

THE HIGH COURT OF SIKKIM: GANGTOK

(Civil Appellate Jurisdiction)

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

FAO No. 04 of 2024

Smt. Kipu Lepcha,
Aged about 54 years,
D/o Late Gyanchey Lepcha @ Gyanche,
R/o Chujachen,
District Pakyong, Sikkim, 737131.

..... **Appellant**

Versus

1. Smt. Phumtsung Lepcha,
Aged about 69 years,
W/o Tek Bdr. Rai,
R/o Chalisay, Rongli,
District Pakyong-737133.
2. District Collector-cum-CALA,
District Pakyong,
Sikkim-737131.
3. Sub-Divisional Magistrate,
Rongli Sub-Division,
District Pakyong, Sikkim-737131.

..... **Respondents**

An appeal under Section 104 read with Order XLIII 1 (r) of
the Code of Civil Procedure, 1908.

Appearance:

Mr. Jorgay Namka, Senior Advocate with Mr. Lahang Limboo, Mr. Avinash Dewan and Ms. Deempal Tamang, Advocates for the Appellant.

Mr. Kazi Sangay Thupden, Mr. Sajal Sharma, Ms. Shreya Sharma, Ms. Som Maya Gurung, Ms. Puja Kumari Singh, Ms. Kajal Rai, Ms. Laki Doma Sherpa,

and Ms. Prerana Rai, Advocates for Respondent No.1

Mr. Sujan Sunwar, Assistant Government Advocate.
for Respondent Nos. 2 & 3.

Date of Hearing : 01.04.2025

Date of Order : 01.04.2025

ORDER (ORAL)

Bhaskar Raj Pradhan, J.

1. The present first appeal challenges the impugned order dated 28.08.2024 passed in an application under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 (CPC) in Title Suit No.12 of 2024.
2. The title suit was instituted by plaintiff (the respondent no.1 herein) against the defendant no.1 (the appellant herein), the District Collector-cum-CALA and the Sub-Divisional Magistrate, defendant nos. 2 and 3 (the respondent nos. 2 and 3 respectively).
3. In the plaint the respondent no.1 had alleged:-

“2. That Late Dawa Namgay Lepcha had purchased landed property bearing Plot nos. 132 and 134 measuring 0.82 acres i.e. 35719.2 sq feet/0.3318 Ha, situated at Markang Ward under Chujachen GPU, Rongli, from one Shri Gyanchey Lepcha, S/o Late Tashi Tshering Lepcha vide a registered sale deed dated 18.10.1982, as per the statutory mandate of Registration of Document Rules, 1930. This property was subsequently re-numbered as Plot No. 1398 as per the survey record of 1978-80 (hereinafter referred to as the said property). A copy of the sale deed dated

18.10.1982 is annexed herewith and marked as Annexure-1”.

- 4.** The plaintiff also sought a declaration and consequential reliefs pertaining to “Plot Nos.132 and 134 measuring 0.82 acres i.e. 35719.2 sq feet/0.3318 Ha, situated at Markang Ward under Chujachen GPU, Rongli, from one Shri Gyanchey Lepcha, S/o Late Tashi Tshering Lepcha vide a registered sale deed dated 18.10.1982, as per the statutory mandate of Registration of Document Rules, 1930. This property was subsequently re-numbered as Plot No. 1398 as per the survey record of 1978-80”
- 5.** The respondent no.1 prayed for a declaration that she was the absolute owner of the suit property and that she has the right, title and interest over the suit property vide registered sale deed dated 18.10.1982; for a declaration that she is entitled to compensation amount for acquisition of the land; as well as other reliefs.
- 6.** The appellant has filed a written statement contesting the said assertions made by the respondent no.1 in the Title Suit No. 12 of 2024 before the learned District Judge, Pakyong.
- 7.** The learned Senior Counsel for the appellant draws the attention of this Court to the provision of Order 39 Rules 1 and 2 read with Section 151 CPC submits that the

impugned order has been passed beyond the purview of the provision.

8. The provision gives power to the court to grant temporary injunction and pass necessary orders when any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree; or when the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit.

9. The power is granted to the court to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders.

10. The learned District Judge vide impugned order directed:

“18. *Therefore, considering the above facts and circumstances of the case, submission made by the Ld. Counsel for the parties and on perusal of the plaint, written statements and the documents filed by the parties, the actual claim of the rival parties cannot be decided at this juncture. However, in view of the nature of the suit, contesting parties and the stage of the suit, it*

would be just and fair if the compensation amount be deposited in a Bank Account. It is therefore, ordered that the Defendant No.2 and 3 are directed to deposit the entire compensation amount in any nationalized Bank within 15 days from the date of this order. The deposit amount shall be kept in a fixed deposit or a separate account until the disposal of the suit. The Defendant No. 2 and 3 shall file an affidavit of compliance, confirming the deposit of the amount within 15 days from the date of this order.

With the order passed today as above, the applications filed by the Plaintiff under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 is disposed of.”

11. Paragraph 18 of the impugned order makes it clear that the learned District Judge, sought to do exactly what was intended by the provision of Order 39 Rules 1 and 2 of the CPC. The impugned order directed that the compensation amount be deposited in a bank account in any nationalized bank which shall be kept in a fixed deposit until the disposal of the suit.

12. In case the respondent no.1 succeeds in the suit the compensation amount payable would be protected for the respondent no.1. In case the appellant succeeds in defending the suit the money which she would be entitled to as compensation would be preserved for her. In such view of the matter, this Court is of the view that the impugned order needs no interference. Accordingly the appeal is rejected. The parties may proceed to trial for adjudication of their dispute.

13. At this point the learned Assistant Government Advocate representing respondent nos. 2 and 3 submits that in compliance to the direction given in the impugned order, the respondent nos. 2 and 3 have deposited the amount in dispute in a fixed deposit in a Central Bank of India, Pakyong Branch. It is directed that the respondent nos. 2 and 3 shall preserve both fixed deposit and interest earned thereon until necessary direction is issued by the learned District Judge after the disposal of the title suit.

14. The appeal is therefore, rejected.

**(Bhaskar Raj Pradhan)
Judge**