THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 12th November, 2020

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

RFA No.10 of 2017

Appellants : Nil Kumar Dahal and Another

versus

Respondents : Indira Dahal and Others

An Appeal under Section 96 read with Order XLI, Rules 1 and 2 of the Code of Civil Procedure, 1908

Appearance

Mr. A. Moulik, Senior Advocate with Ms. K.D. Bhutia and Mr. Ranjit Prasad, Advocates for the Appellants.

Mr. Jorgay Namka, Advocate for the Respondent No.1.

Mr. Sudesh Joshi, Additional Advocate General with Mr. Sujan Sunwar and Mr. Hissey Gyaltsen, Assistant Government Advocates for the State-Respondents No.2 and 3.

Ms. Kunzang Choden Lepcha and Ms. Neetu Tamang, Advocates for the Respondent No.4.

J U D G M E N T

Meenakshi Madan Rai, J.

1. The Appellants were the Plaintiffs before the learned trial Court, in Title Suit No.08 of 2011 *(Nil Kumar Dahal and Another v. Indira Dahal and Others),* a Suit for Declaration, Recovery of Possession, Injunction and other Consequential Reliefs, against the Respondents No.1 to 4 herein, who were the Defendants No.1 to 4 in the said Title Suit. The learned trial Court on consideration of the evidence and all materials on record dismissed the Suit of the Appellants, by the impugned Judgment, dated 26.07.2017. Dissatisfied thereof this Appeal has arisen.

2. Parties shall hereinafter be referred to in their order of appearance before the learned trial Court.

3. The Plaintiffs are blood brothers being the sons of one Devi Prasad Dahal. The Defendant No.1 is their step mother and the Defendant No.4 is their niece, being the daughter of their deceased step brother, Bal Krishna Dahal, the son of Defendant No.1 and the Plaintiffs' father. Defendant No.4 is represented by her guardian Devi Kala Sharma. Defendants No.2 and 3 are Government officials *inter alia* concerned with registration of land. The Plaintiffs claim to be governed by the Mitakshara School of Hindu Law. The dispute between the parties pivots around the *"jiwni"* land described in the Schedule to the Plaint, kept aside by their late father from the ancestral properties, for his upkeep and sustenance during his lifetime at Raley Block, East Sikkim, after partitioning the ancestral properties amongst his sons. By the *"Banda Patra"* ("Partition Deed"), Exhibit "A," dated 17.05.1985, their father devised dual conditions for the *"jiwni"* land to be passed on to his sons i.e. *"father's "jiwni" share would go to the son who would look after and perform death rites."* On his passing on 23.09.2001, the Plaintiffs and the father of the Defendant No.4, each laid claims to the said *"jiwni"* land on grounds that each of them fulfilled the conditions laid out in Exhibit "A." Defendant No.1, for her part, while denying governance by the Mitakshara School of Hindu Law, claims the property on grounds that she has been in unencumbered physical possession of the property since the execution of Exhibit "A" and exercising all rights over it as its owner, sans interference from any quarter.

4.(i) Undisputedly, the property is ancestral having belonged to the Plaintiffs' great-grandfather, one Parmananda Bahun. He had three sons Bishnu Lall (grandfather of the Plaintiffs), Purananda and Lok Nath. Bishnu Lall and Lok Nath passed away before the properties could be partitioned, Lok Nath having died issueless, as a result, the properties came to be partitioned amongst the four remaining sons of Bishnu Lall (out of his five sons) and Purananda Bahun. One of the sons of Bishnu Lall was their father Devi Prasad.

(ii) According to the Plaintiffs, on 26.03.2010, the Defendant No.1, who also allegedly maintains her Nepalese citizenship, filed an application before the District Collector (Defendant No.2), East Sikkim, seeking mutation of the *"jiwni"* land to her name from that of Devi Prasad. Despite objections raised by the Plaintiffs, by the impugned Order dated 03.11.2010, the Defendant No.2, allowed mutation of the *"jiwni"* land in the name of Defendant No.1 and ordered that Plots bearing No.450 and 452 measuring an area of 0.3050 hectares at Raley Khesey Block, be mutated in the name of the Defendant No.1 although Plot No.452 was already mutated in the name of the Plaintiff No.2, as his share, vide Exhibit "A." That, the Order lacked jurisdiction as the Defendant No.2 was not vested with powers to decide Title disputes and exhibited lack of application of mind for ordering mutation of Plot No.452 in the name of the Defendant No.1. That, as the Plaintiffs have fulfilled the dual conditions laid down in Exhibit "A," they are entitled to the *"jiwni"* land to the exclusion of Defendant No.1 and Defendant No.4, the latter allegedly having no *locus* to claim a share in the testamentary disposition as her father (Bal Krishna) was a Nepalese citizen and had passed away before the

issue of sharing of *"jiwni"* land came up for consideration. Besides, the Partition Deed nowhere mentions that a daughter or grand-daughter is entitled to the *"jiwni"* land. That, when proceedings were taken up before the Defendant No.2, the Defendant No.1 had stated that her son Bal Krishna had two sons therefore it is unclear as to how Defendant No.4 has now emerged as the legal heir of Bal Krishna. The Plaintiffs also objected to the Guardianship Certificate issued to the guardian of Defendant No.4 alleging that she too is a Nepalese citizen. Hence, the prayers in the Plaint which are extracted hereinbelow;

> *"In the circumstances the plaintiffs pray for a Decree:*
>
> *i.* *Declaring that the defendant no0*(sic)*.2 has no right, title and authority to pass an Order*(sic) *dated 03/11/2010;*
>
> *(i)A* *Declaring that late Bal Krishna Dahal predeceased his father and having waived to perform certain obligations towards father, as such, his legal heirs has*(sic) *no right, title and interest over the 'jiwni land';*
>
> *(i)B* *Declaring that defendant no.4 not being son of late Devi Prasad Dahal has no right, title and interest over the 'Jiwni land';*
>
> *(i)C* *Declaring that a portion of the 'jiwni land' cannot and shall not be mutated in the name of defendant no.4;*
>
> *(i)D* *Declaring that the Guardianship Certificate obtained by Smt. D.K. Sharma by misrepresentation of facts is liable to be set aside and cancelled.*
>
> *(i)E* *Praying for recovery of possession of Jiwni land from defendant no.1.*
>
> *(i)F* *Declaring that the defendnat*(sic) *no.1 being a Nepal subject has no right to claim any share of the suit property.*
>
> *ii* *Declaring that the Order dated 03/11/2010, i.e. Annexure-15 to be null and void and the same is nonest;*
>
> *iii.* *Declaring that the Order dated 03/11/2010, i.e. Annexure 15 be set aside and quashed.*
>
> *iv.* *Declaring that the plaintiffs are only entitled for the jiwni land that is Plot no.450;*
>
> *v.* *Declaring that the schedule property cannot and shall not be mutated in the name of the defendant no.1;*

vi. In the mean time if the Schedule property is mutated/transferred in the name of the defendant no.1 then to set aside, quash and cancel such mutation/ order of mutation;

vii. Declaring that the plaintiffs have their right, title and interest on the Schedule Property

viii. A permanent injunction

(a) restraining the defendant no.3 from mutating/transferring the Schedule Property in the name of Defendant No.1;

ix. A temporary injunction in terms of Prayer no.(X);

x. Any other relief or reliefs as this Hon'ble Court may deem fit and proper."

5. Contesting the claims of the Plaintiffs, the Defendant No.1 while denying that neither she nor her son were citizens of Nepal or that they were governed by the Mitakshara School of Hindu Law, averred that they were governed by the 'Law of the land" which did not differentiate between male and female heirs. The Plaintiff No.1 had voluntarily left the *"mul ghar"* ("main house") in 1983-84 as he did not get along with his father and the Plaintiff No.2 left after the execution of Exhibit "A." Consequent thereto, it fell upon her son Bal Krishna to take care of the family and Devi Prasad financially as he was ailing and bedridden for almost a decade, with no moral or financial support from the Plaintiffs. All medical expenses and expenses for death rites were arranged by the Defendant No.1 and her son by borrowing money from their well wishers. The Defendant No.1 asserts that she is entitled to fifty per cent of her husband's property as per the "Law of the land" while the Plaintiffs have no such entitlement on their failure to fulfill the conditions in Exhibit "A" which, according to her, were *"to look after their parents and perform death rites."* She denies that the Defendant No.2 had no jurisdiction to issue the impugned Order or that only "sons" are entitled to the *"jiwni"* land. That, the entire Plot

No.452 does not belong to the Plaintiff No.2 as his Plot is numbered "452/1192" which measures 0.325 hectares, while Plot No.452 measures 0.560 hectares. That, the cause of action arose after the completion of the forty-five days death ritual of the deceased and hence the Suit is barred by limitation, has no cause of action and is undervalued and on these grounds, liable to be dismissed.

6. Defendant No.4, the minor daughter of late Bal Krishna Dahal, was abandoned by her mother after her father's death and is thus represented by her paternal aunt and legal guardian Devi Kala Sharma, the sister of Bal Krishna, claiming to be a *bona fide* Sikkimese. She had obtained a Guardianship Certificate from the Family Court. In pith and substance, the Written Statement of the Defendant No.4 is similar to and reiterates the averments made by the Defendant No.1. According to her, the property kept as *"jiwni"* is the land on which the main house stands and has been in the unencumbered physical possession of the Defendant No.1 after the death of her grandfather, without objection or interference from any quarter including the Plaintiffs, hence, the Defendant No.1 is entitled to fifty per cent of her late husband's property as per the Law of the Land.

7. The Defendants No.2 and 3 had no Written Statements to file.

8. It is essential for clarity to recapitulate here that earlier in the same matter i.e. Title Suit No.08 of 2011, the learned trial Court vide its Judgment dated 30.11.2013, concluded that the Plaintiffs are entitled to one-third share each from the *"jiwni"* land which was in the possession of the Defendant No.1. Calling in question the said decision, the Defendant No.1 was before this

Court in Appeal being Regular First Appeal No.04 of 2014 (*Indira Dahal v. Nil Kumar Dahal and Another)*. The Appellant therein (Defendant No.1 herein) argued that the Suit ought to have failed on account of non-joinder of necessary parties as the son of Bal Krishna was not made a party to the Suit. This Court vide its Judgment, dated 22.04.2016, in the said RFA, remanded the matter back to the learned trial Court for impleadment of the legal heirs and successors of late Bal Krishna Dahal. The Plaintiffs filed their Amended Plaint, impleading the daughter of late Bal Krishna as Defendant No.4 in the instant Suit. The Defendants No.1 and 4 also filed their amended responses and the learned trial Court resettled the Issues for determination after the remand, as follows;

> *"1. Whether the Suit is maintainable?*
> *Onus on Plaintiffs.*
> *2. Whether the Plaintiffs have right, title and interest in the suit property i.e., 'jiwni land' being plot No.450?*
> *Onus on Plaintiffs.*
> *3. Whether the Plaintiffs are entitled to recover the suit land i.e. the 'jiwni land' from the possession of the Defendant No.1?*
> *Onus on Plaintiffs.*
> *4. Whether the 'jiwni land' can be mutated in the name of the Defendant Nos.1 and 4?*
> *Onus on Defendant Nos.1 and 4. (Issue No.4 modified vide Order dated: 21.06.2016)*
> *5. Whether the Defendant Nos.1 and 4 are entitled to any share in the 'jiwni land' as per 'banda patra' dated: 17.05.1985?*
> *Onus on Defendant Nos.1 and 4.*
> *6. Whether the Defendant Nos.1 and 4 have already got their shares as per 'banda patra' dated 17.05.1985?*
> *Onus on Plaintiffs. (Modified vide order dated: 21.6.2016?*
> *7. Whether the Plaintiffs have looked after and performed the death rites of the late Devi Prasad Dahal?*
> *Onus on Plaintiffs.*
> *8. Whether Devi Kala Sharma has right to act as a guardian of the minor i.e. Defendant No.4 in force of*(sic) *Guardianship Certificate?*

Onus on Defendant No.4.

