

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 2020

*Mr. Karma Pintso Bhutia,
S/o Late Ong Tshering Bhutia,
R/o Upper M.G. Marg Municipal Ward,
P.O. & P.S. Gangtok,
East Sikkim.

..... Appellant

*Substituted vide order dated: 21.09.2021.

versus

1. Shri Naresh Subba,
S/o Shri A.P. Subba,
R/o House No. T 63(A) & P 87 (B),
Sichey,
P.O. & P.S. Gangtok,
East Sikkim – 737101.
2. Master Subham Subba,
S/o Shri Naresh Subba,
R/o House No. T 63(A) & P 87 (B),
Sichey,
P.O. & P.S. Gangtok,
East Sikkim – 737101.
3. Shri Thinlay Karma Peter Topden,
S/o Late Karma Topden @Karma Tenzing Topden,
R/o Martam House, Bhanupath,
P.O. & P.S. Gangtok,
East Sikkim – 737101.

..... Respondents

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

Appearance:

Mr. Sudipto Majumdar, Senior Advocate with Mr. Basant Kharka, Advocate for the appellant.

Mr. A. Moulik, Senior Advocate with Mr. Simeon Subba and Ms Adeshna Subba, Advocate for the respondents no. 1 and 2.

None for respondent no.3.

and

R.F.A. No. 07 of 2020

M/s Balchand Udairam,
Shri Jiwan Agarwal,
S/o Late Udairam Agarwal,
R/o Upper M.G. Marg,
P.O. & P.S. Gangtok,
East Sikkim.

..... Appellant

versus

1. Shri Naresh Subba,
S/o Shri A.P. Subba,
R/o House No. T 63(A) & P 87 (B),
Sichey,
P.O. & P.S. Gangtok,
East Sikkim – 737101.
2. Master Subham Subba,
S/o Shri Naresh Subba,
R/o House No. T 63(A) & P 87 (B),
Sichey,
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East Sikkim – 737101.
3. Shri Thinlay Karma Peter Topden,
S/o Late Karma Topden @Karma Tenzing Topden,
R/o Martam House, Bhanupath,
P.O. & P.S. Gangtok,
East Sikkim – 737101.

..... Respondents

Appeal under Order XII rule 1 and 2 of the Code of Civil Procedure, 1908.

Appearance:

Mr. Sudipto Majumdar, Senior Advocate with Mr. Basant Kharka, Advocate for the appellant.

Mr. A. Moulik, Senior Advocate with Mr. Simeon Subba and Ms Adeshna Subba, Advocate for the respondents no. 1 and 2.

None for respondent no.3.

and

R.F.A. No. 08 of 2020

M/s Ramjilal Tarachand,
Shri Brahamand Agarwal,
S/o Late Tarachand Agarwal,
R/o Upper M.G. Marg,
P.O. & P.S. Gangtok,
East Sikkim.

..... Appellant

versus

1. Shri Naresh Subba,
S/o Shri A.P. Subba,
R/o House No. T 63(A) & P 87 (B),
Sichey,
P.O. & P.S. Gangtok,
East Sikkim – 737101.
2. Master Subham Subba,
S/o Shri Naresh Subba,
R/o House No. T 63(A) & P 87 (B),
Sichey,
P.O. & P.S. Gangtok,
East Sikkim – 737101.
3. Shri Thinlay Karma Peter Topden,
S/o Late Karma Topden @Karma Tenzing Topden,
R/o Martam House, Bhanupath,
P.O. & P.S. Gangtok,
East Sikkim – 737101.

..... Respondents

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

Appearance:

Mr. Sudipto Majumdar, Senior Advocate with Mr. Basant Kharka, Advocate for the appellant.

Mr. A. Moulik, Senior Advocate with Mr. Simeon Subba and Ms Adeshna Subba, Advocate for the respondents no. 1 and 2.

None for respondent no. 3.

Date of hearing : 21.09.2022, 26.09.2022, 28.09.2022 & 22.11.2022

Date of judgment : 20.12.2022

J U D G M E N T

Bhaskar Raj Pradhan, J.

