

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

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

R.S.A. No. 01 of 2023

1. Shri Krishna Bahadur Chettri,
Aged about 48 years,
S/o Late Harka Bahadur Chettri,
R/o Kitam Namchi,
South Sikkim-737126.
2. Shri Deo Prakash Chettri,
Aged about 62 years,
S/o Late Harka Bahadur Chettri,
R/o Kitam Namchi,
South Sikkim-737126.
3. Shri Ashbir Chettri,
Aged about 54 years,
S/o Late Harka Bahadur Chettri,
R/o Kitam Namchi,
South Sikkim-737126.
4. Shri Lal Bahadur Chettri,
Aged about 44 years,
S/o Late Harka Bahadur Chettri,
R/o Kitam Namchi,
South Sikkim-737126.
5. Smt. Dhan Kumari Chettri,
Aged about 82 years,
W/o Late Harka Bahadur Chettri,
R/o Kitam Namchi,
South Sikkim-737126.
6. Shri Andrew Jackson,
Aged about 66 years,
S/o Late John Jackson,
R/o Kitam Namchi,
South Sikkim-737126.

..... Appellants/Plaintiffs

Versus

Rameshwar Mandir Committee,
Represented by its President,

R/o Kerabari, Kerabari Block,
Melli Bazar, Melli,
South Sikkim-737128.

..... Respondent/Defendant

**Regular Second Appeal under section 100 of the Code of
Civil Procedure, 1908 read with section 151 of the Code of
Civil Procedure, 1908.**

*Second Appeal against the impugned judgment and decree both dated
29.04.2023 passed by learned District Judge, at Namchi, South
Sikkim in Title Appeal No. 04 of 2018.*

Appearance:

Mr. A. Moulik, Senior Advocate with Mr. Ranjit Prasad, Ms. Neha Kumari Gupta and Ms. Laxmi Khawas, Advocates for the Appellants/Plaintiffs.

Mr. B. Sharma, Senior Advocate with Mr. Meg Nath Dhungel, Ms. Shreya Sharma, Ms. Puja Kumari Singh, Ms. Kajal Rai, Ms. Roshni Chettri and Mr. Nishant Agarwal, Advocates for the Respondent/Defendant.

Date of Hearing : 05.11.2025
Date of Judgment : 19.11.2025
Date on which Uploaded : 19.11.2025

J U D G M E N T

Bhaskar Raj Pradhan, J.

1. Krishna Bahadur Chettri and five others (the appellants) have preferred a second appeal under section 100 of the Code of Civil Procedure, 1908.

2. The provision reflects that an appeal shall lie to this Court from every decree passed in appeal by any Court

subordinate to the High Court, if the High Court is “*satisfied that the case involves a substantial question of law*”.

3. The sole respondent is Rameshwar Mandir Committee represented by its President. The appellants had filed a declaratory suit No.18 of 2016 (the suit) against the respondent. For the purpose of this appeal the parties shall be referred to as the plaintiffs and the defendant hereinafter.

4. The plaintiffs’ case in short was that they were the heirs of late Harka Maya Chettri who owned the suit land purchased in the year 1963 from one Kul Bahadur Tamang through a registered sale deed. They asserted that late Harka Maya Chettri was the grandmother of plaintiff nos. 2 to 4 and mother of plaintiff nos. 1 and 5. In the cause title the plaintiff no.1 is reflected as son of late John Jackson. Plaintiff nos. 2 to 5 are reflected as sons of late Harka Bahadur Chettri and plaintiff no. 6 is reflected as wife of late Harka Bahadur Chettri and daughter of late Harka Maya Chettri. They claimed that neither late Harka Maya Chettri nor her husband late John Jackson had parted with the suit land during their lifetime. However, the

plaintiffs could not locate the sale deed or the property papers in their ancestral house until in proceedings relating to R.F.A. No.06 of 2015 the defendant filed the sale deed. It was then the plaintiffs realized that the sale deed and other property papers relating to the suit land were with the defendant and alleged that the defendant had by some illegal and surreptitious means, taken the sale deed.

5. The plaintiffs stated that they filed the suit when the defendant started claiming the suit land to be theirs. The plaintiffs asserted that there was no partition between the parties and the suit land is still the joint and undivided property under common enjoyment of the plaintiffs. The plaintiffs sought to rely upon purported certified copies of the registered sale deed of 1963 and the parcha khatian in the name of the plaintiffs. On such pleadings the plaintiffs prayed for:-

- (a) A decree confirming right, title and possession of the plaintiffs with respect to the suit land.
- (b) A decree declaring that the defendant has got no right, title and interest in and over the lands belonging to late Harka Maya Chettri and is nothing but a rank trespasser.