9. *Whether Devi Kala Sharma has obtained the guardianship certificate fraudulently? Onus on Plaintiffs. (Issue framed vide Order dated: 21.6.2016)*
10. *Whether the Defendant No.1, being the wife of Late Devi Prasad Dahal have*(sic) *any right, title and interest over the property recorded in the name of Late Devi Prasad Dahal? Onus on Defendant No.1.*
11. *To what relief or reliefs, if any, are the Plaintiffs entitled? Onus on Plaintiffs."*

9.(i) The Plaintiffs, in order to establish their case, before the remand, had examined themselves as PW1 and PW2 and four other witnesses being Kunta Maya Dahal *(she was variously numbered as "PW3" and "PW2" hence, hereinafter for convenience shall be referred to by name),* PW3 Man Bahadur Kharka, PW6 Krishna Prasad Sapkota and PW7 Tanka Maya Adhikari. After remand, the Plaintiffs again examined themselves as PW1 and PW2 and one Laxuman Nepal, *(son of Krishna Lall Nepal)* as "PW1" and Ram Chandra Koirala as "PW2." Since Plaintiffs have also been numbered as "PW1" and "PW2," the witnesses above shall also be referred to by their names to avoid confusion.

(ii) The Defendant No.1, before the remand, had examined herself as DW1, Tika Devi Sharma as DW2, Madhav Prasad Adhikari *(he was variously numbered as "DW1" and "DW3" hence, hereinafter shall be referred to by name)* and Dol Nath Gautam *(he was variously numbered as "DW3" and "DW4" hence, hereinafter for convenience shall be referred to by name)*. After remand, she examined herself as DW1, Dhan Maya Adhikari as DW2, Dol Nath Gautam as DW3, Punya Prasad Adhikari *(witness not numbered)* and Ramesh Kumar Dahal as DW4.

(iii) The Defendant No.4 examined one Laxuman Nepal, son of Jai Narayan Nepal as DW1 *(to be distinguished from Laxuman Nepal, son of Krishna Lall Nepal, witness of the Plaintiffs)*, Madhav Prasad Adhikari as DW2, Tika Devi Sharma as DW3, Bishnu Khatiwada as DW4 and her legal guardian (Devi Kala Sharma) *(witness not numbered)*.

(iv) Defendants No.2 and 3 had no witnesses to examine.

(v) It may be remarked here that the numbers allotted to the witnesses by the learned trial Court are slipshod and rather unhappily maintained, which should be discouraged. Due care ought to be taken by the concerned Court while numbering witnesses to avoid any conundrum in referring to them in the Judgment either by the learned trial Court itself or by the Appellate Court. The learned trial Court is expected to heed to this suggestion.

10. The learned trial Court while taking up the Issues for consideration, took up Issue No.7 first and concluded that although the Plaintiffs did perform the death rites of their father, however, the evidence on record reflected that they had not taken care of him during his lifetime including the time of his ailment and therefore did not meet the dual conditions laid out in Exhibit "A." The Issue was decided against the Plaintiffs. Issue No.2 was next taken up for consideration and it was concluded that while the Plaintiffs had only performed the death rites of their father, late Bal Krishna had performed the death rites and also taken care of their father by incurring expenditure for their father's treatment vide loans obtained from different persons and was, thus, entitled to the *"jiwni"* land to the exclusion of the Plaintiffs. This Issue also went against the Plaintiffs. Issues No.4, 5, 6 and 10 were taken up

together and relying on the provisions of the Sikkim Succession Act, 2008, the learned trial Court held that the Defendant No.4 and the Defendant No.1 would be eligible to inherit the properties left behind by Bal Krishna, in equal portions and the said properties should be mutated in their names. While deciding Issues No.8 and 9, it was concluded that there was nothing to suggest that the Guardianship Certificate was obtained by Devi Kala Sharma fraudulently and that the learned Family Court, East Sikkim had found Devi Kala Sharma competent to be the guardian of the minor Defendant No.4 therefore it could not be held that she had no such right. These Issues were also decided against the Plaintiffs. Issues No.1, 3 and 11 were taken up together and the Court concluded that the Plaintiffs are not entitled to the concerned *"jiwni"* land or its recovery. That, the Suit filed by them was clearly not maintainable and was thereby dismissed.

11.(i) Advancing his arguments for the Plaintiffs, learned Senior Counsel walked this Court through the evidence of the parties and their witnesses as well as the findings of the learned trial Court and contended that a careful scrutiny of Exhibit "A" reveals that vide the document, Devi Prasad made no provision for the Defendant No.1 and he was concerned with bequeathing the *"jiwni"* property on his sons only. That, Defendant No.1 has falsely laid claim to it sans any intention of Devi Prasad.

(ii) That, the Defendant No.2 not being a Civil Court, has passed the impugned Order, dated 03.11.2010, Exhibit 12, illegally ordering mutation of the *"jiwni"* land in favour of the Defendant No.1, in the teeth of the conditions laid down in the Partition Deed, Exhibit "A."

(iii) That, the Defendant No.1, besides being ineligible for the property, holds dual citizenship, being a Nepalese citizen also. Hence, the claim of the Defendant No.1 seeking mutation of the property and the Order of the Defendant No.2, dated 03.11.2010, have no legal validity.

(iv) That, Issues No.4, 5 and 6 ought to have been decided in favour of the Plaintiffs and *"jiwni"* land granted to them, they having fulfilled both conditions mentioned in Exhibit "A."

(v) That, the evidence reveals that the Plaintiffs were driven out from the main house by an intolerant Defendant No.1 with a *"khukuri"* (sharp edged weapon) and they thus had inimical relations, which their father was aware of. Despite the said circumstances, the Plaintiffs were expected to and did take care of their father although living away from the main house. After being driven out, the Plaintiff No.1 had to take shelter consecutively in the house of one Kunta Maya Dahal, Krishna Lall Nepal and Rinzing Tongden. Thereafter on passing his Class VIII, he secured Government employment. The Plaintiff No.2 similarly was constrained to leave the main house due to the ill-treatment of his father and step-mother and had taken shelter in the house of his sister, PW7 Tanka Maya Adhikari, who has substantiated this fact. Thus, the Plaintiffs were compelled to leave the main house which was not of their own volition. In spite of living separately from the main house, the Plaintiff No.1 replaced its thatched roof with GCI Sheets, this has been fortified by the evidence of PW6 Krishna Prasad Sapkota and PW7 Tanka Maya Adhikari and was not demolished in cross-examination.

(vi) While referring to the observation of the learned trial Court in Issue No.7, learned Senior Counsel contended that in fact late Devi Prasad used to visit both Plaintiffs in the absence of the Defendant No.1 and they extended financial help to him for the purposes of his medication and clothing. They also visited him when he was ill and this evidence has remained unimpeached. As their father was compelled to live with Defendant No.1 and her son Bal Krishna, the Plaintiffs could not take care of him directly but did so whenever the occasion arose. Devi Prasad left no documentary evidence to suggest that the Plaintiffs did not take care of him. That, the Defendant No.1 failed to examine any Doctor to establish that Devi Prasad was ailing for a decade while Defendant No.4, in cross-examination, could not stand by her evidence in this context. No Medical Certificates suggesting that Devi Prasad was ailing and bedridden were also furnished. DW Dol Nath Gautam, in fact, was only eleven years in 1985 when the Plaintiff No.1 was driven out but deposed that he was aware of the entire circumstance in which the Plaintiffs left the house therefore he cannot be said to be a truthful witness. The four Defence witnesses are also unreliable as their evidence were verbatim reproduction of each other's statements.

(vii) The learned trial Court while deciding Issues No.1, 2, 3, 7 and 11 against the Plaintiffs failed to appreciate the uncontroverted evidence of their witnesses.

(viii) PW Kunta Maya Dahal affirmed that the annual death rites were observed by the Plaintiffs besides stating that the Plaintiffs were present beside the body of their late father immediately after his death and her evidence remained uncontroverted as also the evidence of PW3 Man Bahadur Kharka

who deposed about Devi Prasad meeting the Plaintiffs. None of the DWs have disputed the evidence to the effect that the Plaintiffs performed the death rites of their father.

(ix) The learned trial Court while concluding that the Plaintiffs had failed to prove that they maintained and looked after their late father did not discuss the yardstick required for such maintenance. That, the dual conditions were inserted into Exhibit "A" despite their father's knowledge that the Plaintiffs lived separately from him which goes to establish that he had acknowledged that they had taken care of him during his lifetime. That, Bal Krishna had an advantageous position as he continued to live with his parents even after the partition and thereby could look after them directly. The learned trial Court observed that the Plaintiffs had failed to prove through documentary evidence that they had taken care of their father. In doing so, the Court failed to consider that children do not maintain books of accounts while rendering financial assistance to take care of their parents. Nor did the Court consider that the evidence of the witnesses pertaining to the Plaintiffs visiting their father, were not controverted in cross-examination.

(x) That, the observation of the learned trial Court regarding Hindu Law by Raghavachariar **[N.R. Raghavachariar's Hindu Law]** is totally misconceived and out of context.

(xi) That, reliance on the Sikkim Succession Act of 2008 by the learned trial Court, is also erroneous as the Law was never enforced in the State of Sikkim.

(xii) In view of all the facts and circumstances and the evidence on record, the prayers in the Plaint be granted and the

impugned Judgment and Decree of the learned trial Court be set aside as the Plaintiffs have proved that they complied with the terms of Exhibit "A" with regard to the *"jiwni"* land.

12.(i) Learned Counsel for the Defendant No.1, repudiating the arguments of learned Senior Counsel for the Plaintiffs, contended that the Plaintiffs had filed the Suit only on their failure to obtain a favourable Order from the Defendant No.2, despite knowing fully well that the Plaintiff No.1 had failed to step into the main house from the year 1983-84.

(ii) Learned Counsel also advanced the contention that the Plaintiffs had voluntarily left the house and separated from their father and the Defendant No.1.

(iii) That, when their father was ailing for almost a decade, Bal Krishna along with the Defendant No.1 tended to him, providing for the house financially and also for his treatment, which has been extracted in the evidence of the Defendant No.1 duly supported by the evidence of her witnesses and of Defendant No.4.

(iv) On his death, the Plaintiffs came reluctantly to the main house only on the request of the village elders and lit their father's funeral pyre but offered no financial assistance. The evidence of the Defendant No.1 and her witnesses establishes as much. Contrarily, both Plaintiffs have no evidence to establish that they supported their father during his illness, took care of him in the Hospitals or contributed financially or morally during his illness.

(v) It was contended that the Plaintiffs, by virtue of Exhibit "A," had already received sufficient landed property while the Defendant No.1, despite her contribution to the family, has not

inherited any property and she is entitled to fifty per cent of her husband's property as per the Law of the land.

13.(i) It was the next argument of the learned Counsel that the Plaintiffs had, only in the second Amended Plaint, at Paragraph 22 "G," spun out a new story of having taken care of their father. To support this in evidence, sans pleadings, they deposed that the thatched roof of the main house was replaced by the Plaintiff No.1 and that he was driven out by the Defendant No.1 and his father with a *"khukuri."* That, it is a well settled principle of Law that evidence adduced beyond the pleadings would not be admissible nor can any evidence be permitted to be adduced which is at variance with the pleadings. Such evidence is therefore to be disregarded. On this aspect, reliance was placed on ***Govind Singh v. Harchand Kaur***[1], ***M. Chinnasamy v. K.C. Palanisamy and Others***[2] and ***Union of India v. Ibrahim Uddin and Another***[3].

(ii) That, even if the roof had been replaced in 1978-79 as contended, it is evident that the Plaintiff No.1 was living in the main house at that time. The Plaintiff No.1 has admitted that he lived separately from his father and visited the house only on 23.09.2001 on hearing of his father's death. His further admission was that no custom in their family debars the females from shares in the family property and that none of his sisters were married when Exhibit "A" was executed. The Plaintiff No.2 also admitted to living separately from his father. That, the evidence of the Plaintiffs' witnesses failed to support that of Plaintiff No.1 with regard to his replacing the thatched roof, while the evidence of PW7 Tanka Maya Adhikari

[1] AIR 2011 SC 570
[2] (2004) 6 SCC 341
[3] (2012) 8 SCC 148

proves that it was not only the sons of Devi Prasad but all the children of the deceased, numbering fifteen, who performed his death rites.

(iii) It was further canvassed by learned Counsel that the Plaintiffs have to prove their case "beyond a reasonable doubt" and the Plaintiffs must stand or fall on their own case. On this count, learned Counsel sought assistance from the ratio in ***Kiran Limboo v. Kussang Limboo***[4].

(iv) Reliance was also placed on the provisions of Order VII Rules 1 and 3 and Order II Rule 2 of the Code of Civil Procedure, 1908 ("CPC") and it was urged that the Suit must include the whole claim but the Plaintiffs have only sought for a declaration that they are entitled to the *"jiwni"* land.