1. This judgment shall dispose three identical appeals preferred by three tenants (the appellants/defendant no.1) against the judgments and decrees, all dated 30.06.2020, in Eviction Suits No. 08 of 2015, 09 of 2015 and 10 of 2015. The impugned judgments and decrees directed the eviction of the

appellants from the suit property and to vacate the same within three months of the judgment. Additionally, a decree for recovery of arrears of rent from the appellants from November 2014 was directed till the time the appellants handed over vacant possession of the suit property to the plaintiffs (respondents no.1 and 2).

2. The eviction suits were filed by the plaintiffs on 28.12.2015 for eviction, recovery of khas possession of the suit property and arrears of rent. The plaintiffs sought eviction, *inter alia*, on the ground of non-payment of rents by the appellants since November 2014; for bona fide requirement; and for thorough overhauling.

3. The appellants filed their written statements on 10.5.2016. The appellants pleaded that the suit was not maintainable; that there was no landlord tenant relationship; that the plaintiffs had no locus standi; that the suit was filed for *mala fide* purpose and illegal gain; that it was a collusive suit and the plaintiffs were proxies for late Karma Topden (the original defendant no.2 and father of present respondent no.3). The appellants stated that late Martam Topden, father of late Karma Topden, constructed the suit property in the early 1930s on a plot of land gifted to him by the then Maharaja of Sikkim. According to the appellants, the words that fell from the mouth of the then

Maharaja of Sikkim who was the sovereign ruler became law during those days; the gift became absolute and late Martam Topden became the absolute owner of the suit property. After construction, a portion on the southern side measuring 30' x 30' consisting of a shop space at the road level, first basement and the second basement of the same size below the shop space were let out to M/s Balchand Udairam (appellant in R.F.A. No. 07 of 2020) on monthly rental by late Martam Topden. The middle portion of the suit property measuring 10' x 30' consisting of a shop space at the road level, first basement and the second basement of the same size below the shop space were let out on a monthly rent to the father of the original defendant no.1 (now replaced by appellant in R.F.A. No. 06 of 2020). The northern side measuring 20' x 30' consisting of a shop space at the road level, first basement and the second basement of the same size below the shop space were let out to Ramjilal Kashiram which was later changed to M/s Ramjilal Tarachand (the appellant in R.F.A. No. 08 of 2020) in the year 1956 on monthly rentals by late Martam Topden. According to the appellants, sometime in 1978 late Karma Topden informed them that his father late Martam Topden had gifted the suit property to him and thereafter late Karma Topden started collecting monthly rents for the suit property from the appellants.

4. Late Karma Topden filed his written statement on 10.5.2016 supporting the case of the plaintiffs. He stated that he had entered into a sale agreement on 6.8.2012 (exhibit-3)(Sale Agreement) to sell the suit property to the plaintiff at a consideration value of Rs.4,00,00,000/- and after having received an advance applied to Urban Development & Housing Department (UD&HD), Government of Sikkim, for transfer of suit property in favour of the plaintiffs. According to Late Karma Topden, the suit property was then transferred to the plaintiffs vide lease deed dated 25.11.2013 (exhibit-7) (lease deed) which was subsequently registered in the name of the plaintiffs on 5.4.2014 after he had received full and final amount of Rs.4,00,00,000/-. He then informed the appellants about the transfer as they had agreed to vacate the suit property immediately on its transfer. Late Karma Topden averred that, however, he had thereafter received the rent through Demand Drafts/Pay Orders from the appellants with a covering letter dated 23.2.2015 to which he replied vide his letter dated 27.2.2015 (exhibit-14), returned the Demand Drafts/Pay Orders and informed them about the new house owners, i.e., the plaintiffs. The appellants thereafter sent the rent through their lawyer Mr Sudesh Joshi along with legal notice on 4.5.2015 (exhibit -D1/5). Late Karma Topden averred that he returned the said rent again. He further averred that inspite of the filing of the eviction suits the appellants sent their rents to him

through their lawyer Mr Sudesh Joshi by his notice dated 1.4.2016 (exhibit – D1/6 Collectively) which was returned through his Advocate's letter dated 13.4.2016 (exhibit – D2/13).

5. The order dated 30.10.2018 of the District Judge records the filing of an application for substitution of the legal heirs of late Karma Topden as he expired on 4.8.2018. The application was allowed and late Karma Topden was substituted by his son Thinlay Karma Peter Topden as defendant no.2 in the suit (respondent no.3 herein). Thinlay Karma Peter Topden then filed his written statement reiterating what his father late Karma Topden had stated in his written statement.

