmentalisation, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction or words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities."

(ii) The principles for determining an application under Order VII Rule 11 having been extracted (*supra*), require no further elucidation. It is essential to Notice in the first instance that the Trial Court was of the view that (i) there was no cause of action for the reason that the Appellant had failed to file any Partition Deed with the Plaint (ii) consciously did not mention which properties fell into the share of other three sons of late Chandra Bahadur Subba (iii) whether there was some more properties at Phodong if so which were the properties (iv) the Appellant's father sold some land but it is not known to whom and when (v) the Appellant also did not disclose as to why the properties have not yet been recorded in the name of the Appellant or his other five siblings.

(iii) Appositely, at this juncture, it is relevant to consider that the entire claim of the Appellant is pivoting around Plot No.329 and 330, as per the 1950-52 survey records, which have been renumbered, as detailed hereinabove. It is his specific claim that in

⁹ (2004) 3 SCC 137

1979-80 the lands earlier recorded in the name of his grandfather was altered to that of Respondent No.1 (Secretary, Urban Development Department), for which transactional documents were not traceable in the official records. The Order of the Respondent No.4, the Sub-Divisional Magistrate dated 13-02-2017 records as much and supports the Appellant's contention.

(iv) The *parcha khatiyan* by which the disputed landed properties are recorded in the name of Sikkim Sarkar, in the *kafiyat* column reveal that, the Appellant is in possession of certain properties therein besides which it is clear from the averments at Paragraph 8 of the Plaint are as follows;

"8. That, sometime during July 2012, the Amin from the office of the District Collector came to the house of the plaintiff and told him that the Urban Development and Housing Department had allotted a site measuring 0.380 hectares to the Police Department from Plot No.329 and he had come for spot verification of the same."

(v) The averments in this Paragraph itself should have been a red flag for the Trial Court, to consider that, as the Respondent No.1 (Secretary, Urban Development Department) claims to be the owner of Plot No.329 since 1979-80 and in possession of the property, the Appellant would have no *locus standi* in that context. Consequently, there was no reason for the Amin to have informed him of the spot verification by going to his house no less.

(vi) The second point that the Trial Court failed to consider is that there are no papers pertaining to the acquisition of the property by the Respondent No.1 (Secretary, Urban Development Department) either from Late Chandra Bahadur Limboo or Late Farasman Limboo, even the father of the Appellant as recorded by the Order of the Sub-Divisional Magistrate, in Misc. Case

No.101/DM/E, dated 13-02-2017 (Document No.16). In this context, the Trial Court ought to have borne in mind that the Supreme Court in a plethora of Judgments has held that documents of title do not give ownership unless the transactional document/document of conveyance is shown i.e., how the land was transferred from the previous owner to the owner who claims title and possession.

(vii) In *Ramesh Chand (dead) through Lrs. vs. Suresh Chand and Another*¹⁰, it has been clearly observed that in a sale of immovable property the value of which exceeded ₹ 100/-, the three requirements of law are that the transfer of property of sale must take place through a validly executed sale deed, i.e., it must be in writing, properly attested and registered. Unless, the sale deed is in writing, attested and registered, the transaction cannot be construed as sale, or in other words, the property will not be transferred.

(viii) The Supreme Court in *Suraj Lamp and Industries Private Limited (2) through Director vs. State of Haryana and Another*¹¹, was considering whether the transfer of immovable property can be executed by General Power of Attorney (GPA) sales or Sale Agreements (SA). While holding in the negative it was elucidated that immovable property can be legally and lawfully transferred/conveyed only by a Registered Deed of Conveyance.