14.(i) DW Punya Prasad Adhikari, the witness for the Defendant No.1, has deposed that Defendant No.1 did not ill-treat the Plaintiffs. Placing reliance on the ratio of ***Karedla Parthasaradhi v. Gangula Ramanamma (Dead) Through Legal Representatives and Others***[5] and ***Sadhu Singh v. Gurdwara Sahib Narike & Ors.***[6], it was contended that the wife is the Class I heir of her husband and entitled to his properties on his death. That, the Hindu Succession (Amendment) Act, 2005 and Section 6 of the Act, in particular, removes discrimination by giving equal rights to daughters/widows in the Hindu Mitakshara coparcenary property for which strength was drawn from ***Vineeta Sharma v. Rakesh Sharma***[7]. That, accordingly the Defendant No.1 and the Defendant No.4 are entitled to fifty per cent each of the *"jiwni"* land despite the conditions laid down in Exhibit

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[4] 2020 SCC OnLine Sikk 2
[5] AIR 2015 SC 891
[6] AIR 2006 SC 3282
[7] MANU/SC/0582/2020

"A." Reliance was placed on ***Anar Devi and Others v. Parmeshwari Devi and Others***[8].

(ii) Arguments were also advanced denying that Defendant No.1, late Bal Krishna Dahal and Devi Kala Sharma were citizens of Nepal. In this context, learned Counsel placed reliance on ***State of Andhra Pradesh v. Abdul Khader***[9].

(iii) That apart, the Plaintiffs are well settled in life being Government employees and have received their respective shares of the property.

(iv) That, this Court in its Judgment, dated 22.04.2016, in ***"RFA No.04 of 2014 (Smt. Indira Dahal v. Shri Nil Kumar Dahal and Another)"*** had held that *"…Indisputably, Bal Krishna Dahal used to live with his parents, looked after them and had also performed the death rites of his father along with……"* Hence, the observations of the learned trial Court in the impugned Judgment requires no interference.

15. Learned Counsel Ms. Kunzang Choden Lepcha, appearing for the Defendant No.4 made no verbal submissions but filed her written synopsis of arguments reiterating the facts as averred in the pleadings and in sum and substance, also reiterating the arguments advanced by learned Counsel for the Defendant No.1. Learned Counsel led this Court through the evidence of the various witnesses and ultimately contended that the Defendant No.1, besides the Defendant No.4, is also entitled to fifty per cent of the *"jiwni"* land.

16. Learned Additional Advocate General for State-Respondents No.2 and 3 had no submissions to make.

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[8] AIR 2006 SC 3332
[9] AIR 1961 SC 1467

17. The submissions advanced by learned Counsel for the parties were heard at length and duly considered. The pleadings, all evidence, documents on record, the impugned Judgment and the citations placed at the Bar have also been perused.

18.(i) Before embarking into a discussion on the merits of the matter, it is essential to point out here that the averments made by both Defendants No.1 and 4 in Paragraph "17" of their respective written statements *inter alia* reflects as follows;

> "**17**. ……..The said two pre conditions which are also acknowledged by the Honble High Court in its Judgment dated 22.04.2016 passed in RFA No.04 of 2016 between Smt. Indira Dahal versus Shri Nil Kumar Dahal & another are "look after the parents and also perform death rites" which were not fulfilled by the Plaintiffs. **It is only Defendant No.1 and her son, Bal Krishna Dahal who fulfill both this** *(sic 'these')* **pre conditions and hence entitled to the JEWNI land as per the Hon'ble High Court**…"
>
> **(Emphasis supplied)**

(ii) Learned Counsel for the Defendant No.1 in his written arguments has *inter alia* contended as under;

> "……And finally when one comes to the case of respondent No. 4, it is not in doubt that **Late Bal Krishna Dahal** (**the respondent No. 4 before this Hon'ble Court**) had taken care of Late Devi Prasad Dahal during his lifetime and he had also performed his death rites thus fulfilling the twin conditions laid down in the Banda Patra.
>
> This was the observation of this Hon'ble Court way back on **22.04.2016** when **Late Bal Krishna Dahal** was not even impleaded as respondent No. 4 in the instant case in **Judgment dated 22.04.2016** passed in **R.F.A. No. 4 of 2014** at **paragraph 15** concluded.- *"What stares one in the face is that the Appellant (Respondent No. 1/Defendant No. 1) bore one son Bal Krishna Dahal to Devi Prasad Dahal. It appears that the said Bal Krishna Dahal died in an accident in Nepal leaving behind his widow and a daughter.* ***Indisputably, Bal Krishna Dahal used to live with his parents, looked after them and had also performed the death rites of his father*** *along with his step brothers, the Respondent……..."."*

(iii) The Defendant No.4, in her written arguments stated that the Defendant No.1, at Paragraph "3" of her Additional

Evidence-on-Affidavit (Exhibit D1/G), has affirmed that, "*The Hon'ble High Court in its Judgment dated 22.04.2016 passed in RFA No. 04 of 2016 came to the conclusion that only my son, Bal Krishna Dahal fulfill the two conditions "look after the parents and also perform death rites", specifically laid down in the Banda Patra dated 17.05.1985* ***Exhibit D1/A*** *is the Judgment dated 22.04.2016 passed in RFA No. 04 of 2016*."

19. It is imperative to clarify here that the interpretation given to the Judgment of this Court in RFA No.04 of 2014 *(supra)* as reflected in the averments of the Written Statements of the Defendant No.1 and Defendant No.4 and their written arguments, are misleading, erroneous and mischievous. It is necessary to refer herein to the Judgment and extract the relevant portion thereof;

> "**15**. What stares one in the face is that the Appellant bore one son Bal Krishna Dahal to Devi Prasad Dahal. It appears that the said Bal Krishna Dahal died in an accident in Nepal leaving behind his widow and a daughter. Indisputably, Bal Krishna Dahal, used to live with his parents, looked after them and had also performed the death rites of his father **along with his step brothers**, the Respondents. Although the Learned Trial Court in its Judgment has alluded to the fact that Bal Krishna Dahal looked after and maintained his late father as well as performed the death rites, however, in paragraph 56 of the impugned Judgment has recorded *inter alia,* that *"……..…..It may be necessary to mention that though the younger son of late Devi Prasad Dahal, Bal Krishna (since deceased) also maintained/looked after and performed the death ritual of their father, however, neither his legal heir and successor were made parties in the present suit nor any of them came as interested party to claim the said Jiwni land, as such, it is not necessary to go into the details."*
>
> ……...
>
> **23**. It is hereby ordered that the legal heirs and successors of Bal Krishna Dahal be impleaded as Defendants in the Title Suit which shall be readmitted to its original number in the Register of Civil Suits of the Learned Court of the District Judge, Special Division-I, Sikkim at Gangtok. The Suit be determined as per Law within six months from today in view of the fact that the Title Suit is of the year 2010."
>
> **(Emphasis supplied)**

From a reading of the above, it is clear that this Court had observed that Bal Krishna lived with his parents, looked after them and also

performed the death rites of his father "along" with his step brothers i.e. the Plaintiffs. The adverb "along" which obtains in the relevant sentence, has to be read in its correct perspective. It is clear that no decision with regard to the merits of the case has been made, as sought to be insinuated by the Defendant No.1 and Defendant No.4. The facts and circumstances at that juncture were duly considered and direction issued by this Court to implead the descendants of late Bal Krishna on account of his admitted role in his family. The Judgment, by no stretch of the imagination stated that only Bal Krishna fulfilled both the conditions. Such an erroneous interpretation cannot be given to the decision of this Court in the RFA *supra* and parties ought to refrain from such misrepresentation.

20. That having been said, while perusing the averments of the parties in their pleadings, it is clear that the Plaintiffs claim to be governed by the Mitakshara School of Hindu Law while the Defendants No.1 and 4 deny it, asserting that they were governed by the Law of the land. The learned trial Court ought to have settled an issue for determination on this point in view of the provisions of Order XIV of the CPC, which *inter alia* provides that Issues arise when a material proposition of fact or Law is affirmed by the one party and denied by the other. Nonetheless, this matter shall be taken up for discussion herein. Accordingly, the questions that fall for consideration before this Court are;

(i) Whether the Mitakshara School of Hindu Law was applicable to the Plaintiffs?;

(ii) Who is entitled to succeed to the *"jiwni"* land of deceased Devi Prasad Dahal?; and

(iii) Whether the Defendant No.1 is entitled to fifty per cent of the *"jiwni"* land despite the conditions laid down in the testamentary disposition of the Partition Deed, Exhibit "A"?

21. Taking up the first question framed hereinabove, in the first instance, we may relevantly examine whether there are Laws of Succession in the State protected by the provisions of Article 371-F of the Constitution of India ("Constitution"). Necessary reference is made to the provisions of Article 371-F(k), (l) and (n) of the Constitution which provides;

> "**371-F. Special provisions with respect to the State of Sikkim**.—Notwith-standing anything in this Constitution,—
>
> .....
>
> (*k*) all laws in force immediately before the appointed day in the territories comprised in the State of Sikkim or any part thereof shall continue to be in force therein until amended or repealed by a competent Legislature or other competent authority;
>
> .....
>
> *(l)* for the purpose of facilitating the application of any such law as is referred to in clause (k) in relation to the administration of the State of Sikkim and for the purpose of bringing the provisions of any such law into accord with the provisions of this Constitution, the President may, within two years from the appointed day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon, every such law shall have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law;
>
> .....
>
> *(n)* the President may, by public notification, extend with such restrictions or modifications as he thinks fit to the State of Sikkim any enactment which is in force in a State of India at the date of the notification;
>
> ....."

These provisions are self-explanatory and have been extracted to elucidate the position of the old Laws in Sikkim as well as provisions existing for extension and enforcement of the Laws of the country to the State, consequent upon the 36th Amendment Act to the Constitution, whereby Sikkim became a part of the Indian Union.

22. It was the vehement argument of learned Counsel for the Defendant No.1 that the parties are bound by the Law of the land which do not differentiate between men and women in terms of Succession thereby entitling Defendant No.1 to fifty per cent of her husband's property. No specific Law was brought forth for the perusal of this Court by the Defendant No.1. It may be noticed that *lex terrae* or Law of the land refers to Laws within a country or region, but no effort was made by the Defendant No.1 to clarify either the "Law" or the "land" referred to in view of the afore-extracted provisions of Article 371-F of the Constitution. Before the learned trial Court, reliance had been placed by the Defendant No.1 on the Sikkim Succession Act, 2008, therefore it can be safely presumed that this was the Statute being referred to. The fate that this Law has met will be discussed later.

23. The contention of the Defendant No.1 was that both Plaintiffs in their cross-examination, admitted that they belonged to the Brahmin community and follow their community traditions and customs and were unaware of the words "Mitakshara School" or what it stood for.

24. In the light of the statement relating to customs and traditions extracted *supra* from the Plaintiffs in cross-examination, it would be relevant to examine what "Customs" are and the method of proof of such "Customs" for Courts to take it into consideration for the purposes of adjudication. In **Halsbury's Laws of England, (Fourth Edition), Volume 12(1)**, the attributes of "Custom" was enumerated as follows;

> "**606. Essential attributes**. To be valid, a custom must have four essential attributes: (1) it must be immemorial; (2) it must be reasonable; (3) it must be

> certain in its terms, and in respect both of the locality where it is alleged to obtain and of the persons whom it is alleged to affect; and (4) it must have continued as of right and without interruption since its immemorial origin. These characteristics serve a practical purpose as rules of evidence when the existence of a custom is to be established or refuted.
>
> **[Page No.160]**
>
> **626. Nature of proof.** All customs of which the courts do not take judicial notice must be clearly proved to exist, the onus of establishing them being upon the parties relying upon their existence. Proof must be made either by matter of record or by evidence of usage since time immemorial. Evidence to prove a custom must not only be consistent with the custom which is alleged, but must also prove a custom which is no wider than that alleged. If the evidence tends to prove a custom wider than that which is alleged, the party seeking to establish the custom is not at liberty to adopt part only of the evidence and to reject the rest.
>
> **[Page No.177]**
>
> **627. Usual method of proof.** In proving an immemorial custom, the usual course taken is to call persons of middle or old age to state that in their time, usually at least half a century, the custom has always prevailed. This is considered, in the absence of countervailing evidence, to show that the custom has existed from all time. There are two sorts of countervailing evidence. First, other old person may be called to show that there was an interruption during the period spoken of by the first set of witnesses; secondly, evidence may be given that, from the nature of the case, it was quite impossible that such a right should have existed from time immemorial, or that there is some legal difficulty or obstacle in the way which makes the alleged assertion of the right incompatible with the law of the country. Whether the evidence supports the custom as alleged or not is a question of fact for the court. A custom possible in law, being reasonable and otherwise fulfilling the requisites of a good custom, may be established by very slender evidence.
>
> **[Page No.178]**

The extracts *supra* throw light on what comprises "Customs" and the usual method of proof required.