6. The learned District Judge framed eleven identical issues for consideration in all the three eviction suits. The plaintiff no.1 examined himself, Bijay Mondal (PW-2), Ashim Basnet (PW-3), A. B. Karki (PW-4) and Siddharth Rasaily (PW-5) in support of his case. Late Ong Tshering Bhutia (original defendant no.1 in Eviction Suit No. 08 of 2020), Jiwan Agarwal (represented the defendant no.1 in Eviction Suit No. 09 of 2015) and Brahmanand Agarwal (represented the defendant no.1 in Eviction Suit No. 10 of 2015), deposed for themselves as defendant no.1 as well as for each other as witnesses in the three Eviction Suits. Tsewang Rinzing Dorjee deposed on behalf of Thinlay Karma Peter Topden who substituted his father late Karma Topden and reiterated what both

late Karma Topden as well as Thinlay Karma Peter Topden stated in their written statements. Tsewang Rinzing Dorjee verified and confirmed the contents of his evidence on affidavit. During his cross-examination, he stated that although the appellants had been tendering the rent to the defendant no.2, he did not accept the rents.

7. The learned District Judge while examining issues no.1, 2 and 3, concluded that the plaintiffs are the owners of the suit property through the lease deed and so they had the locus standi to file the eviction suits which was thus maintainable. The learned District Judge also held that the lease deed was valid and the schedule of the lease deed to be correct on examining Issues No. 4 and 5. It was further held that late Karma Topden had let out all the three floors to the appellants on monthly rent while deciding Issue No. 6. Issue No. 10 was also decided in favour of the plaintiffs and it was held that the appellants had made alterations and additions to the suit property. While deciding issue no.11, the learned District Judge concluded that on the valid execution of the lease deed, the plaintiffs became the owner of the suit premises. The learned District Judge held that the appellants had defaulted in payments of rents of more than four months; that the plaintiffs required the suit property for their *bona fide* need and occupation; and that the suit property was in a dilapidated

condition requiring thorough overhauling while deciding Issues No. 7, 8 and 9.

8. Mr. Sudipto Mazumdar, the learned Senior Advocate for the appellants, assailed the impugned judgment on the grounds set out in the appeal. It was his case that the suit property was constructed not on leasehold land but on the land gifted by the Maharaja of Sikkim to late Martam Topden and as such the lease deed by which the plaintiffs sought title is *non-est*. It was argued that there was no jural relationship of landlord and tenant between the plaintiffs and the appellant. He submitted that the claim of the plaintiffs of having purchased the suit property is false since there was no registered sale deed. It was also submitted that there was no default of payment of rent as the appellants continued to tender rent to late Karma Topden and thereafter to his son Karma Peter Thinlay Topden. The plaintiffs did not have any locus standi to file the suits which was thus not maintainable. The Eviction Suits were filed by the plaintiffs on proxy for late Karma Topden and therefore it was collusive suit. He relied upon the judgment of the Supreme Court in ***Apollo Zipper India Limited vs. W. Newman and Company Limited***¹ to submit that though by virtue of section 116 of the Evidence Act, the tenant is estopped from challenging the title of his landlord, yet the tenant is entitled to

¹ (2018) 6 SCC 744

challenge the derivative title of an assignee of the original landlord of the demised property in an action brought by the assignee against the tenant for his eviction under the rent laws.

9. Mr. A. Moulik, learned Senior Advocate for the plaintiffs vehemently defended the impugned judgment and submitted that the prayers for eviction were correctly granted as they had been able to prove non-payment of rent for more than four months; *bona fide* need; as well as the fact that the suit property was in dilapidated condition requiring thorough overhauling. He relied upon various judgment of the Supreme Court as well as this Court. Relying upon **Apollo Zipper India Limited** (supra), he submitted that in eviction suits when issue of title is raised, landlord is not expected to prove his title like what he is required to prove in a title suit. He relied upon **Ambica Prasad vs. Mohd. Alam and Another**² to submit that under section 109 of the Transfer of Property Act, 1882 a transferee of a landlord's right enters into the shoe of the landlord in respect of the subsisting tenancy and attornment by tenant is not required. He relied upon **Shamim Akhtar vs. Iqbal Ahmad and Another**³ and submitted that a tenant by merely denying title cannot avoid eviction. He relied upon **Swadesh Ranjan Sinha vs. Haradeb Banerjee**⁴ to submit that even a sub-lessee could be the owner/landlord and entitled to file eviction suit. The judgment of

² (2015) 13 SCC 13

³ (2000) 8 SCC 123

⁴ (1991) 4 SCC 572

this court in *Tika Khawas vs. Pashupati Nath*⁵ was cited to submit that the landlord under the Gangtok Rent Control and Eviction Act, 1956 need not be the owner.