(ix) The third point that was not considered is that, the Government for its part, being a welfare State, failed to furnish documents to even indicate that compensation had been paid by the Government to the Appellant or his father and grandfather on the

¹⁰ 2025 SCC OnLine 1879

¹¹ (2012) 1 SCC 656

acquisition of the property in dispute. In ***Vidya Devi*** (*supra*) relied on by Learned Senior Counsel for the Appellant, the Supreme Court found that, the Appellant was forcibly expropriated of her property in 1967, when the right to property was a fundamental right guaranteed by Article 31 in Part III of the Constitution. It was observed that Article 31 guaranteed the right to private property, which could not be deprived without due process of law and upon just and fair compensation. It was further held as follows;

"12.2. The right to property ceased to be a fundamental right by the Constitution (Forty-Fourth Amendment) Act, 1978, however, it continued to be a human right [*Tukaram Kana Joshi v. MIDC*, (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491] in a welfare State, and a constitutional right under Article 300-A of the Constitution. Article 300-A provides that no person shall be deprived of his property save by authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. The obligation to pay compensation, though not expressly included in Article 300-A, can be inferred in that Article. [*K.T. Plantation (P) Ltd. v. State of Karnataka*, (2011) 9 SCC 1 : (2011) 4 SCC (Civ) 414].

12.3. To forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the constitutional right under Article 300-A of the Constitution. Reliance is placed on the judgment in *Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai* (2005) 7 SCC 627, wherein this Court held that: (SCC p. 634, para 6)

"6. ... Having regard to the provisions contained in Article 300-A of the Constitution, the State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and *reasonable compensation therefor must be paid.*"
(emphasis supplied)"

(x) The Learned Trial Court would do well to recapitulate that the Supreme Court in ***D. B. Basnett*** (*supra*), was dealing with the case of the Appellant who claimed that the Agriculture Department of the Government of Sikkim, Respondent 2 sought to acquire, in the year 1980, land measuring 8.36 acres, located in Dundung Block, Sang in East Sikkim for the purpose of building the Progeny

Orchard Regional Centre. The land was recorded in two names — 1.29 acres in the name of the Maharaja of Sikkim and 7.07 acres in the name of Man Bahadur Basnett, father of the original Appellant. The latter land was the subject-matter of dispute in the said proceedings. The Supreme Court held that the Respondents had failed to establish as follows;

"19. The result of the aforesaid would be that the respondents have failed to establish that they had acquired the land in accordance with law and paid due compensation. The appellant would, thus, be entitled to the possession of the land as also damages for illegal use and occupation of the same by the respondents, at least, for a period of three (3) years prior to the notice having been served upon them. We are strengthened in our observations on account of the judgment of this Court in *LAO v. M. Ramakrishna Reddy* [*LAO v. M. Ramakrishna Reddy*, (2011) 11 SCC 648 : (2011) 4 SCC (Civ) 633] , wherein it was held that the owner can be entitled to damages for wrongful use and possession of land in respect of which no notification is issued under Section 4 of the Land Acquisition Act, from the date of possession till the date such notification is finally published."

(xi) Thus, from the case of ***Vidya Devi*** (*supra*) and ***D. B. Basnett*** (*supra*), it is apparent that the mode of acquisition of private property, the land of the Appellant herein, has to be established. The Appellant could not have been non-suited only for not having a Partition Deed, or for not indicating which properties pertained to his uncles or for lack of details of property situate at some other place, which is not even the subject matter of the dispute, or the other circumstances mentioned hereinabove. In my considered view, these are extraneous circumstances to the case of the Appellant, who only lays claim to Plot Nos.329 and 330 as per the survey records of 1950-52.

10. On the question of limitation the Trial Court has non-suited the Appellant on the ground that the cause of action had arisen in July, 2012 and the Plaint ought to have been filed within

2015 in terms of Article 58 of the Limitation Act. This is clearly an erroneous observation for the reason that the suit of the Appellant is not merely for declaration, the title of the Complaint reads as follows;

"SUIT FOR DECLARATION, RECOVERY OF POSSESSION, INJUNCTION AND OTHER CONSEQUENTIAL RELIEFS."

(i) Thus, concluding that Article 58 of the Limitation Act was only applicable, is an erroneous observation of the Trial Court which is not tenable. The Trial Court in the impugned Order also held that "*..... In this regard, the claim of the plaintiff that Article 64 and 65 of the Limitation Act, 1963 would apply in this case cannot be countenanced since these provisions deal with adverse possession.....*" This is incorrect as it is only Article 65 of the Limitation Act that deals with adverse possession not Article 64 of the Limitation Act. Article 64 provides as follows;

Description of suit	Period of Limitation	Time from which period begins to run
64. For possession of immovable property based on previous possession and not on title, when the plaintiff while in possession of the property has been dispossessed."	Twelve years	The date of dispossession.