- (c) A decree declaring that the record of rights showing the suit land recorded in the name of the defendant is bad in law, void ab initio, illegal and be set aside and or cancelled.
- (d) A decree for permanent injunction restraining the defendant and their men and agents from disturbing the possession and enjoyment of the suit land by the plaintiffs.
- (e) A decree for the costs of the suit, and for
- (f) A decree for any other relief or reliefs to which the plaintiffs may be found entitled to under law.

6. The defendant in its written statement took various legal objections on the maintainability of the suit. They asserted that in fact late Harka Maya Chettri had alienated the suit land to the defendant in the year 1965 and therefore, the parcha khatiyans prepared after the survey of 1950-52 and thereafter, in 1980-82 reflects the name of the defendant as the owner of the suit land. The defendant claimed to have regularly paid the land rents for the suit land from the year 1960 till 1996 and been in exclusive possession since 1964. The defendant also took the plea

that at one point of time a portion of the suit land was taken on lease by the Forest Department that was paying rent to the suit land. The defendant claimed that this fact proved that the State Government had recognised the defendant as the owner of the suit land. The defendant asserted that right from 1964 till the filing of the suit none of the plaintiffs objected to the exclusive ownership and possession of the suit land by the defendant. The defendant asserted that the suit land “*came to the answering defendant during the lifetime of Harka Maya Chettri itself.*”

7. Based on the pleadings of the parties the learned Civil Judge framed three issues for determination i.e.:

- (1) Whether the plaintiffs are entitled to the decree for declaration of title to the suit land?
- (2) Whether the plaintiffs can file the instant suit in view of the order dated 24.09.2016 passed by the learned District Judge in Title Suit Case No.02 of 2013?
- (3) Whether the plaintiffs are entitled to any relief (s)?

8. During the trial the plaintiffs examined Krishna Bahadur Chettri (plaintiff no.2/P.W.1), Ratna Bahadur Chettri (P.W.2), Deo Prakash Chettri (Plaintiff No.3/P.W.2),

Ashbir Chettri, (Plaintiff No.4/P.W.3), Dhan Kumari Chettri, (Plaintiff No.6/P.W.4), Ratna Bahadur Rai (P.W.3) and Krishna Prasad Subba (P.W.4).

9. Krishna Bahadur Chettri (plaintiff no.2/P.W.1), only reiterated the statements in the plaint and could not assert possession of the suit land. Ratna Bahadur Chettri (P.W.2) candidly admitted that he was related to the plaintiffs and that he did not know if late Harka Maya Chettri had sold the suit land and gifted the suit land to any other person.

10. Ratna Bahadur Rai (P.W.3) claimed to have been kept in the suit land by late Harka Maya Chettri and he was there till 2001. However, he had to leave the suit land in 2001 as it had become impossible to cultivate the property due to wild animals. During cross-examination, he admitted that he had no idea as to whether the suit land was donated to the defendant by late Harka Maya Chettri or late John Jackson. He admitted that the plaintiffs had not filed any case regarding the suit land prior to 2013 and his son Subash Rai is running a hotel in the suit land.

11. Krishna Prasad Subba (P.W.4) only deposed about the relationship of the plaintiffs with each other and some others and nothing else.

12. Deo Prakash Chettri (Plaintiff No.3/P.W.2), Ashbir Chettri (Plaintiff No.4/P.W.3) and Dhan Kumari Chettri (Plaintiff No.6/P.W.4) did not depose anything substantial.

13. None of the plaintiffs' witnesses exhibited any documentary evidence in support of the pleadings in the plaint.

14. The defendant examined Ratna Bahadur Chettri (D.W.1), Chabilal Sapkota (D.W.2) and Mohan Prasad Sharma (D.W.3) and Tilak Bahadur Pradhan (D.W.4).

15. Ratna Bahadur Chettri (D.W.1) deposed that he was the General Secretary of the defendant and reiterated the statements made in the written statement. He stated that late Harka Maya Chettri had alienated the suit land in favour of the defendant and parted with its possession. He claimed that the suit land was the property of the defendant. He also stated that the Forest Department had taken a portion of the suit land on lease and paid rent thereof and that the defendant had been paying the land rents regularly. D.W.1 exhibited numerous documents in support of the defendant's claim including four documents referred to and relied upon by the learned Appellate Court.

16. During cross-examination, he admitted that he had no documentary evidence to establish that the suit land had been alienated by late Harka Maya Chettri and late John Jackson in favour of the defendant. He also admitted that he had no connection with the defendant in the year 1994-95.

17. Chabilal Sapkota (D.W.2) claimed to be the treasurer of the defendant and also reiterated the statements made in the written statement. He stated that both late Harka Maya Chettri and late John Jackson had confirmed that the suit land was alienated in favour of the defendant vide his written representation to the District Collector dated 26.12.1977 (exhibit D/C). During cross-examination he admitted that as late Harka Maya Chettri had purchased the suit land vide (exhibit D/B) dated 27.06.1964 she could not have sold the suit land before that. He admitted that he had no knowledge as to whether the defendant has any document apart from the “parcha” to prove that the suit land belongs to the defendant or that it was alienated in favour of the defendant.