10. On examination of the plaints, it is seen that the suits were filed essentially for eviction of the appellants by the plaintiffs. As the suit property is situated in Gangtok, under section 4 of the Gangtok Rent Control and Eviction Act, 1956 a tenant can be evicted essentially on three grounds, i.e., when whole or part of the premises are required for the *bona fide* occupation of the landlord or his dependents; for thorough overhauling (excluding additions and alteration); and when the rent in arrears amount to four month rent or more. In the case of thorough overhauling, the tenant so evicted shall, have the first right to reoccupy the premises on such enhanced rate as may be fixed by the Sikkim Durbar [now the State Government vide the Adaptation of Sikkim Law (1) Order, 1975 which came into force on 27th April, 1975]. Thus, out of the eleven issues framed, issues no. 7, 8 and 9 would determine the fate of the suit.

11. The Gangtok Rent Control and Eviction Act, 1956 which is applicable to Gangtok does not define the word 'landlord' used therein, unlike Notification No.6326-600-H&W-B dated 14.04.1949, which is the existing rent law for the rest of

⁵AIR 1986 Sikkim 6

Sikkim. However, it is settled that under the Gangtok Rent Control and Eviction Act, 1956 it is not necessary that the landlord should also be the owner of the property. This Court in **Tika Khawas** (supra) 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'. This Court, therefore, affirmed the finding of the learned Trial Court that the plaintiff had locus standi to bring the suit repelling the contention that as the plaintiff was not the owner of the suit premises he had no locus standi as he was not the landlord. Resultantly, it is settled that to file an eviction suit under the Gangtok Rent Control and Eviction Act, 1956 it is not necessary to establish that the plaintiff is the owner of the suit property and it would be enough if he established that he was the landlord.

12. The appellants do not dispute that they are tenants. They also do not dispute that late Martam Topden and thereafter, late Karma Topden, were the owners of the suit property as well as their landlords. Infact, the appellants had attorned to late Karma Topden after he started collecting rents from them on the demise of late Martam Topden. The appellants disputed that the plaintiff had purchased the suit property since the plaintiffs had failed to annex any registered sale deed or registered conveyance deed executed by late Karma Topden in their favour. The appellants

contended that the suit was collusive one with an ulterior motive to make out the grounds for eviction.

13. What therefore falls for consideration is to what extent could the appellants, who were admittedly tenants of late Karma Topden in the suit property, dispute the assertion made by late Karma Topden that he had sold the property to the plaintiffs? In ***Apollo Zipper India Limited*** (supra), the Supreme Court held that it is settled principle of law laid down by it that in an eviction suit filed by the landlord against the tenant under the rent laws, when the issue of title over the tenanted premises is raised, the landlord is not expected to prove his title like what he is required to prove in a title suit. In other words, the burden of proving the ownership in an eviction suit is not the same like a title suit. The Supreme Court further held that by virtue of section 116 of the Indian Evidence Act, the tenant is estopped from challenging the title of his landlord yet the tenant is entitled to challenge derivative title of an assignee of the original landlord of the demised property in an action brought by the assignee against the tenant for his eviction under the rent laws.

14. Admittedly, the appellants had been informed by late Karma Topden about the transfer of the suit property to the plaintiffs vide his letter dated 27.2.2015 (exhibit-14). In fact, the appellants by their Advocate's letter 4.5.2015 (exhibit-D-1/5) to