25. In ***Ass Kaur (Smt.) (Deceased) by LRs. v. Kartar Singh (Dead) by LRs. and Others***[10], a two Judge Bench of the Hon'ble Supreme Court observed that in the absence of any proof of custom, indisputably the Hindu Law would apply.

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[10] (2007) 5 SCC 561

26. As far back as in 1908, in ***Daya Ram v. Sohel Singh***[11], the Chief Court of Punjab while dealing with the true effect of Section 5 of the Punjab Laws Act, 1872, Robertson, J held as follows;

> "In all cases it appears to me under this Act, it lies upon the person asserting that he is ruled in regard to a particular matter by custom, to prove that he is so governed, and not by personal law, and further to prove what the particular custom is. There is no presumption created by the clause in favour of custom; on the contrary, it is only when the custom is established that it is to be the rule of decision. The Legislature did not show itself enamored of custom rather than law nor does it show any tendency to extend the 'principles' of custom to any matter to which a rule of custom is not clearly proved to apply. It is not the spirit of Customary Law, nor any theory of custom or deductions from other customs which is to be a rule of decision, but only 'any custom applicable to the parties concerned which is not...' and it therefore, appears to me clear that **when either party to a suit sets up 'custom' as a rule of decision, it lies upon him to prove the custom which he seeks to apply; if he fails to do so Clause (b) of Section 5 of the Laws Act applies, and the rule of decision must be the personal law of the parties subject to the other provisions of the clause**."
>
> **(Emphasis supplied)**

27. In ***H.H. Mir Abdul Hussain Khan v. Bibi Sona Dero***[12], the question of custom came up for consideration in view of the difference in opinions of the Court of first instance and the Court of Appeal. The District Court held that the custom was established and the Court of the Judicial Commissioner of Sind decided that custom was not established. The Appeal arose from the latter decision and the Hon'ble Supreme Court *inter alia* observed as follows;

> "**6**. ……It is therefore incumbent upon the plaintiff to allege and prove the custom on which he relies, and it becomes important to consider the nature and extent of the proof required. Their Lordships have carefully considered the difficulty of applying all the strict rules that govern the establishment of custom in this country to circumstances which find no analogy here. Custom binding inheritance in a particular family has long been recognised in India (see Soorendronath Roy v. Mussamut Heeramonee Burmoneah (1868) 12 M.I.A. 81, although such a custom is unknown to the law of

[11] (1908) P.R. No.110 1906, F.B.
[12] MANU/PR/0125/1917

> this country and is foreign to its spirit. Customs affecting descent in certain areas or customs affecting-rights of inhabitants of a particular district are perhaps the nearest analogies in this country. ……
> ……
> **19**. In every case of this kind the burden of proof lies heavily upon the plaintiff, and though his evidence may consist of a number of striking instances in support of his case, it receives a severe blow when prominent members of the families concerned deny that the custom exists.
> ……"

A reading of this Judgment thus reflects that the Hon'ble Judges were aware of the myriad of castes and customs of the country and that custom in one family may not necessarily be the custom of another family and thereby the lack of uniformity in customs. In other words, it is accepted in our country that every family may have their own customs but it is for the person asserting it to establish that such a custom exists by sufficient proof, as laid down in ***Daya Ram v. Sohel Singh*** and ***H.H. Mir Abdul Hussain Khan*** *(supra)*.

28. In ***Ujagar Singh v. Jeo***[13] the Hon'ble Supreme Court held *inter alia* as follows;

> "**13**. It therefore appears to us that the ordinary rule is that all customs, general or otherwise, have to be proved. Under s. 57 of the Evidence Act however nothing need be proved of which courts can take judicial notice. Therefore it is said that if there is a custom of which the courts can take judicial notice, it need not be proved. Now the circumstances in which the courts can take judicial notice of a custom were stated by Lord Dunedin in Raja Rama Rao v. Raja of Pittapur I.L.R. (1918) IndAp 148, in the following words, "When a custom or usage, whether in regard to a tenure or a contract or a family right, is repeatedly brought to the notice of the Courts of a country, the Courts may hold that custom or usage to be introduced into the law without necessity of proof in each individual case." When a custom has been so recognised by the courts, it passes into the law of the land and the proof of it then becomes unnecessary under s. 57(1) of the Evidence Act. It appears to us that in the courts in the Punjab the expression "general custom" has really been used in this sense, namely, that a custom has by repeated recognition by courts, become entitled to judicial notice as was said in Bawa Singh v. Mt. Taro A.I.R. 1951 Simla 239 and

[13] MANU/SC/0187/1959

> Sukhwant Kaur v. Balwant Singh A.I.R. 1951 Simla 242..
>
> ……
>
> **30**. It was then said that in the plaint it had been admitted by the respondent that there was a general custom as alleged by the appellant and so no proof of that general custom was required in this case. We do not think this contention is justified. No doubt in her plaint the respondent referred to a custom entitling her to succeed and termed it a special custom. We are unable to read the reference to a special custom as amounting to an admission of a general custom or its terms.
>
> ……
>
> **41**. As we have earlier said this observation was approved by the Judicial Committee in Abdul Hussain Khan v. Bibi Sona Dero I.L.R.(1917) IndAp 10. In Fatima Bibi v. Shah Nawaz I.L.R. (1920) Lah. 98., a case to which we have earlier referred, the Court allowed the plaintiff's sisters, who had based their claim on custom and not on the personal law, to fall back on Mohammedan law, the personal law of the parties, on their failure to establish the custom, no custom against them having been proved by the collaterals. **There are a number of other authorities, to which it is not necessary to refer, in which personal law was resorted to when no custom on either side was established. We agree that is the correct view to take**. We therefore think that even if the respondent had been unable to prove the custom in her favour she is entitled to succeed in the suit on the basis of the personal law of the parties, namely, the Hindu law."
>
> **(Emphasis supplied)**

It thus follows that where custom is not established, the personal Law of the parties becomes applicable.

29. To be fair to the Plaintiffs, it was not their averment in the pleadings that their family had established customs for Succession. The statement, as already reflected above, came to be extracted in cross-examination in which both Plaintiffs made identical statements *viz.*;

> *"……..It is true that I belonged*(sic) *to the Brahmin community and we follow our own traditions and customs as per the said community. It is true that I am not aware of the word Mitakshara School and I cannot say what it stands for. ……"*

However, as seen from the text of **Halsbury** *(supra)* and the catena of ratiocination referred to above, if a person claims governance by custom, he is to prove it to enable the Courts to apply it, failing

which the personal Law of the parties will be applicable. Ironically, from the evidence on record neither have the Plaintiffs been able to establish by furnishing any evidence, the customs followed either in their community or specifically in their family nor has the Defendant No.1, for her part, been able to show any Law of the land which confers rights on her to acquire her husband's property.

30. Assuming that the reference made by the Defendant No.1 was to the Sikkim Succession Act, 2008, it may pertinently be pointed out here that a Division Bench of this High Court in ***Basanti Rai and Ors. v. State of Sikkim and Ors.***[14] was considering the legality and validity of the said Statute issued vide Notification No.22/LD/P/2008, dated 24.07.2008, of the Law Department, Government of Sikkim. In the said Writ Petition, the State Government in its Return, clearly stated that the Act is only on paper and has not yet been notified, as required, to bring the same into force and contended that the Petition was premature. This Court, on examining the reply filed by the State-Respondents, vide its Order, dated 31.07.2017, concluded as follows;

> "**4.** ……that the Sikkim Succession Act, 2008 is not yet enforced, the same having not been notified as yet. Consequently, Orders, if any, passed by the Authorities, in terms of the provisions of the Sikkim Succession Act, 2008, are declared null and void ab initio. Examination of the validity of an enactment, which is nonexistent, is not required, as it is pre-mature. ……"

31. In the absence of any established custom of the parties pertaining to Succession, any State enactment occupying the field and the absence of personal Law, the quandary therefore would now be how the matter is to be adjudicated upon. At this juncture, it is thus imperative that we refer to the ratiocination of ***Sonam Topgyal***

[14] 2017 SCC OnLine Sikk 123

Bhutia v. Gompu Bhutia[15]*,* decided on 14.06.1979, by a Division Bench of this High Court, comprising of M.S. Gujral, C.J. and A.M. Bhattacharjee, J. The Court was concerned with a matter relating to Wills and whether Buddhists in Sikkim can legally make testamentary disposition. It was also specified that though this point was not taken up by any of the parties in their pleadings or otherwise but had cropped up during the hearing of the Appeal. The Court was of the opinion that the question would go to the root of the matter and was of general public importance in Sikkim as there was no judicial pronouncement of the Court or any other Court on this point. It was observed therein as follows;

> "**9**. There is no doubt that in Sikkim, there is, as yet, no statutory law authorising testamentary disposition. But as will appear from the unchallenged evidence of the witnesses appearing before us, in practice Wills had been and have been recognised, acted upon and given effect to in the Courts of Sikkim as valid modes of post-mortem disposition of properties and witnesses Sarki Bhutia, Karma Pintso Bhutia and T.D. Densapa have also referred to several instances of the execution of Will by Sikkimese-Buddhists. The question before us is whether Wills in Sikkim can be regarded to be valid and legal without any legislative provision to that effect. The Shastric Hindu Law did not recognise testamentary disposition and statutory provisions had to be made by and under the provisions of the Hindu Wills Act, 1870, empowering the Hindus to make Wills. Buddhism also favoured intestacy and as pointed out by the Privy Council in *Dwe Maung* v. *Khoo Haung Shein* (AIR 1925 PC 29 at p. 31), according to "the strict Buddhist view" "intestacy is compulsory". As the personal laws of the Hindus and Buddhists did not recognise testamentary disposition, doubts have arisen as to whether the Hindus and Buddhists in Sikkim can validly make Wills in the absence of legislative provisions.
>
> .....
>
> **26.** But though there is no legislation in Sikkim relating to Wills, the Courts in Sikkim have followed and applied the provisions of the Indian Succession Act, 1925 in all matters relating to Wills including granting of Probates and Letters of Administration. The question, therefore, is whether the provisions

[15] AIR 1980 Sikk 33

relating to Wills in the Indian Succession Act, 1925, which have never been formally adopted in or extended to Sikkim by any formal legislative authority are to be regarded as laws in force in Sikkim? Salmond has defined law as a body of principles recognised and applied by the State in the administration of Justice and as to consist of "of the rules recognised and acted on by Courts of justice". Holland has defined law as "a rule of external human action enforced by a Sovereign political authority." Therefore, the provisions relating to Wills in the Indian Succession Act, 1925, having so long been "recognised" "applied" and "acted on" by the Courts of justice in Sikkim in the administration of justice in matters relating to Wills, are also to be regarded as Laws in force in Sikkim.

