THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 1st JUNE, 2020

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

RFA No.05 of 2017

Appellant : Shri Damber Singh Chettri

versus

Respondent : Shri Lachuman Chettri

Appeal under Order XLI Rules 1 and
2 of the Code of Civil Procedure, 1908

Appearance

Mr. Jorgay Namka, Legal Aid Counsel for the Appellant.

Mr. N. Rai, Senior Advocate with Mr. Kumar Sharma and Ms. Sudha Sewa, Advocates for the Respondent.

J U D G M E N T

Meenakshi Madan Rai, J.

1. The Appellant is before this Court assailing the Judgment and Decree, dated 24-03-2017, in Title Suit No.05 of 2014, *Shri Damber Singh Chettri* vs. *Shri Lachuman Chettri*, vide which the Learned District Judge, West Sikkim, at Gyalshing, dismissed his Suit.

2. The facts pivot around the ownership of two plots of land over which both the Appellant and the Respondent claim ownership, viz., Plot Nos.344 and 345, as recorded in the survey records of 1950-52, situated at Lungjik Block, Gyalshing, West Sikkim, measuring 4.75 and 0.13 acres respectively, converted to Plot Nos.482, 488, 486, 987, 489, 490 and 541, measuring a total area of 2.0800 hectares, during the 1977-78 survey

operations. The Appellant claims that he is the son of one late Nayan Singh Chettri and grandson of Late Ganja Singh Chettri. The Respondent is his brother-in-law, a former resident of Srinagi, West Sikkim, now residing at Lower Lungjik Block, West Sikkim. As per the Appellant, his father had two sons, himself and his late brother Dhan Bahadur Chettri, a bachelor, who passed away in the year 1954, leaving behind Plot Nos.343, 344, 345, 349, 352 and 356 (1950-52 records), measuring a total area of 6.69 hectares, situated at Lungjik Block, West Sikkim. On his passing, the entire properties allegedly came into the possession and occupation of the Appellant and his father, Nayan Singh Chettri. In the year 1977, the Appellant left for Manipur seeking livelihood and on his father's demise in 1980 he was unable to attend the death rites due to a Malaria epidemic in Manipur which he too contracted. In 1982, he returned home for a short period and handed over the suit properties to the Respondent for its maintenance. On his return home finally in 2001 he found that the said suit properties were illegally occupied by the Respondent as its owner. On 26-04-2011, on enquiry under the Right to Information Act, 2005, from the Office of the District Collector, West Sikkim, he found that the suit properties were recorded in the name of Dhan Bahadur Chettri as per the records of 1952 and later sold to the Respondent. The Appellant hence filed the Title Suit and sought a declaration that registration and mutation of Plot Nos. 344 and 345 (1950-52 records) converted to 482, 488, 486, 987, 489, 490 and 541 (1977-78 records) in the name of the Respondent

is liable to be cancelled. He also sought a declaration that the entire plots of land mentioned in Schedule 'A' to the plaint are his ancestral properties which ought to be mutated and registered in his name and handed over to him by the Respondent.

3. The Appellant's averments were disputed by the Respondent who asserted that he had married the Appellant's younger sister in the year 1979 but was neither aware nor informed that the Appellant had a sibling named Dhan Bahadur Chettri. His father-in-law, Nayan Singh Chettri possessed some landed property including the suit property which was sold to him on 08-02-1978, vide Exhibit 'A', duly substantiated by Money Receipt, Exhibit 'G', while Exhibit 'H' scribed by Nayan Singh Chettri addressed to the Gram Panchayat of Lungjik Block revealed the exigencies compelling him to sell the property to the Respondent. The Respondent averred that infact the Appellant the only son of his parents had intermittently visited them before their demise and was well aware of the transaction of the disputed plots of which the Respondent has been in continuous possession and occupation since 1978, hence the Suit is not maintainable.