(ii) In addition to the above circumstance, the Trial Court also ought to have considered that the Suit having been valued at ₹ 36,02,000/- (Rupees thirty six lakhs and two thousand) only, could therefore not only be for declaration of title. A suit for declaration as held unequivocally by this High Court in **Shyam Sunder Rasaily and Others vs. Madan Mohan Rasaily and Others**¹² would be valued only at ₹ 100/- (Rupees one hundred) only.

(iii) In my considered view, admittedly the Appellant does

¹² AIR 1994 Sikkim 14

not have the title deeds to the documents but it is not in dispute that he was in possession of the property and claims to be still in possession of the portions of the property, which he claims to be cultivating but he was dispossessed from certain portions and came to learn of such dispossession sometime in the year 2015. Even assuming that knowledge accrued to the Plaintiff from 2012, the Suit having been filed in the year 2018, it was well within the period of limitation prescribed under Article 64 of the Limitation Act (*supra*). Besides limitation is a mixed question of fact and law and sufficient opportunity ought to be afforded to the litigant who is genuinely aggrieved and approaches the Court to resolve his dispute against the might of the State-Respondents.

(iv) Now, the Appellant having made allegations of illegal deprivation of his lands, his claims which are based on factual aspects, including his possession of the property are to be tested on the anvil of evidence that he is required to produce. In ***Tukaram Kana Joshi and Others through Power of Attorney Holder vs. Maharashtra Industrial Development Corporation and Others***¹³ the Supreme Court while dealing with a somewhat similar situation held as follows;

"11. There are authorities which state that delay and laches extinguish the right to put forth a claim. Most of these authorities pertain to service jurisprudence, grant of compensation for a wrong done to them decades ago, recovery of statutory dues, claim for educational facilities and other categories of similar cases, etc. Though, it is true that there are a few authorities that lay down that delay and laches debar a citizen from seeking remedy, even if his fundamental right has been violated, under Article 32 or 226 of the Constitution, the case at hand deals with a different scenario altogether. **The functionaries of the State took over possession of the land belonging to the appellants without any sanction of law. The appellants had asked repeatedly for grant of the benefit of compensation. The State must either comply with the procedure laid down for acquisition, or requisition, or any other permissible statutory mode. There is a**

¹³ (2013) 1 SCC 353

distinction, a true and concrete distinction, between the principle of "eminent domain" and "police power" of the State. Under certain circumstances, the police power of the State may be used temporarily, to take possession of property but the present case clearly shows that neither of the said powers have been exercised. A question then arises with respect to the authority or power under which the State entered upon the land. It is evident that the act of the State amounts to encroachment, in exercise of "absolute power" which in common parlance is also called abuse of power or use of muscle power. To further clarify this position, it must be noted that the authorities have treated the landowner as a "subject" of medieval India, but not as a "citizen" under our Constitution."

[emphasis supplied]

(v) The reliance on *Khatri Hotels* (*supra*) by all the Respondents is of no relevance as in that matter the Supreme Court discouraged the abuse of the process of Court and while explaining Article 58 of the Limitation Act held as follows;

"30. While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word "first" has been used between the words "sue" and "accrued". This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued."

(vi) In light of the foregoing discussions and the reasons elucidated, the impugned Order deserves to be and is set aside.

11. The Appeal is allowed.

12. The Suit be restored to its original number in the Register of Civil Suits of the Court of the Principal District Judge, Gangtok, Sikkim and determined in accordance with law.

13. The discussions and reasons for arriving at the conclusion hereinabove are not to be construed as opinions on the merits of the matter, which are to be gauged on the bedrock of evidence at the time of trial.

14. Parties to bear their own costs.

Som Kumar Subba vs. State of Sikkim and Others

15. Copy of this Order be transmitted to the Trial Court forthwith along with its records.

(**Meenakshi Madan Rai**)
Judge
12-09-2025

Approved for reporting : **Yes**