late Karma Topden disputed that the suit property had been sold to the plaintiffs inspite of a clear assertion to that effect in the letter dated 27.2.2015. In cross-examination, late Ong Tshering Bhutia admitted that if the plaintiff would have furnished copies of registered sale deed to them justifying the fact that they had purchased the suit property then they would have paid the plaintiffs' rent. He admitted that since the plaintiffs produced the registered lease deed, they declined to give him rent on the presumption that he did not become the owner of the suit property by virtue of such lease deed. He admitted that although late Karma Topden told him and other tenants that the plaintiffs had become the owners of the suit property and they were now required to pay rent to them still they kept sending the rent to late Karma Topden. He further admitted that the plaintiff no.1 had informed them that they had purchased the suit property for Rs.4,00,00,000/- and the UD&HD had transferred the land on lease basis and as such they had become owners of the suit property. However, they did not believe the plaintiffs statement and continued sending rent to late Karma Topden. He also admitted that they did not give reply to the plaintiffs legal notice dated 15.9.2015 (exhibit-21). Jiwan Agarwal too admitted that vide letter dated 27.2.2015 (exhibit-14), late Karma Topden informed them that plaintiff no.1 had become the owner of the suit property. He further admitted that by letter dated 6.8.2015 (exhibit-15 and

exhibit-D1/2), late Karma Topden informed the appellant's lawyer that the plaintiff no.1 was the owner of the suit property while returning the Demand Draft/Pay Order. He admitted that by the plaintiffs letter dated 21.8.2015 (exhibit-16) addressed to him and other appellants they informed that they were the new owners of the suit property and that the appellants had not paid rent to them. In spite of receipt of the same, the appellants did not pay the rent to the plaintiffs or made any inquiry before the Registrar or UD&HD to know whether it was true. He admitted that by the plaintiffs' lawyers letter dated 15.9.2015 (exhibit-21) to the appellants, he informed them that the plaintiffs were the lessees of the land in which the suit property was located by way of a lease deed registered on 5.8.2014. He admitted that the appellants had been informed of the change in ownership of the suit property but in spite of the receipt they did not offer rent to the plaintiffs. He further admitted that there was in fact a meeting at Hotel Tashi Delek between the plaintiff no.1 and the appellants. Brahmanand Agarwal also admitted having received the notice from the plaintiffs' advocate informing him that they had become the owners of the suit property through lease deed, however, he had not replied to the notice. He admitted that even after receipt of the notice none of the appellants paid rent and instead sent the same to late Karma Topden who did not accept it but returned it to them. He admitted that late Karma Topden had sent

several letters to the appellants duly informing all of them that plaintiff no.1 was the owner of the suit property which was very much in their knowledge as all of them had met plaintiff no.1 at Hotel Tashi Delek.

15. In an eviction suit under the Gangtok Rent Control and Eviction Act, 1956, it would not be necessary to go into the question of title as it would suffice if the plaintiffs established they were the landlords in view of what has been settled by this Court in *Tika Khawas* (supra). The Appellants' *bona fide* seeking to ascertain the fact to protect themselves without disowning that he is a tenant of the suit property would be legitimate. However, the appellants not acknowledging or attorning to the plaintiffs, inspite of being told in writing by late Karma Topden, the admitted owner and landlord of the suit property, that he had sold the suit property to the plaintiffs and returning the rents forwarded would be dogged insistence only. The records reveal that the appellants were informed in writing as well as orally in more than one occasion that the suit property had since been sold to the plaintiffs. Late Karma Topden had informed the appellants in writing about it vide his letter dated 27.2.2015 (exhibit-14). By this time, late Karma Topden had already entered and executed sale agreement dated 6.8.2012 and thereafter the plaintiffs had entered upon a lease deed with UD&HD on 25.11.2013. The lease deed also granted the plaintiffs the right to transfer the suit

property with the previous written consent of the UD&HD. According to the plaintiffs, pursuant to the sale agreement dated 6.8.2012, they paid Rs.4,00,00,000/- to late Karma Topden. Tsewang Rinzing Dorjee who deposed on behalf of Thinlay Karma Peter Topden, son of late Karma Topden, also confirmed the payment. Thereafter, late Karma Topden also executed sale deed document and approached the office of the Sub-Registrar, Gangtok for transfer of the suit property in favour of the plaintiffs. However, the Sub-Registrar found that the land in which the suit property stood was recorded in the name of Sarkar and therefore, directed them to approach the UD&HD for execution of lease. A. B. Karki, the Sub-Registrar then, also verified this fact in his deposition before the learned District Judge. Quite evidently, the plaintiffs had purchased the suit property from late Karma Topden, became landlord and had the locus standi to seek eviction of the appellants for their defaults. The plaintiffs had proved that they had a better title over the suit property than the appellants. It is inconceivable that late Karma Topden, the original owner of the suit property would sign the sale agreement, the sale deed and also inform the appellants in writing that he had sold the suit property to the plaintiff and give away all his rights to the suit property in favour of the plaintiffs only to collude with them to evict the appellants. However, the appellants declined to acknowledge these facts and resorted to legalese to