18. Mohan Prasad Sharma (D.W.3) was also one of the members of the defendant. He reiterated what was stated

by the defendant in the written statement. During cross-examination, he admitted that he did not know how the suit land was registered in the name of the defendant and that he had been a member of the defendant since 1984.

19. Tilak Bahadur Pradhan (D.W.4) was the vice president of the defendant. He also reiterated what was stated in the written statement of the defendant. During cross-examination, he admitted that he had become the vice president in the year 2016 and that he did not know what had transpired prior to 2016 regarding the suit land. He also stated that the suit land was given to the defendant by late John Jackson after the death of late Harka Maya Chettri and that he did not know how it was transferred to the defendant.

20. The defendant exhibited not only the “parcha khatian” prepared pursuant to the 1950-52 survey and 1980-82 but also the original sale deed of 1963 by which late Harka Maya Chettri had purchased the suit land from late Kul Bahadur Tamang along with other property documents. The defendant exhibited numerous other documentary evidences.

21. The learned Civil Judge dismissed the suit filed by the plaintiffs' as the plaintiffs had not been able to prove their case with any substantial evidence. The learned First Appellate Court upheld the dismissal of the suit but also concluded that certain documents could safely be relied upon that proves and confirms the title of the defendant in the suit land. These documents are:

- (1) The sale deed between late Kul Bahadur Tamang and late Harka Maya Chettri registered on 27.06.1963 (exhibit D/B).
- (2) Certified copy of Bustywala ko khatiyani (exhibit D/F) certified on 11.03.1980.
- (3) Certified copy of Bustywala ko khatiyani (exhibit D/G).
- (4) True copy of map prepared during survey operation of 1980-81 (exhibit D/I).

22. The singular substantial question of law formulated by this Court is "*whether the learned First Appellate Court misinterpreted and misconstrued the meaning intent of the documents exhibited in the case and hence, wrongly declared the Respondent/Defendant as the owner of the suit property, having titled thereto*". Therefore, it would be important to examine each of these above documents relied

upon by the learned First Appellate Court to come to the above conclusion.

(1) The sale deed between late Kul Bahadur Tamang and late Harka Maya Chettri registered on 27.06.1963 (exhibit D/B).

23. The sale deed (exhibit D/B) executed between late Kul Bahadur Tamang and late Harka Maya Chettri was produced and exhibited by the defendant in the original. The plaintiffs have staked their claim on the suit land through this sale deed. According to the plaintiffs this document was illegally and surreptitiously procured by the defendant. The plaintiffs did not prove this allegation. The plaintiffs did not question the sale deed although it was exhibited by the defendant. The sale deed reflects that the suit land was purchased by late Harka Maya Chettri from Kul Bahadur Tamang for consideration on 15.05.1963 and it was duly registered on 27.06.1963. The plaintiffs could not substantiate their allegation that the defendant had illegally and surreptitiously procured the sale deed. Therefore, one could presume that the defendant had not procured the original sale deed illegally. However, the defendant in their written statement claimed that the suit land was “alienated” in the year 1965 by late Harka Maya

Chettri in favour of the defendant. The word “alienated” is a generic term to transfer or convey (property or property rights) to another. Since the defendant claimed that late Harka Maya Chettri “alienated” the suit land in favour of the defendant, it was for them to prove the alienation, which they failed to do through any legal document.

(2) Certified copy of Bustywala ko khatiyān (exhibit D/F) certified on 11.03.1980

24. Although exhibit D/F was exhibited by Ratna Bahadur Chettri (D.W.1) as the original “parcha khatiyān” in the name of the defendant as per 1950-52 survey operation, a scrutiny of the document reflects:

- (i) It was not the original “parcha khatiyān” maintained by the revenue authorities but only a purported unsigned and undated copy certified to be true in the year 1980.
- (ii) The document, which is titled: “bustywala ko khatiyān”, is purportedly certified by the Head Surveyor and the District Collector on 11.03.1980 both of whom were not produced as witnesses.
- (iii) It was not produced or exhibited by the maker of the document.

- (iv) The document does not reflect who was the authority who prepared it or when it was prepared.
- (v) The entries made therein were not proved to be correct by any officer who are in the custody of the “bustywala ko khatian”.
- (vi) Neither the holder of the document whose name is purportedly recorded there nor the Amin who prepared it have signed at the back of the “bustywala ko khatian” as required by Rule 12 of the Record Writing or Kotha Purnu or Dru-Deb and Attestation Rules of 1951 which was the then existing Rules to acknowledge receipt of the document.
- (vii) The document was produced and exhibited by Ratna Bahadur Chettri (D.W.1) who was born in the year 1980 only and admittedly did not have personal knowledge about it.