27. In other words the statutory laws relating to Wills as contained in the Indian Succession Act, 1925 have, as a result of their continuous and systematic recognition and application by the Courts in Sikkim, become the non-statutory laws of Sikkim. Law does not and need not always flow formally or directly from a legislative authority. For otherwise, personal laws, customary laws, common laws or even precedents cannot be regarded as laws. Reference in this connection may be made to a recent decision of Sikkim High Court in *Asharam Agarwala* v. *Union of India*, (reported in 1978 Sikkim LJ 18) where it has been held that though the Arbitration Act, 1940 has never been formally made applicable in Sikkim, yet the provisions of the said Act, having so long been recognised, applied and acted upon by the Courts of Justice in Sikkim in the administration of justice in matters relating to Arbitration, are to be regarded as laws in force in Sikkim, though not as direct statutory laws. In dealing with the question as to whether such non-statutory laws could or can also create jurisdictions for the Courts to entertain applications, appeals and other proceedings under the said Act, it has been observed as hereunder:—

> "If as already noted, Courts in Sikkim have all along not only applied the provisions of the Arbitration Act in between the parties to arbitration but have also applied the provisions relating to entertainment of all applications and appeals as provided in the said Act, then the latter provisions also, as a result of application and recognition by Courts, became the laws in force within the meaning of Article 371-F(K) of the Constitution whereunder all laws in force in Sikkim immediately before the commencement of the Constitution (Thirty-Sixth Amendment) Act, 1975, shall continue in force until amended or repealed by a competent Legislature or other competent authority. In other words, if by and under the Laws of Sikkim, though not statutory, the Courts had been exercising the jurisdiction to entertain applications relating to arbitration matters and also appeals therefrom, such laws

> and jurisdiction have also continued and shall continue in force."
>
> **28**. Following this decision, I would hold that not only the provisions relating to the execution, interpretation or effect of Wills in the Indian Succession Act, 1925, but all the provisions therein relating to Wills including the provisions relating to grants of Probate and Letters of Administration and also appeals and other proceedings therefrom have become the laws of Sikkim. ……"

32. On the same lines, in ***Bishnu Kala Karki Dholi and Others v. Bishnu Maya Darjeeni, Civil First Appeal No.8 of 1976,*** decided earlier on, *viz.* 06.03.1978 by the same Bench of this High Court, the two questions requiring determination in the Appeal were, whether a mortgager is entitled to file a Suit and to obtain a decree for redemption of mortgage, where a Deed of mortgage is invalid for want of registration and, if not, whether the mortgager is entitled in such a Suit to a decree for recovery of possession on proof of title. Speaking for the Court, Justice A.M. Bhattacharjee while considering and observing that the Transfer of Property Act had not been extended and enforced in the State of Sikkim then, held as follows;

> "**9.** ……The observation quoted above should be read with the observation of the Supreme Court in the above noted decision in *Namdeo v. Narmada Bai* (AIR 1953 Supreme Court 228 at p. 230) quoted hereinbelow:-
>
> > "It is axiomatic that the Courts must apply the principles of justice, equity and good conscience to transactions which come up before them for determination even though the statutory provisions of the Transfer of Property Act are not made applicable to these transactions. It follows therefore that the provisions of the Act which are but a statutory recognition of the rules of justice, equity and good conscience also governs those transfers."
>
> And when so read will lead to the conclusion that even though the Transfer of Property Act does not formally apply in Sikkim, the Courts in Sikkim, in discharging their paramount duty to act in the absence of statutory provisions, according to the principles of justice, equity and good conscience should reasonable*(sic)* and properly apply the principles contained in Section 60 of the Transfer of Property Act relating to redemption of mortgage and unenforceability of any clog on the right of

> redemption. This is what was also done by the Rajasthan High Court in Dev Karan v. Murarilal (ILR 1958 Rajasthan 811) in a case arising from the former State of Alwar before the extension of the Transfer of Property Act thereto and this decision has been affirmed by the Supreme Court in Murarilal v. Devkaran (AIR 1965 SC 225) and relying in the observations made therein at page 231, I would hold that it would be reasonable to assume that the Civil Courts established in Sikkim, like Civil Courts all over India, were and are required to administer justice according to the principles of equity and justice where there was or is no specific statutory provision to deal with the question before them and, therefore, it would be just and proper to apply the principles contained in Section 60 of the Transfer of Property Act relating to the right of redemption and clog on the equity of redemption."

33. In ***Jas Bahadur Rai v. Putra Dhan Rai, 1978 (3) Sikkim Law Journal***, decided on 29.07.1978, the same Bench of this High Court, while considering whether the provisions of the Indian Easements Act, 1882, should be applied in Sikkim sans extension or enforcement of the Law, in the absence of any corresponding Law on the point, in Sikkim, held as follows;

> "**3**. The Indian Easements Act, 1882, was never formally adopted in Sikkim prior to its incorporation in the Union of India; nor the same has been extended to Sikkim by any notification under Article 371-F (n) of the Constitution of India or otherwise; and neither there was nor there is any corresponding statutory law relating to easement or licence in force in Sikkim. But when a point for decision was not covered by the provision of any law in force in Sikkim, the Courts in Sikkim, from long before its incorporation in the Union of India, have followed the principles of laws in force in India in deciding such a point, if such principles appeared to them to be based on or in consonance with the principles of justice, equity and good conscience. If this is characterized as making of laws by Courts, it may be pointed out that the very same thing was done by the Courts in India during the early British period when legislative laws in India were scanty and the Courts in India freely followed and adopted the principles of the English law in deciding points not covered by the provisions of the Indian laws in force. As is well-known, India was then a country which was almost empty of legislative laws and the void was to a great extent filled up by Courts through their decisions by importing the principles of English law, both common and statutory.
>
> **4**. ……
>
> **5**. The principles contained in the Section quoted above are no doubt based on justice, equity and good

> conscience as has been held by the Division Bench of the Allahabad High Court in Mathuri versus Bhola Nath (AIR 1934 Allahabad 517) and the principles of this section have been applied in those parts of India where this Easements Act does not expressly extend and apply. As I have already pointed out, the Courts in Sikkim have freely applied the provisions of Indian Laws in cases not specifically covered by the laws in Sikkim, if the relevant provisions of the Indian laws appeared - to them to be consonant with the principles of equity and justice. In my view, therefore, the provisions of Section 60, Indian Easements Act, 1882 can be invoked and should be applied in Sikkim in the absence of any corresponding law in Sikkim on the point. I would repeat that if this amounts to making of laws by Courts, the Courts in Sikkim will have to continue to do so until the field is occupied or is substantially occupied by specific laws. ……"

34. In the decision of ***Durga Prasad Pradhan v. Palden Lama, Second Appeal No.1 of 1980,*** decided on 03.06.1981, the Division Bench of this High Court while considering the submissions of Counsel for the Respondent that the Specific Relief Act of 1963 had not been extended to Sikkim and therefore did not apply to Sikkim, held as follows;

> "**5**. ……It is true that the Specific Relief Act, 1963, does not apply in Sikkim and there is no statutory law in Sikkim on this subject. But it is now beyond doubt that even if an enactment does not extend and apply to any area *ex proprio vigore,* but the enactment contains provisions which are statutory embodiment of the rules of equity and justice, such provisions have been, are and may be applied by the Courts to transactions beyond such area, in the absence of any law operating therein. ……"

35. It may also be recounted here that Justice A.M. Bhattacharjee, J in his notes sent to the Law Commission of Sikkim, reported in **1978 (3) Sikkim Law Journal, at Page 4**, wrote as follows;

> "……
>
> The provisions of the Hindu Law and the Mahomedan Law having been so long applied, recognised, administered, enforced and acted upon by the State and its Judicial Organ, the Courts of Sikkim, the provisions so applied became laws in Sikkim and have continued as laws under the principle enunciated in those Privy Council and Supreme Court cases and have actually been continued as laws under the provisions of Clause (k) of Article 371F of the Constitution whereunder "all laws in force immediately before the applinted*(sic)* day in the

> territories comprised in the State of Sikkim or any part thereof shall continue to be in force therein until amended or repealed by a competent Legislature or other competent authority." The provisions of the Hindu Law and the Mahomedan Law, therefore, to the extent they have been applied, recognised, administered, enforced and acted upon by the Courts in Sikkim before its incorporation in the Union of India, still continue as laws in force under the mandate of Article 371F (k). ……
>
> I am, therefore, of opinion that notwithstanding the absence of any statutory provisions making Hindu Law and Mahomedan Law applicable to Hindus and Mahomedans in Sikkim, the provisions of Hindu Law and Mahomedan Law would apply to Hindus and Mahomedans of Sikkim to the extent those have been applied, recognised, administered, enforced and acted upon by the Courts of Sikkim prior to its incorporation in the Union of India. ……"

36. Relying on the various ratio referred to hereinabove and on the bedrock of the reasoning thereon, it is evident that where there is no existing old Law on a particular subject in Sikkim or where the Law is scanty or inadequate, the Courts in Sikkim also being Courts of equity, justice and good conscience, have to turn to the Laws of the country. It is but apposite to notice that the Courts in Sikkim, even prior to being part of the Indian Union have followed principles of Law in force in India if the principles were based on justice, equity and good conscience, as already reflected in the plethora of ratio of this High Court referred to above. In ***Jas Bahadur Rai*** *(supra),* it may be reiterated that it was observed as follows;

> "**5**.……In my view, therefore, **the provisions of Section 60, Indian Easements Act, 1882 can be invoked and should be applied in Sikkim in the absence of any corresponding law in Sikkim on the point**. I would repeat that if this amounts to making of laws by Courts, **the Courts in Sikkim will have to continue to do so until the field is occupied or is substantially occupied by specific laws**. ……"
>
> **(Emphasis supplied)**

Considering that the provisions of the Hindu Succession Act, 1956, has not been extended or enforced in the State, nor does any corresponding Statute occupy the field in the State, it would, in the circumstances be just and proper to look to and apply the principles

contained in the Hindu Succession Act, 1956, for the purposes of considering matters relating to Succession in Sikkim, for persons to whom it applies as personal Law.

37. The parties are Hindu Brahmins. This is not disputed. Their father Devi Prasad divided the property amongst his three sons contemporaneously which was consented to by all without any objection. As under the Mitakshara Law, the father i.e. Devi Prasad had the power to divide the family property during his lifetime and exercised his power, as evident from Exhibit "A" which is admitted to by all parties, thus, for all intents and purposes, it can be gauged that their family was following the principles of the Mitakshara School of Hindu Law. The above discussions soundly answers the first question settled for determination by this Court.

38. Now to address the second question flagged, under the Mitakshara School of Hindu Law, each son and now daughters vide the Hindu Succession (Amendment) Act, 2005, in Section 6, are coparceners in their own right and upon birth, take an equal interest in the ancestral property, whether movable or immovable. Thus, being entitled to a share, they can seek partition. If they do so, the effect in Law is not only a separation of the father from the sons but a separation *inter se,* the consent of the sons is not necessary for the exercise of that power. However, no Hindu father joined with his sons and governed by the Mitakshara Law although vested with the power to partition the property can make a partition of the joint family property by Will. In ***Kalyani (Dead) by Lrs. v. Narayanan and Others***[16]*,* the Hon'ble Supreme Court has propounded this principle. Once partition is complete, the property then becomes the separate

[16] 1980 Supp SCC 298

property of each of the coparceners, however, in the hands of the son, the property will be ancestral property and the natural or adopted son of that son will take interest in it and be entitled to it by survivorship and joint family property. **[See Mullah's Hindu Law, 22nd Edition, Chapter XII]**. The Hon'ble Supreme Court in ***C.N. Arunachala Mudaliar v. C.A. Muruganatha Mudaliar and Another***[17] considered the question as to where a Hindu, instead of requiring his self-acquired or separate property to go by descent, makes a gift of it to his son, or bequeaths it to him by Will, whether such property is the separate property of the son or whether it is ancestral in the hands of the son as regards his male and female issues. It was observed that if there are no clear words describing the kind of interest intended to be given, the Court would have to collect the intention from the language of the document, taken along with the surrounding circumstances in accordance with the established cannons of construction.

***39*.** It is apparent from the records, that the parties are in agreement that the property partitioned amongst the Plaintiffs and the deceased Bal Krishna, were ancestral properties. Late Devi Prasad, during his lifetime, vide Exhibit "A," partitioned all movable and immovable property amongst his three sons, the Plaintiffs being his sons from his first wife and Bal Krishna being the son from his second wife, the Defendant No.1. He set aside some property for himself during the said partition, for his sustenance during his lifetime, known in common local parlance as *"jiwni."* Admittedly, Exhibit "A" was prepared by Devi Prasad in his full consciousness and consented to by his three sons, duly witnessed by the

[17] AIR 1953 SC 495

Panchayat and the village elders, who also affixed their signatures on the document along with the Plaintiffs. On partition, the share of Devi Prasad became his separate property, and he was free to dispose it off as he thought fit including bequeathing it by a Will. Exhibit "A" is thus, not only a Deed of Partition but a testamentary disposition for the *"jiwni"* property of Devi Prasad. On pain of repetition, it may be stated that vide Exhibit "A," Devi Prasad laid down conditions *viz. "father's "jiwni" share would go to the son who would look after and perform death rites."* It needs to be clarified here that he has not mentioned "parents" as claimed by the Defendant No.1 and Devi Kala Sharma, guardian of Defendant No.4, in their evidence. In the scheme of Exhibit "A," no reference has been made to Defendant No.1 save to the effect that when the partition was executed, the "sons" were referred to as the "sons of first wife" and "sons of second wife" and not by their own names. On this aspect, in ***Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. And Others***[18], it was *inter alia* observed as under;

> "**33.** Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. …… No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed

[18] (1987) 1 SCC 424

> so that every word has a place and everything is in its place. ……"

Further, in ***Anwar Hasan Khan v. Mohd. Shafi and Others***[19], the Hon'ble Supreme Court *inter alia* held thus;

> "**8**. ..... It is a cardinal principle of construction of a statute that effort should be made in construing its provisions by avoiding a conflict and adopting a harmonious construction. The statute or rules made thereunder should be read as a whole and one provision should be construed with reference to the other provision to make the provision consistent with the object sought to be achieved."