dispute the claim of late Karma Topden as well as the plaintiffs. Therefore, till the receipt of the letter dated 27.2.2015 (exhibit-14) of late Karma Topden, the appellants' non-payment of rent to the plaintiffs may be excused but their failure to do so thereafter would definitely be default. A little effort on the part of the appellant may have yielded better information to convince themselves that they were required to accept the plaintiffs as their landlords but they decided to remain adamant on their initial insistence and not reason their own unreasonableness. The appellant ought to have known that they would continue to be the tenants and not get better title on the suit property by refusing to acknowledge the plaintiffs as the new landlords. Admittedly, the appellants had not paid rents of the suit property from November 2014. The suit was filed in December 2015. Non-payment of rent to the plaintiffs after receipt of letter dated 27.2.2015 of late Karma Topden till December 2015 would necessarily have to be considered as their default. As the period would be for more than four months, the default would squarely fall within the period when the rent in arrears amount to four month rent or more which would permit the plaintiffs to seek their eviction for non-payment of rent under the Gangtok Rent Control and Eviction Act, 1956.

16. Resultantly, it is held that the appellants were in arrears of rent for four months and more and on this ground alone the

appellants were liable to be evicted. The finding of the learned District Judge on this aspect is upheld and Issue No.7 is held in favour of the plaintiffs.

17. The learned District Judge also held that the plaintiffs required the suit premises for their *bona fide* and personal occupation. The plaintiffs had pleaded that when late Karma Topden approached them with the offer of sale of suit property they were on the lookout for a suitable property to build their own residential house along with a hotel as they did not own a house of their own and were living in a rented accommodation belonging to Ashim Basnett. The plaintiffs also asserted that they required the suit property for commercial purpose. The learned District Judge on examination of the evidence concluded that the plaintiffs did not have their own residential house in Gangtok whereas the appellants admittedly had their own residential houses situated at Tibet Road and New Market Road in Gangtok. The plaintiff no.1 has deposed that the plaintiffs did not own any residential properties in Gangtok. Ashim Basnett deposed that the plaintiffs were his tenants. Their cross-examination did not bring out anything contrary to their depositions in chief. The appellants admitted having their own residential houses in Tibet Road and New Market Road in Gangtok. The assertions of the plaintiffs that the suit property was required for their *bona fide* occupation has been proved. The need projected is genuine and a reasonable

one and not just devised to evict the appellants. The finding of the learned District Judge on Issue No.8 is also upheld.

18. The learned District Judge further concluded that the suit premises were in dilapidated condition and required thorough overhauling and that the appellants were required to be evicted on this ground as well. The learned counsel for the appellants submitted that since the appellants had been evicted on this ground, as required under section 4 of the Gangtok Rent Control and Eviction Act, 1956 the plaintiffs should be directed to offer the first right of pre-occupation to the appellants on the suit property after being thoroughly overhauled. The submission of the learned counsel for the appellants would hold good if the appellants had been evicted solely on this ground of thorough overhauling. However, as the eviction of the appellants has been upheld on the ground of non-payment of rents as well as for *bona fide* requirement, even if this court upholds the findings of the learned District Judge that the appellants were liable to be evicted on the ground of thorough overhauling, the appellants would not get the benefit of the right of pre-occupation after it is over-hauled.

19. It is the case of the plaintiffs that the suit property was constructed several decades ago and since become old and dilapidated requiring complete reconstruction and overhauling. The appellants themselves assert that the suit property, i.e., a