25. Even if the defendant had proved the document as secondary evidence under section 65 of Indian Evidence Act, 1872 and the fact that it was produced from proper custody, there was no signature of the maker of the document to presume it to be genuine. As it was not signed by the maker of the document the question of presumption of the hand writing was also not available. In any case, merely because the document, which at the highest, was

only secondary evidence which was produced, it is not sufficient to raise the presumption of due execution of the original. Therefore, the defendant failed to prove the “bustywala ko khatiyān” (exhibit D/F).

(3) Parcha khatiyān (exhibit D/G)

26. Ratna Bahadur Chettri (D.W.1) has produced and exhibited the “parcha khatiyān” (exhibit D/G) as he was the General Secretary of the defendant in whose name it is recorded. The “parcha khatiyān” (Exhibit D/G) reflects the name of the bustywala as “Rameshwar Mandir, Kerabari Committee.” The name of the “bari” is recorded as Malbasey. The khasra numbers mentioned therein are 386, 387 and 391 and the total area recorded is 3.8280 hectares. This is the suit land. It purports to be in the signature of the South District at Namchi signed on “27/8”. It does not reflect the year on which it was signed by the Revenue Officer. The “parcha khatiyān” (exhibit D/G) has been certified to be true copy by a person who has signed it on 06.08.85. However, the identity of the person who signed it and his designation is not mentioned therein. It also contains the seal of the Office of the District Collector, South District, Namchi. Further, the defendant did not

produce and prove the “parcha khatiyān” through the office of the authority who maintained the revenue records. It was produced by Ratna Bahadur Chettri (D.W.1) who had no personal knowledge about the making of the “parcha khatiyān” (exhibit D/G) except the fact that it was in the records of the defendant.

(4) Survey map (exhibit D/I)

27. The survey map (exhibit D/I) is also only a true copy of the purported original and exhibited by Ratna Bahadur Chettri (D.W.1) who did not have any personal knowledge about its preparation.

28. In the above circumstances, the finding of the First Appellate Court that these documents could safely be relied to conclude that the defendant had title to the suit land would be incorrect based only on the presumption under section 90 of the Indian Evidence Act, 1872. The defendant failed to prove that the suit land had been “alienated” in their favour by late Harka Maya Chettri. The correctness of the entries in the “parcha khatiyān” (exhibit D/G) or the “bustywala ko khatiyān” (exhibit D/F) were also not proved by the defendant as they could not prove how the suit land was “alienated” in their favour. Further,

it was defendant's case that the suit land was alienated in their favour by late Harka Maya Chettri in the year 1965. The defendant relied upon letter dated 26.12.1977 purportedly written by late John Jackson to the District Collector (exhibit D/C). The contents of the letter reflect that the assertion made in the written statement was however, incorrect. In the letter dated 26.12.1977 (exhibit D/C) late John Jackson states that his wife late Harka Maya Chettri had died leaving behind him and his son as the heir to the suit land; that he had donated it to the defendant; and that in order to transfer the suit land he has to execute a gift deed for registration. This clearly reflects that late Harka Maya Chettri had not alienated the suit land. The pleading in the written statement is contrary to the contents of the letter dated 26.12.1977 (exhibit D/C) relied upon by the defendant.

29. The sale deed (exhibit D/B) does reflect that late Harka Maya Chettri was the owner of the suit land. The plaintiffs could not however, prove how they were entitled to late Harka Maya Chettri's property. The pleadings does not disclose their entitlement to the suit land. Therefore, the first issue framed by the learned Civil Judge was correctly answered against the plaintiffs by both the

learned Civil Judge as well as the learned First Appellate Court by holding that the plaintiffs were not so entitled. However, the declaration that the defendant was the owner of the suit land by the learned First Appellate Court was factually and legally incorrect. Such declaration could not have been granted in favour of the defendant in a suit filed by the plaintiffs when the defendant themselves had not filed any counter claim or sought any prayer for such a declaration.

30. The question of law framed by this Court is answered in the affirmative. It is held that the learned First Appellate Court misinterpreted and misconstrued the meaning and intent of the documents exhibited in the case and hence, wrongly declared the defendant as the owner of the suit property, having title thereto. Consequently, the declaration made by the First Appellate Court that the defendant had title over the suit land based on the above documents is set aside. However, the plaintiffs failed to prove their case even by preponderance of probabilities and therefore, the plaint was rightly rejected both by the learned Civil Judge as well as by the First Appellate Court.

The appeal is allowed to the above extent. The parties shall bear their respective costs.

(**Bhaskar Raj Pradhan**)
Judge

Approved for reporting : **Yes**
Internet : **Yes**
to/