The testamentary disposition of Devi Prasad of course, in no way, can be described as a Statute, nevertheless the principles enunciated above for interpretation, may well be adopted for the purposes of interpreting the relevant portion of Exhibit "A." Thus, on the anvil of the said principles, a careful scrutiny of Exhibit "A" indubitably establishes that Devi Prasad was referring to himself only and none else for the purposes of the conditions laid down in the testamentary disposition.

40. While further considering Exhibit "A," it is evidently an unregistered document. The Sikkim State General Department Notification No.385/G, dated 11.04.1928, requires all documents such as mortgage and Sale Deeds and *"other important documents"* and Deeds to be registered and will not be considered valid unless they are duly registered. Nevertheless, it is now no more *res integra* that the Courts can look into unregistered documents more so, if it is a family settlement. The Hon'ble Supreme Court in ***Thulasidhara and Another v. Narayanappa and Others***[20] held *inter alia* as follows;

> "**9.4**…… The High Court has refused to look into the said document and/or consider document dated 23-4-1971 (Ext. D-4) solely on the ground that it requires registration and therefore as it is unregistered, the same cannot be looked into.

[19] (2001) 8 SCC 540
[20] (2019) 6 SCC 409

> However, as observed by this Court in Kale [Kale v. Director of Consolidation, (1976) 3 SCC 119] that such a family settlement, though not registered, would operate as a complete estoppel against the parties to such a family settlement. ……
>
> **9.5.** As held by this Court in *Subraya M.N.* [*Subraya M.N.* v. *Vittala M.N.*, (2016) 8 SCC 705 : (2016) 4 SCC (Civ) 163] even without registration a written document of family settlement/family arrangement can be used as corroborative evidence as explaining the arrangement made thereunder and conduct of the parties. In the present case, as observed hereinabove, even the plaintiff has also categorically admitted that the oral partition had taken place on 23-4-1971 and he also admitted that 3 to 4 panchayat people were also present. However, according to him, the same was not reduced in writing. Therefore, even accepting the case of the plaintiff that there was an oral partition on 23-4-1971, the document, Ext. D-4 dated 23-4-1971, to which he is also the signatory and all other family members are signatory, can be said to be a list of properties partitioned. Everybody got right/share as per the oral partition/partition. Therefore, the same even can be used as corroborative evidence as explaining the arrangement made thereunder and conduct of the parties. Therefore, in the facts and circumstances of the case, the High Court has committed a grave/manifest error in not looking into and/or not considering the document Ext. D-4 dated 23-4-1971."

The Law having been thus settled, Exhibit "A" reveals the family arrangement pertaining to partition of the ancestral properties as well as bequeathment by Will.

41. It would now be relevant to consider and address the contesting arguments of the parties regarding the care given by the Plaintiffs to their deceased father. The averments in the Plaint at Paragraph 22 "G" reveal as follows;

> *"That, the Plaintiffs had taken care of their father during his lifetime and never performed death rites under duress. The Plaintiffs had also provided financial, medical and all types of help those are given by son*(sic) *to their father late D.P. Dahal during his lifetime."*

The Plaintiffs' contention and evidence is that the Plaintiff No.1 was driven out of the main house in 1983-84 with a *"khukuri"* by his father and step mother. Notwithstanding such treatment, he took care of his father by replacing the thatched roof of the main house

with GCI sheets and extending all financial and other relevant help. The Defendant No.1 asserted that the two points raised above were never pleaded and it is settled Law that evidence cannot be adduced beyond the pleadings. Beneficial reference on this count is made to ***M. Chinnasamy*** *(supra)* relied on by Defendant No.1, wherein it was held *inter alia* as follows;

> "**42.** With respect, we are not in a position to endorse the views taken therein in their entirety. Unfortunately, the decision of a larger Bench of this Court in *Jagjit Singh* [AIR 1966 SC 773] had not been noticed therein. Apart from the clear legal position as laid down in several decisions, as noticed hereinbefore, there cannot be any doubt or dispute that only because a re-counting has been directed, it would not be held to be sacrosanct to the effect that although in a given case the court may find such evidence to be at variance with the pleadings, the same must be taken into consideration. **It is now well-settled principle of law that evidence adduced beyond the pleadings would not be admissible nor can any evidence be permitted to be adduced which is at variance with the pleadings. The court at a later stage of the trial as also the appellate court having regard to the rule of pleadings would be entitled to reject the evidence wherefor there does not exist any pleading**."
>
> **(Emphasis supplied)**

In ***Union of India v. Ibrahim Uddin and Another*** *(supra),* the Hon'ble Supreme Court observed *inter alia* as under;

> "**85.6. The court cannot travel beyond the pleadings as no party can lead the evidence on an issue/point not raised in the pleadings and in case, such evidence has been adduced or a finding of fact has been recorded by the court, it is just to be ignored**. Though it may be a different case where in spite of specific pleadings, a particular issue is not framed and the parties having full knowledge of the issue in controversy lead the evidence and the court records a finding on it. ……."
>
> **(Emphasis supplied)**

42. In light of the established position of Law, the Plaintiffs' evidence, as well as those of their witnesses with regard to the instance of the Plaintiff No.1 being chased out by his father and step mother with a *"khukuri"* and replacement by him of the thatched

roof of his main house, being over and above the averments in his pleadings, is rejected and disregarded in totality by this Court.

43. However, the pleadings of the Plaintiffs do also contain the averment that they had provided financial, medical and other assistance to their father as expected of sons. I now examine the proof thereof.

44. Plaintiffs No.1 and 2 both deposed that during their father's visits to their respective houses, they gave him money for medicine and clothing, apart from which they also took him for medical treatment to Doctors. PW Kunta Maya Dahal, relative of the Plaintiffs, supported their evidence, her evidence found substantiation in the evidence of PW7 Tanka Maya Adhikari, the blood sister of the Plaintiffs. PW Laxuman Nepal and PW Ram Chandra Koirala, both known to the Plaintiffs and their father, were witness to the Plaintiffs visiting their father during his illness and stated as much. A perusal of the cross-examination of Plaintiffs No.1 and 2 reveal that no questions were put to them in cross-examination to test the veracity of their statements pertaining to extension of financial help to their father and taking him to the Doctor, save to the extent that they did not furnish documentary evidence of such facts. With regard to the second condition in Exhibit "A" i.e. *"perform death rites,"* both Plaintiffs deposed that they had performed their father's death rites and rituals voluntarily. This evidence was buttressed by the deposition of PW Kunta Maya Dahal, PW3 Man Bahadur Kharka, PW 7 Tanka Maya Adhikari, PW Laxuman Nepal *(son of Krishna Lall Nepal)*, PW Ram Chandra Koirala and PW6 Krishna Prasad Sapkota. Both PW3 Man Bahadur Kharka and PW6 Krishna Prasad Sapkota admitted to being illiterate

but no questions were put to them in cross-examination to test their knowledge or otherwise of the contents of their evidence-in-chief nor was any effort made by Defendant No.1 and Defendant No.4 to gauge as to whether they had each been explained the contents of Exhibit 17 and Exhibit 18, their respective Evidence-on-Affidavit. It was also the admission of both witnesses that the contents were in "English" and they did not know what it stated but the contents of the documents were not translated for their benefit during cross-examination. Omnibus and vague questions put to the witnesses from rural backgrounds, in cross-examination, is not only unacceptable but such questions, in no way, demolish the evidence-in-chief. In this context, apposite reference may be made to ***Shivaji Sahabrao Bobade and Another v. State of Maharashtra***[21] wherein the Hon'ble Supreme Court observed *inter alia* as follows;

> "**8.** Now to the facts. The scene of murder is rural, the witnesses to the case are rustics and so their behavioural pattern and perceptive habits have to be judged as such. The too sophisticated approaches familiar in courts based on unreal assumptions about human conduct cannot obviously be applied to those given to the lethargic ways of our villages. When scanning the evidence of the various witnesses we have to inform ourselves that variances on the fringes, discrepancies in details, contradictions in narrations and embellishments in inessential parts cannot militate against the veracity of the core of the testimony provided there is the impress of truth and conformity to probability in the substantial fabric of testimony delivered. ……"

45. It therefore transpires that the rustic background and education of the witnesses *viz.* PW3 and PW6 were not taken into consideration by the learned Defence Counsel when the questions were put to them in cross-examination. Notwithstanding such a circumstance, even if the evidence of PW3 and PW6 are to be disregarded, the claim of the Plaintiffs that they had extended

[21] (1973) 2 SCC 793

monetary assistance to their father, spent time with him by visiting him when he was unwell and both of them having performed the death rites of their late father, could not be said to be untrue, the evidence of the Plaintiffs and their two witnesses having stood resolute under cross-examination on these two counts. In fact, even the evidence of DW2 Tika Devi Sharma, witness for Defendant No.1, reveals that both Plaintiffs used to visit the main house in intervals and they behaved cordially with their father and Defendant No.1, while Laxuman Nepal *(son of Jai Narayan Nepal),* witness for the Defendant No.4, admitted that the Plaintiffs performed the death rites of their father voluntarily. It may be observed here that taking care of parents cannot be construed only as financial assistance rendered, time spent with parents is also to be given the credit it deserves.

46. Defendant No.1, for her part, denied the claims of the Plaintiffs that they had contributed financially towards the treatment of Devi Prasad as, according to her, only she and her son Bal Krishna, bore all required expenses, even to the extent of having taken loans. Exhibit D4/A, dated 16.08.2001 and Exhibit D4/B, dated 23.09.2001, i.e. documents purportedly establishing loan taken by her son for her husband's treatment from Bishnu Khatiwada and Laxuman Nepal *(son of Jai Narayan Nepal),* were strongly relied upon by her. No documents were furnished to establish the decade long illness of Devi Prasad or his bedridden and convalescent condition. No explanation ensued as to why Exhibit D4/A and Exhibit D4/B were not furnished before the learned trial Court before the remand of the matter. The scribe of the said documents were also not produced as witnesses either by the

Defendant No.1 or the Defendant No.4 and although DW1 Laxuman Nepal ventured to state that Bal Krishna was the scribe of Exhibit D4/B, no handwriting of Bal Krishna was furnished for comparison. The credibility of these documents, in my considered opinion, is suspect. Reliance on the ratio of ***Kiran Limboo*** *(supra)* and on the provisions of Section 67 of the Indian Evidence Act, 1872, in fact, goes against the Defendant No.1 as no witness has proved the contents of Exhibit D4/A and Exhibit D4/B.

47. Although, DW2 Tika Devi Sharma made an effort to support the evidence of the Defendant No.1, however, under cross-examination, buckled and admitted that the Plaintiffs used to visit the main house at intervals and behave cordially with her parents. According to her, there was no quarrel between her father and the Plaintiffs on the execution of Exhibit "A." The evidence of DW Dol Nath Gautam can scarcely be relied on considering that when the partition was affected in 1985, he was eleven years old and could have had no personal knowledge of events that took place then. DW2 Dhan Maya Adhikari, the half sister of the Plaintiffs, supported the evidence of Defendant No.1, her evidence withstood cross-examination. DW Punya Prasad Adhikari, known to the Plaintiffs and their father as well as the Defendant No.1, brought a new twist to the tale by stating in his evidence that the Plaintiffs were disgruntled with the family partition which he had learnt from Devi Prasad and therefore the Plaintiffs and their father did not share cordial relations. He supported the evidence of Defendant No.1 that only she and her son took care of Devi Prasad and performed the death rites, however, later he admitted that no issue was raised by any of the sons relating to the shares allotted and that the Plaintiffs

had performed the thirteenth day funeral rites of their father. His evidence is therefore vacillating with regard to the conduct of the Plaintiffs in the context of execution of Exhibit "A" as reflected *supra* and cannot be considered reliable. DW4 Ramesh Kumar Dahal is the son of Plaintiff No.1, born in 1982. He failed to give any substantive evidence pertaining to the case save to the extent that his parents are separated and that Bal Krishna had participated in the *"Anthyesthi Kriya"* (death rites) of his grandfather.

