

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

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

C.R.P. No.06 of 2022

1. The Divisional Forest Officer (T) South,
Department of Forest, Environment & Wildlife
Management,
District Namchi, Sikkim.
2. The PCCF-Cum-Secretary,
Department of Forest, Environment & Wildlife
Management,
Government of Sikkim,
District Gangtok, Sikkim.
3. The Secretary,
Energy & power Department,
Government of Sikkim,
District Gangtok, Sikkim.
4. The Sub-Registrar/Sub-Divisional Magistrate,
Office of the District Collector,
District Namchi, Sikkim.

..... Revisionists

Versus

Shri. Ashok Tshering Bhutia,
Son of Late A.C. Bhutia,
Resident of Tibet Road,
Gangtok Sikkim.
Pin No. 737101

.....Respondent

**Application for revision under Section 115 read with 151 of the
CPC, 1908**

Appearance:

Dr. Doma T. Bhutia, (Senior Advocate), Additional
Advocate General with Mr. Yadev Sharma, Government
Advocate and Mr. Sujan Sunwar, Assistant Government
Advocate for the Revisionists.

Mr. T. B. Thapa, Senior Advocate with Mr. Ranjan Chettri,
and Ms. Chandrika Maya Karki, Advocates for the
Respondent.

Date of hearing : 09.03.2023

ORDER (ORAL)

Bhaskar Raj Pradhan, J.

1. This court while examining a regular first appeal vide Order dated 12.04.2022 in R.F.A. No 09 of 2020 came to the view that certain vital issues had not been considered by the learned Trial Court. Accordingly, this court invokes the provision of Order XLI Rule 25 of the Code of Civil Procedure, 1908 (CPC) and framed three issues for trial. the learned Trial Court was directed to examine these three issues in terms of Order XLI Rule 25 CPC, conduct a trial to ascertain the issues, take additional evidence, if required, and return the evidence to this court together with its findings and the reasons therefore, within a period of six months from the date of the first appearance of the parties as directed.

2. Pursuant to the said direction it transpires that the revisionist moved an application under Order VIII Rule 1 A (3) read with section 151 CPC before the learned Trial Court seeking to rely upon five documents enumerated in paragraph 2 of the application on the ground that this court had vide Order dated 12.04.2022 directed as above and that these documents were pertinent to the issues framed by this court.

- 3.** A written objection was filed by the respondent herein. The respondent was of the view that the revisionists had failed to explain the delay in filing the documents; that there were no pleadings to sustain the relevance of those documents in the context of the issues framed; and that the revisionists had failed to show how these documents were relevant to the issues framed by this court.
- 4.** The learned Trial Court considered the application as well as the written objection and passed the impugned Order dated 02.10.2022 by which the application filed by the revisionists under Order VIII Rule 1 A (3) read with section 151 CPC was rejected on the ground that the revisionists had nowhere in the application pleaded the relevancy of the documents and the respondent would be prejudiced if the revisionists was allowed to place those documents at this stage of proceedings.
- 5.** The three issues which were framed by this court vide its Order dated 12.04.2022 was at the stage of hearing the appeal against the judgment rendered by the learned Trial Court. The direction of this court in its Order dated 12.04.2022 was clear. Considering the facts of the case this court thought it fit to invoke the provision of Order XLI Rule 25 CPC to issue the direction as stated above. It was this provision which was relevant.

6. Order VIII Rule 1 A (3) CPC relates to an early stage of a civil proceeding when written statements are filed. Rule 1 of Order VIII CPC deals with filing of written statements within a period as provided therein. Rule 1A of Order VIII CPC makes it a duty of the defendant to produce documents upon which relief is claimed or relied upon by him. The defendant is required to produce these documents in the manner provided in Rule 1A. In the present case that stage is over. Order XLI however, relates to appeals from original decrees and deals with the form of the appeal, grounds and various other matters relating to appeals. Rule 25 thereof also deals with the power of the appellate court to frame issues and refer them for trial. Rule 25 of Order XLI CPC permits the Appellate Court, if necessary, to frame issues and direct the Trial Court to take additional evidence required. This Court vide Order dated 12.04.2022 had already considered the facts of the case and passed directions to the Trial Court to conduct a trial to ascertain the issues and to take additional evidence if required. In such circumstances, it was incumbent upon the revisionists to place the additional evidence before the learned Trial Court, show its relevance to the three issues framed to permit the learned Trial Court to examine them as to its relevancy, conduct the trial and ascertain the issues. However, it transpires that the revisionists invoked

Order VIII Rule 1 A (3) CPC instead. The respondent also objected to the application keeping in mind that contours of Order VIII Rule 1A (3) CPC. Resultantly, while passing the impugned order the learned Trial Court examined the application in view of the provisions of Order VIII Rule 1A (3) CPC and rejected it.

7. The learned Trial Court however, did not consider the relevancy of the documents placed before the court by the revisionists in the application although it was their submission that it was pertinent. This court is therefore, of the considered view that the impugned order passed by the learned Trial Court cannot be sustained and is accordingly set aside. The learned Trial Court shall consider the relevancy of the five documents mentioned in paragraph 2 of the application filed by the revisionists under Order VIII Rule 1A (3) CPC afresh keeping in mind the direction of this court dated 12.04.2022 and the provision of Order XLI Rule 25 CPC and proceed to conclude the trial of the three issues framed by this court. It is accordingly so ordered.

8. Certain applications preferred by the parties seem to have engaged the learned Trial Court for substantial time. The extended period till 30.04.2023 for the trial as directed vide Order dated 03.11.2022 in RFA No. 09 of 2020 is nearing. This court is thus of the view that the learned Trial

Court must be given additional time. As agreed by the learned counsel for the parties six months further time from the date of this order is granted to the trial court to complete the proceedings. Pending interlocutory application is also disposed.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting : **Yes**
Internet : **Yes**

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