



HIGH COURT OF SIKKIM
Record of Proceedings

WP(C) No.21 of 2025

CHANDU SHERPA AND OTHERS

PETITIONERS

VERSUS

RAJU RAI AND ANOTHER

RESPONDENTS

Date: 10.06.2025

CORAM :

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

For Petitioners Mr. Dewen Sharma Luitel, Advocate.
 Mr. Bhaichung Bhutia, Advocate.

For Respondents

R-1 Mr. Pradeep Tamang, Advocate.

R-2 Mr. Sujan Sunwar, Assistant Government Advocate.

ORDER (ORAL)

1. Mr. Pradeep Tamang, Learned Counsel enters appearance for the Respondent No.1 today and undertakes to file Vakalatnama during the course of the day.

2. Heard on I.A. No.01 of 2025 which is an application filed by the Petitioners seeking to place certain documents on record.

3. The challenge in this Petition is to the Order dated 24-03-2025, of the Court of the Learned Civil Judge, Gangtok, in Title Suit No.11 of 2017 (*Chandu Sherpa and Others vs. Raju Rai and Another*).

4. Learned Counsel for the Petitioners submits that the evidence on affidavit which was filed by the Defendant No.1, the Respondent No.1 herein, cannot be admitted in evidence for the reason that the Defendant No.1 had only been permitted to clarify the errors appearing in their earlier evidence on affidavit, by way of an additional affidavit. However, instead of filing such clarification, a fresh evidence on affidavit was filed, which is beyond the scope of the order.

5. Learned Counsel for the Respondent No.1 seeks to file response to the Petition.



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6. Learned Assistant Government Advocate has no objection as he submits that the dispute is in fact confined to the private parties.

7. Having perused and considered the Order of the Trial Court, it is seen that the Court has categorically clarified that the Petitioners herein, the Plaintiffs before the Trial Court, have raised no claim to the effect that the subsequent affidavit contains facts other than those permitted by the Court. The Court also observed that, the Defendant No.1 had not withdrawn their earlier evidence on affidavit, which thereby subsists in the records of the case. The additional affidavit filed on 29-11-2024, was to be considered as an "additional affidavit" and not fresh "evidence on affidavit". The Court thus found no impediment in considering the subsequent affidavit as an additional affidavit and took it on record.

8. On the pain of repetition, it is thus seen that the Court observed that the subsequent affidavit is an additional affidavit and is not being considered as fresh "evidence on affidavit. It is not disputed that, the additional affidavit contains no new facts, other than those permitted.

9. Suffice it for the Trial Court and the parties to bear in mind that, pleadings must be borne by proof. There can be no evidence beyond the parameters of the averments made in the Plaint and the Written Statement. In this context, the Supreme Court in ***Ram Sarup Gupta (Dead) by LRs vs. Bishun Narain Inter College and Others***¹, observed as follows;

"6. It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded

¹ (1987)2 SCC 555

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by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should settle the essential material facts so that other party may not be taken by surprise. The pleadings however should receive a liberal construction; no pedantic approach should be adopted to defeat justice on hair-splitting technicalities. Some times, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law. In such a case it is the duty of the court to ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not be so much about the form of the pleadings; instead the court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the pleadings parties knew the case and they proceeded to trial on those issues by producing evidence in that event it would not be open to a party to raise the question of absence of pleadings in appeal.”

The Trial Court is thus to be mindful of the above circumstances.

10. In conclusion, for the foregoing reasons, I am of the considered view that the impugned Order warrants no interference.

11. Writ Petition is dismissed and disposed of as also I.A. No.01 of 2025.

12. Copy of this Order be forwarded to the Learned Trial Court for information.

Judge
10.06.2025

ds/sdl