48. For the Defendant No.4, DW1 Laxuman Nepal *(son of Jai Narayan Nepal)*, known to the Plaintiffs and their father and the Defendants No.1 and 4, had no knowledge of the relations between the Plaintiffs and their father. He, however, admitted that the Plaintiffs performed the death rites of their father voluntarily. According to him, vide Exhibit D4/B, dated 23.09.2001, he loaned Rs.20,000/- (Rupees twenty thousand) only, to Bal Krishna. Exhibit D4/B is an unregistered document. It does not mention the interest amount nor does it mention that the interest amount would be fixed subsequently on non-payment of the principle amount, thus the contents are rather nebulous for a loan document. The only witness to Exhibit D4/B is the elder sister of Bal Krishna, Devi Kala Sharma. The entire circumstances of the document having been furnished only after the matter was sent back on remand and produced before the learned trial Court with Bal Krishna's sister as the sole witness, lends suspicion to it. Considering the belated appearance of the document and lack of proof thereof, it is reiterated that it appears to have been manufactured for the purposes of the instant matter and cannot be relied upon.

49. Madhav Prasad Adhikari examined as witness No.2 for Defendant No.4, was also a witness for Defendant No.1. In his evidence as witness for Defendant No.1, he stated that he is the maternal uncle of late Devi Prasad. Contrarily, in his evidence as witness for Defendant No.4, he stated that Devi Prasad was his maternal uncle. Relevantly, in Paragraph "5" of his evidence as witness for Defendant No.1, he has stated that the Plaintiffs being satisfied with the respective shares that they received, in full consent, scribed their signature on the said Partition Deed. Conversely, as witness for the Defendant No.4, in Paragraph "3" of his evidence, he stated that he had learnt from late Devi Prasad that both the Plaintiffs did not share good relations with him as they were unhappy with the family partition and after the said partition, they had discarded their father and had very sour relations with his entire family. The witness appears to be confused with regard to how he was related to Devi Prasad added to which, his inconsistent and ambivalent evidence reflected hereinabove makes him an unreliable and untrustworthy witness. His evidence thereby merits no reliance.

50. DW3 Tika Devi Sharma, was witness for Defendant No.1 and also appeared as witness for the Defendant No.4. She sought to establish that Bal Krishna as also her sister Devi Kala, the guardian of Defendant No.4, were *bona fide* Sikkimese Indians and reiterated that only Defendant No.1 and her brother looked after their father but admitted that she had no documents relating to her father's prolonged ailment and that they were not on talking terms with the Plaintiffs. DW4 Bishnu Khatiwada, son-in-law of late Devi Prasad being the husband of DW3, also narrated the story of the Plaintiffs

abandoning their parents after voluntarily leaving the main house and identified Exhibit D4/A as the receipt for a sum of Rs.50,000/- (Rupees fifty thousand) only, taken by Bal Krishna from him, for his father's treatment. The cross-examination of this witness revealed that he was a Bus conductor in the SNT Department and in 2001, his monthly salary was around Rs.15,000/- (Rupees fifteen thousand) only, besides which he had two School going sons and a wife to support. He was unaware as to who had scribed Exhibit D4/A and did not state its contents although he identified it as a "Money Receipt" and his signature on it. Admittedly, he was not on speaking terms with the Plaintiffs and did not share good relations with them. His evidence of having loaned Rs.50,000/- (Rupees fifty thousand) only, to Bal Krishna has to be taken with a pinch of salt as he was earning Rs.15,000/- (Rupees fifteen thousand) only, per month as the sole bread winner in his family comprising of his wife and two School going sons. Mere marking and exhibiting of documents is not proof of its contents. His evident inimical relations with the Plaintiffs and lack of proof of Exhibit D4/A, renders his evidence unreliable. DW Devi Kala Sharma, half sister of the Plaintiffs, is the guardian of the Defendant No.4. She too asserted that the family of Devi Prasad is governed by the Law of the land and not by the Mitakshara School of Hindu Law. According to her, the Plaintiffs are signatories to Exhibit "A" and they have already acted upon the Partition Deed. She further stated that Bal Krishna and Defendant No.1 looked after Devi Prasad and she was aware of this fact as she helped them, being a Staff Nurse at the Central Referral Hospital, Tadong. From there, he was taken to Siliguri for further treatment. After he passed away, the Plaintiffs were forced to come to the main house

and perform the death rites. According to her, the *"jiwni"* land had been kept by her father for her mother's welfare and he had sold a piece of land to meet her (witness's) educational expenses. While considering her evidence, it is clear that she is now making an endeavour to insert a tangential angle to the case of the Defendant No.1 by stating that the *"jiwni bari"* was kept for her mother's welfare. Her deposition is evidently an attempt to protect her mother (Defendant No.1) and ensure that she gets the property although Exhibit "A" specifically mentions the conditions on which the son(s) of Devi Prasad would get the *"jiwni"* property. In tandem with the evidence of Defendant No.1, this witness has also stated that the conditions in the Partition Deed are that the son *"look after the **parents** and also perform their death rites."* This is an erroneous interpretation of the document as already discussed in detail above. No mention of either "mother" or "parents" has been made in the document neither was any witness of the Plaintiffs, Defendant No.1 or Defendant No.4, confronted with the contents of the document to explain or expound this portion. She denied all suggestions put to her with regard to manufacturing of the documents exhibited and stated that the Plaintiff No.1 had not been maintaining his first wife. This is contrary to the evidence of DW4 Ramesh Kumar Dahal, the son of the Plaintiff No.1, who stated under cross-examination that his father pays maintenance to his mother after she had filed a Maintenance Case in the Court in 1998. Her evidence, therefore, cannot be accepted in its totality in view of the exacerbations she has made with regard to the interpretation of Exhibit "A" and that the *"jiwni bari"* was for her mother's welfare.

51. The foregoing evidence, thus, establishes that the Plaintiffs did assist their father financially whenever he visited them and they also visited him at intervals, behaved cordially with him as also with the Defendant No.1 and were seen to be with their father when he fell ill. The weight of the evidence furnished by the parties tilts in favour of the Plaintiffs notwithstanding the fact that they were living apart from him and were involved in running homes for their own separate families as against the ambivalent and vacillating evidence of the witnesses of the Defendant No.1 and Defendant No.4, as already discussed. Bal Krishna had the advantage of living with his parents and it is not contested that he took care of them by virtue of such a circumstance. The fact that the Plaintiffs along with Bal Krishna, performed the death rites of their father withstood all cross-examination and, in any event, the Defendant No.1 and her witnesses have also admitted this fact. I have to agree with the observation of learned Senior Counsel for the Plaintiffs that no son or daughter worth their salt would keep an account book of the expenditure made towards maintaining or taking care of their parents. It would indeed be an abhorrent circumstance sufficient to arouse indignation in any person. Devi Prasad evidently made no complaints to any witness of nonchalant or callous attitude of the Plaintiffs towards him.

52. In this context, the learned trial Court while deciding Issue No.7, was of the opinion that the Plaintiffs were unable to substantiate their claims of having taken care of their father during his lifetime by any documentary proof thereof. The evidence of PW Laxuman Nepal and PW Ram Chandra Koirala were found to be unreliable as according to the learned trial Court, these witnesses

had only made bald claims with regard to the Plaintiffs having taken care of Devi Prasad when he was unwell. The learned trial Court desired *"corroboration from worthy evidence,"* however, it was not specified as to what the "worthy evidence" was to comprise of. The learned trial Court had concluded that although the Plaintiffs had performed the death rites of their father, however, they had not taken care of their father during his lifetime. In the light of the evidence on record and the foregoing discussions already discussed by me, I am unable to bring myself to agree with the finding of the learned trial Court in Issue No.7.

***53*.** While deciding Issue No.2, the learned trial Court relied heavily on the evidence of Defendant No.1 and DW4 Bishnu Khatiwada, the witness for Defendant No.4, Exhibit D4/A, the unregistered Money Receipt, the evidence of Laxuman Nepal *(son of Jai Narayan Nepal)* and Exhibit D4/B. Learned trial Court was impressed with the production of Exhibit D4/A and Exhibit D4/B despite the fact that these documents had been filed rather belatedly, only after the matter having been sent back on remand, thereby raising doubts about the authenticity of the documents. The reasoning of the learned trial Court at Paragraph "43" of the impugned Judgment *inter alia* was that,

> *"**43**. ……The Plaintiffs on the other hand were already staying separately from Late Devi Prasad Dahal and once the partition took place the severance of joint status, even if the same were to be assumed, would also be deemed to have taken place. Once it is held so, even if there was no banda patra/ testamentary disposition above the 'jiwni land' of Late Devi Prasad Dahal (which became his separate property after the partition) would devolve on his undivided son (Late Bal Krishna Dahal) to the exclusion of his divided sons (Plaintiffs)…… ……Raghavachariar in his Hindu Law, Second Edition, Page 444 states that where a father was joint at the time of his death with some only of his sons, the others having already separated from*

> *him, those who remained joint with him, whether they were sons born before or after the partition, succeed to the whole property, whether ancestral or self-acquired, to the exclusion of the divided sons. ……"*

54. The learned trial Court concluded that this seems to be the settled position under the Mitakshara Law which solely governed the Hindus in the State during the year 2001 when Devi Prasad had died. I have to disagree with this finding and the interpretation given to the above position of Law as stated by Raghavachariar in view of the fact that after the partition had taken place vide Exhibit "A," as already discussed *supra,* the father had his own share in the property which thus, was his separate property. Bal Krishna also received his separate share. Consequently, Devi Prasad was free to decide how his share would be given away after his passing *viz.* by the testamentary disposition, on the conditions therein being fulfilled. The reasoning that the share of Devi Prasad would devolve on his undivided son Bal Krishna despite him having received his share, is an erroneous interpretation of the concerned Law. Merely because Bal Krishna continued to live in the main house with the father did not vest this circumstance with the legal connotation that he was joint with the father, as Exhibit "A," with clarity states that all the sons were given properties and they had separated and the father had kept *"jiwni"* land for himself. I am inclined to agree with the arguments canvassed by learned Senior Counsel for the Plaintiffs in this context wherein it was stated that the observation of the learned trial Court regarding Hindu Law by Raghavachariar is totally misconceived and out of context.

55. The learned trial Court, also discussed the provisions of the Sikkim Succession Act, 2008, and held that the Act is applicable to all Sikkimese who possess Sikkim Subject Certificate and die

intestate. He further opined that although the Defendant No.1 had denied that she and the Plaintiffs were governed by the Mitakshara School of Hindu Law, in fact, till 2008 the Hindus in Sikkim were solely governed by the said Law.

56. The above statement leads to the conclusion that the learned trial Court was of the opinion that in fact the Mitakshara School of Hindu Law governed the Hindus in the State till 2008. The Sikkim Succession Act, 2008, as already discussed, never saw the light of day. Hence, the reliance of the learned trial Court on a *non est* Statute is erroneous.

***57*.** While deciding Issues No.4, 5, 6 and 10, the learned trial Court, in Paragraph "45" of the impugned Judgment, observed *inter alia* as under;

> *"**45**. ……Strictly speaking, the Defendants No.1 & 4 cannot therefore claim any share on the basis of the concerned 'banda patra' and the question of their having gotten any share vide the said 'banda patra' also does not arise. However, it may be mentioned here that while Late Devi Prasad Dahal had died during September 2001 Late Bal Krishna Dahal died in the year 2010. On the death of Late Devi Prasad Dahal, as discussed above, it was Late Bal Krishna Dahal who was entitled to get, and did acquire, his father's 'jiwni land' and therefore he is to be regarded as being the owner of the 'jiwni land' till he expired in the year 2010. When he died intestate in the year 2010, which is seen to be the case here, the Sikkim Succession Act, 2008, which as discussed earlier is applicable to persons possessing Sikkim Subject Certificate/Certificate of Identification(COI) and those who are descendants of Sikkim Subject Certificate holder identified through COI, had already come into force in the State of Sikkim and was/is applicable throughout the State(in cases where a person dies intestate after its enactment). ……"*

The learned trial Court, invoking the provisions of Section 5 of the Sikkim Succession Act, 2008, and Note II appended to Section 2 and the provisions of Section 6 of the said Act, concluded that the Defendant No.1 and Defendant No.4 would be eligible to inherit the properties left behind by Bal Krishha, including the *"jiwni"* land.