three storied wooden house was constructed by late Martam Topden sometime in early 1930 after which the appellants have been in occupation of various portions of the suit property. They, however, deny that it is in dilapidated condition. According to the appellants, the three storied wooden house undergoes maintenance periodically and the expenses are borne by the appellants. No evidence was, however, placed before the court to establish what they asserted. Late Ong Tshering Bhutia and Jiwan Agarwal admitted that the suit property was 89 years old. Bijoy Mondal, the plaintiffs' witness, also asserted that the suit property was an old dilapidated wooden house as personally informed by late Karma Topden to him. Bijoy Mondal also stated that on his query and personal inspection the house was constructed several decades ago and since had become old and dilapidated requiring complete reconstruction and overhauling. Siddarth Rasaily, Town Planner of Gangtok Municipal Corporation, deposed about various notices (exhibit-5A collectively) issued to late Karma Topden informing him that the suit property occupied by the appellants were found to be in dilapidated condition and not fit for habitation upon its technical verification. Exhibit-5A collectively consists of notice nos. 760/UD&HD dated 19.6.1992, 761/UD&HD dated 19.6.1992, 762/UD&HD dated 19.6.1992 and 763/UD&HD dated 19.6.1992 issued to late Karma Topden by the Assistant Town Planner stating

that on technical verification, it is found that the wooden house structure housing Ramjilal Tarachand, Ong Tshering Bhutia and Balchand Udairam, is in a dilapidated condition and found unsafe for habitation. Exhibit-5A collectively also includes final notice no.1406(77)/UDHD/2240 dated 21.9.1992 addressed to late Karma Topden calling upon him to submit a Blue Print Plan for new RCC building to be constructed in place of the old wooden structure which is required to be demolished within the given time. The last notice in exhibit-5A collectively is notice no. 320/TP-1/UD&HD dated 26.3.2012 issued by the Town Planner to late Karma Topden stating that all owners of old wooden houses are directed to submit Blue Print Plan for a new structure that has been designed according to the Bureau of Indian Standards norms for seismic zones IV and V. The notice dated 26.3.2012 was a notice signed by Siddarth Rasaily. Exhibit-5A collectively reflects that the UD&HD had been pursuing late Karma Topden to demolish the old wooden structure much prior to the transfer of the suit property by him to the plaintiffs. This fact belies the allegation of the appellants that the plaintiffs were making a false claim in collusion with late Karma Topden to make out a ground for eviction. According to the plaintiff no.1, before the lease deed dated 25.11.2013 was executed, the UD&HD vide letter dated 5.12.2013 (exhibit-5) put a condition to him that it would transfer the allotted site only if an undertaking was given by the plaintiffs that they

would submit a Blue Print Plan for approval and start construction within six months. The plaintiffs submitted an undertaking dated 7.12.2013 (exhibit-6) pursuant to which the lease deed was executed. The plaintiffs, thereafter, also submitted the Blue Print Plan (exhibit-8) which was duly approved by the UD&HD and pursuant to which the UD&HD issued the Construction Order dated 22.9.2014 (exhibit-9). These facts have been substantially proved by the plaintiffs and inspite of lengthy and detailed cross-examination of the plaintiff no.1 and the plaintiffs' other witnesses nothing substantial to destroy the case made out by the plaintiffs has been brought forth. Consequently, Issue No. 9 is also held in favour of the plaintiffs and against the appellants.

20. The plaintiffs had claimed that the appellants had not paid rents since November 2014. It is the appellants' case that they had tendered the rents to late Karma Topden and not to the plaintiffs as they refused to accept that the plaintiffs had purchased the suit property. Admittedly, late Karma Topden declined to accept the rents so tendered and returned it to the appellants. The eviction suits were filed in December 2015. The records do not reveal that the appellants deposited the rents before the learned District Judge. It is only at the stage of the appeals on the direction of this Court that rents from November 2014 have been deposited by the appellants. Special equities are not in favour of the appellants. The learned District Judge had

directed the appellants to vacate and hand over the suit premises within three months from the date of the impugned judgment. The eviction decree passed by the learned District Judge is confirmed. The appellants shall vacate the suit premises within three months from the date of this judgment. The plaintiffs are entitled to the arrears of rent from November 2014 till the appellants hand over the suit property to them.

21. The amount of rent deposited by the appellants with effect from November 2014, in terms of the order of this Court dated 12.10.2020, in State Bank of India maintained in the name of the Registrar General, High Court of Sikkim, be released to the plaintiffs along with the interest accrued on the deposit, if any.

22. Appeals dismissed.

23. Consequently, the stay granted in all the appeals vide order dated 12.10.2020 stand vacated.

24. Copy of this Judgment shall be sent to the learned Trial Court for information.

25. Trial Court records be remitted forthwith.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting : **Yes/No**
Internet : **Yes/No**