58. In the first instance, I have to disagree with the finding of the learned trial Court vide which he has divided the entire property of Bal Krishna including the *"jiwni"* land between Defendant No.1 and Defendant No.4, for the reason that the Issues under discussion do not deal with the separate property of Bal Krishna. The passing away of Bal Krishna if *intestate,* entitles the Defendant No.1 to a share in his properties in view of the provisions of the Hindu Succession Act, 1956, however, this is not the Issue in the instant matter and discussions thereof stand truncated here. Issues No.4 and 5 revolve around the *"jiwni"* land and Issue No.6 is not even relevant for the disposal of the present Suit as the claim of the Plaintiffs is confined to the *"jiwni"* land in terms of Exhibit "A". There is no ambiguity in the conditions laid down by Devi Prasad in Exhibit "A", the intention has to be collected from the language of the document as observed in ***C.N. Arunachala Mudaliar*** *supra.*

59. With regard to Issues No.8 and 9, the Plaintiffs could not have raised the Issues before the learned trial Court and ought to have approached the correct Forum if they were of the opinion that the Certificate of Guardianship had been obtained fraudulently. Consequently, I am in agreement with the findings of the learned trial Court on these Issues.

60. While disagreeing with the view of the learned trial Court on Issues No.1, 3 and 11, it is clear from the evidence before the Court that the Plaintiffs, having fulfilled both requisite conditions of Exhibit "A," are entitled along with Defendant No.4, the daughter of their half brother Bal Krishna, to a share each of the *"jiwni"* land.

61. Now addressing question No.3 framed hereinabove, the Defendant No.1 has staked a claim to fifty per cent of the properties

recorded in the name of her late husband by virtue of being his second wife and having cared for him, during his lifetime. Devi Prasad did not make any provision for the Defendant No.1 in his separate property i.e. the *"jiwni"* land by arranging for a life estate for her. He did not die *intestate*. Had Devi Prasad died *intestate,* then in terms of Section 8 of the Hindu Succession Act, 1956, a share of her husband's property would have devolved upon her, she being a Class I heir as per the Schedule to Section 8 of the Act.

62. In ***Sadhu Singh*** *(supra)* relied on by the Defendant No.1, the Hon'ble Supreme Court dealt with the provisions of Section 8, Section 14(1) and Section 30 of the Hindu Succession Act, 1956. One Ralla Singh had a wife Isher Kaur. They had no children. Ralla Singh executed a Will on 07.10.1968 and died on 19.03.1977. His widow Isher Kaur on 21.01.1980, purported to gift the property in favour of a Gurdwara. The Appellant (Sadhu Singh) filed a Suit challenging the Deed of Gift and also prayed for recovery of possession after the death of Isher Kaur. According to the Appellant, under the Will of Ralla Singh, Isher Kaur took only a life estate and the properties were to vest in the Appellant and his brother. She had no right to gift the property to the Gurdwara under the terms of the Will under which she took the properties. She was bound by the terms of the bequest. Isher Kaur and the Gurdwara contended that the property received by her on the death of her husband was as his heir and it was taken by her absolutely and she was competent to deal with the property. It was pleaded that in any event Section 14(1) of the Hindu Succession Act entitled her to deal with the property as an absolute owner. The Appellant countered that Isher Kaur, having taken the property under the disposition of her

husband, was bound by its terms and she had only a life estate and no competence to donate the property. It was a case to which Section 14(2) of the Hindu Succession Act applied and the limitation on right imposed by the Will was binding on Isher Kaur. Her estate could not get enlarged under Section 14(1) of the Act. The trial Court held that the Will executed by the Appellant was not genuine and dismissed the Suit holding that Isher Kaur had taken the property absolutely on the death of her husband as an heir and under the circumstances she was entitled to donate the property to the Gurdwara. The lower Appellate Court, on Appeal by the Appellant, held that the Will propounded by the Appellant was found to be the last Will and Testament of Ralla Singh and was a valid execution and upheld it. Thus, the trial Court decree was reversed and the Suit decreed. The Gurdwara was in Second Appeal before the High Court which reversed the decision of the first Appellate Court. The Hon'ble Supreme Court while citing various other decisions in the matter, set aside the Judgment and Decree of the High Court and passed a Decree in favour of the original Plaintiff for recovery of possession of the property from the Gurdwara, the donee from Isher Kaur, and anyone claiming under or through it, on the strength of his title and to hold it for himself and his brother. The Hon'ble Supreme Court while considering the ratio of the Second Appeal, held as follows;

> "**3**. ……What it has presumably held is that Isher Kaur had pre-existing right in the property and consequently the limitation placed on her rights in the will, could not prevail in view of Section 14(1) of the Hindu Succession Act. **It did not bear in mind that the property was the separate property or self-acquired property of Ralla Singh and his widow, though she might have succeeded to the property as an absolute and sole heir if Ralla Singh had died intestate on 19-3-1977, had no pre-existing right as such. The widow had, at best, only a right to maintenance and at best**

> **could have secured a charge by the process of court for her maintenance under the Hindu Adoptions and Maintenance Act in the separate property of her husband. May be, in terms of Section 39 of the Transfer of Property Act, she could have also enforced the charge even as against an alienee from her husband. Unlike in a case where the widow was in possession of the property on the date of the coming into force of the Act in which she had a pre-existing right at least to maintenance, a situation covered by Section 14(1) of the Hindu Succession Act, if his separate property is disposed of by a Hindu male by way of testamentary disposition, placing a restriction on the right given to the widow, the question whether Section 14(2) would not be attracted, was not considered at all by the High Court**. It proceeded as if the ratio of *V. Tulasamma* [(1977) 3 SCC 99 : (1977) 3 SCR 261] would preclude any enquiry in that line."
>
> **(Emphasis supplied)**

The Hon'ble Supreme Court, while referring to the ratio of ***V. Tulassama and Others v. Sesha Reddy (Dead) by L.Rs.***[22] concluded that on the wording of Section 14(1) of the Hindu Succession Act and the context of the decision, the ratio would apply only when a female Hindu is possessed of the property on the date of the Act under semblance of a right, whether it be a limited or a preexisting right to maintenance in lieu of which she was put in possession of the property. The Hon'ble Supreme Court also held therein;

> "**13**. An owner of property has normally the right to deal with that property including the right to devise or bequeath the property. He could thus dispose it of by a testament. Section 30 of the Act, not only does not curtail or affect this right, it actually reaffirms that right. **Thus, a Hindu male could testamentarily dispose of his property. When he does that, a succession under the Act stands excluded and the property passes to the testamentary heirs**. Hence, when a male Hindu executes a will bequeathing the properties, the legatees take it subject to the terms of the will unless of course, any stipulation therein is found invalid. Therefore, there is nothing in the Act which affects the right of a male Hindu to dispose of his property by providing only a life estate or limited estate for his widow. The Act does not stand in the way of his separate properties being dealt with by him as he deems fit. His will hence could not be challenged as being hit by the Act."
>
> **(Emphasis supplied)**

[22] (1977) 3 SCC 99

The Court went on to refer to the decision in ***Ramachandra Shenoy and Another v. Mrs. Hilda Brite and Others***[23]. The ratio therein observed;

> "**14**. ……It is one of the cardinal principles of construction of wills that to the extent that it is legally possible effect should be given to every disposition contained in the will unless the law prevents effect being given to it. ……"

That, the Court has to attempt a harmonious construction to give effect to all terms of the Will if it is in any manner possible.

63. This sets to rest the rights of Defendant No.1 with regard to the land that she is in occupation of being the *"jiwni"* land. Defendant No.1 was not possessed of the property under the semblance of a right, whether limited or for the purposes of maintenance. Suffice it to state here that the *"jiwni"* land is to descend in terms of the testamentary disposition of Exhibit "A" and the Defendant No.1, as also all other parties to the Suit, are bound by the terms of the bequest.

64. While considering the decisions of the Hon'ble Supreme Court and various High Courts relied on by the Defendant No.1, it is worth mentioning here that the ratio in ***Karedla Parthasaradhi*** *(supra)* is not relevant for the present purposes as it deals with a Hindu male having died *intestate* and the Defendant therein asserting that she was his legally married wife and thereby entitled to his house after his death being the Class I heir of her husband. While considering the reliance made on ***Ganduri Koteshwaramma and Another v. Chakiri Yanadi and Another***[24] and ***Vineeta Sharma*** *(supra)*, it is worth noticing that the Defendant No.1, after averring rather vaguely that she was governed by the Law of the land, has taken a

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[23] AIR 1964 SC 1323

[24] (2011) 9 SCC 788

U-turn and placed reliance on the ratio *(supra)* which are centred around the Hindu Succession Act, 1956, and contrary to the stance taken by her. No reasons have been extended for such reliance which thereby requires no consideration.

65. Next, it may be clarified here that in a civil dispute the standard of proof extends to a "preponderance of probability" and not "beyond a reasonable doubt," as canvassed by learned Counsel for the Defendant No.1. The latter is the standard required for proof in a criminal case against an accused. The argument of learned Counsel for the Defendant No.1 contending that the Plaintiffs have to prove their case beyond a reasonable doubt is therefore rejected. ***Anar Devi and Others*** *(supra)* relied on by the Defendant No.1 being a Suit for partition of notional share of the deceased father in a coparcenary property, is not relevant to the issue at hand. The argument of learned Counsel for the Defendant No.1 that the Suit is only for declaration cannot be countenanced as the prayers in the Plaint reveal otherwise.

66. In light of the foregoing discussions and the reasons set forth by me, I cannot bring myself to agree with the observations and findings of the learned trial Court on the Issues settled by it for determination, save in Issues No.8 and 9, as already discussed.

67. In conclusion, it follows that;

(i) In the absence of any statutory provision dealing with Succession in the State and as the Hindu Succession Act, 1956, has not been extended and enforced in the State but considering that the Courts in Sikkim have applied the provisions of the Laws of the country where the Laws in Sikkim are inadequate or do not cover a specific area, it stands to reason that the provisions of the Hindu

Succession Act, 1956, can be invoked and applied for the purposes of determining matters relating to Succession in Sikkim, involving parties to whom the personal Law is applicable, till specific Laws occupy the field.

(ii) The Sikkim Succession Act, 2008, is not a notified Act and being *non est* no reliance can be placed on it.

(iii) The Plaintiffs and late Bal Krishna are entitled to an equal share each of the *"jiwni"* land of late Devi Prasad as described in the Schedule to the Plaint and are also entitled to take steps with regard to their respective shares. Defendant No.4 being the daughter of Bal Krishna would be entitled to his share of the "*jiwni"* property.

(iv) The question of Defendant No.1 being entitled to the "*jiwni"* property does not arise at all sans any such intention of Devi Prasad in Exhibit "A" and the provisions of Law.

68. The contention of the Defendant No.1 that the Suit is barred by limitation is not tenable as it is clear that the cause of action arose only after the issuance of the impugned Order by the Defendant No.2, dated 03.11.2010.

69. The prayer of the Plaintiffs seeking a declaration that Bal Krishna predeceased his father has no legs to stand as the evidence on record establishes that Devi Prasad passed away in "2001" and Bal Krishna was witnessed performing his father's death rites. Evidence also reveals that Bal Krishna died in "2010," no evidence to the contrary was furnished by the Plaintiffs.

70. Similarly, as no evidence was led on the averment of the Plaintiffs that the Defendant No.1 had claimed before the Defendant No.2 that Bal Krishna had left behind two sons and the

existence of a daughter was never pleaded, it requires no further discussion. Besides, by filing the Amended Plaint and impleading the Defendant No.4 as a party, they have recognized the daughter of Bal Krishna as his legal heir.

71. The prayer that the Defendant No.4 not being a son of Devi Prasad, had no right, title and interest over the *"jiwni"* land, is correct to that extent as it does not fulfill the specific conditions set out in Exhibit "A," however she is the legal heir and successor of Bal Krishna and thereby entitled to his share.

72. The prayer seeking a declaration that the Defendant No.1 is a Nepal citizen and that the Guardianship Certificate of Devi Kala Sharma was obtained fraudulently, deserves no consideration. If the Plaintiffs are aggrieved by such a circumstance, they are to approach the correct Forum.

73. The impugned Order of the Defendant No.2, dated 03.11.2010, is hereby declared as null, void and *non est* and is quashed and set aside, having been issued without jurisdiction.

74. Appeal allowed to the extent above and disposed of accordingly. Pending applications, if any, also stand disposed of.

75. No order as to costs.

76. Copy of this Judgment be sent to the learned trial Court for information.

77. Records of the learned trial Court be remitted forthwith.

(Meenakshi Madan Rai)
Judge
12.11.2020

ml Approved for reporting : **Yes**