4. The Learned Trial Court framed the following issues for determination;

i. *Whether the suit of the Plaintiff is barred by the Law of Limitation?*

ii. *Whether the suit lands are ancestral landed properties of the Plaintiff and the Defendant had no right to transfer*

and to take possession of the suit lands in his name since he is a stranger to the ancestral lineage of the Plaintiff?

iii. *Whether the suit lands were given to the Defendant for the solitary purpose of its maintenance but same were illegally transferred in his name without the consent and knowledge of the Plaintiff?*

iv. *Whether the Defendant during the prolonged absence of the Plaintiff had fraudulently managed to manufacture some documents for the registration and mutation of the suit lands in his favour?*

v. *Whether the Plaintiff had a brother named Late Dhan Bahadur Chettri and that he died in the year 1974?*

vi. *Whether the Plaintiff returned to the State of Sikkim from Manipur only in the year 2001 after leaving Sikkim in the year 1977?*

vii. *Whether the Defendant had purchased Plots bearing No.344 and 345 (old Plot No.) bearing new Plots No.482, 483, 486, 487, 488, 489, 490, 451 from Nayan Singh Chettri for a consideration value of Rs.5,000/- vide registered Sale-Deed dated 08.02.1978?*

viii. *Whether the Plaintiff is entitled for any relief or reliefs as prayed by him?*

5. The Issues were taken up for determination whereby Issue Nos.1 and 6 were considered together and it was concluded that from the evidence on record the Appellant did return to Sikkim in 1982 after the death of his father and was thus aware of the occupation and possession of a portion of his properties by the Respondent. However, he filed the first Suit before the Court only in the year 2012 well past the period of limitation. The Issues were decided accordingly. In Issue No.2 it was observed that the Plaintiff left home and remained out of touch with his parents and returned only in 1982. Consequently

the father being old and infirm out of dire necessity sold the property. The whereabouts of the Appellant being unknown, the question of his consent did not arise and the sale was duly proved by Exhibits 'H' and 'J'. The Issue was decided accordingly. Issue Nos.3 and 4 were taken up together and it was held that in light of the detailed findings in Issue Nos. 2 and 6, Issues 3 and 4 were redundant. In Issue No.5 it was found that the Plaintiff failed to satisfactorily prove that Late Nayan Singh Chettri had another son by the name of Dhan Bahadur Chettri. In Issue No.7, it was reiterated that consequent upon the findings in Issue No.2, this Issue should also be decided in favour of the Respondent and concluded accordingly. In Issue No.8, the Learned Trial Court held that in view of the findings in Issue Nos.1 to 7 decided as above, the Appellant is not entitled to any of the reliefs claimed and dismissed the Plaintiff's suit.

6. What requires determination by this Court is whether the disputed property belonged to Dhan Bahadur Chettri and whether Nayan Singh Chettri sold it to the Respondent, although he was incompetent to do so.

7. Learned Counsel for the Appellant while urging that the impugned Judgment deserves to be set aside contended that the Learned Trial Court overlooked relevant material on record which was in favour of the Appellant. That, the suit properties comprising of Plot Nos.344 and 345 is the ancestral property of the Appellant which the Respondent had surreptitiously recorded in his name when the Appellant was living in Manipur. That, the

Respondent's claim that he purchased the land from Nayan Singh Chettri, father of the Appellant, in 1978 as the Appellant had left home for the last 15 years and his aged parents were unable to cultivate the land are blatantly false statements. The Respondent was married to the Appellant's step-sister only in the year 1979, while the transaction allegedly took place in the year 1978 before the wedlock, which therefore renders the claim of the Respondent of being the care giver of the Appellant's parents questionable, as that role would not have been possible before his marriage to their daughter. That, Exhibit 'A' the Sale Deed document records the "*name of seller*" as "*Nayan Singh Chettri*", when infact the property did not belong to him as evident from Exhibit 'D', the "*Parcha Khatian*" pertaining to the suit land standing in the name of Dhan Bahadur Chettri. It was next contended that Exhibit 'A' has been executed by one Chabilal Khulal, purportedly the holder of the Power of Attorney on behalf of Nayan Singh Chettri, sans documents to substantiate this circumstance, rendering Exhibit 'A' suspicious and a manufactured one. That, the entire case of the Respondent hinges around Exhibit 'H' said to have been addressed by Nayan Singh Chettri to the Block Mondal and Gram Panchayat, Lungjik in 14-02-1978, declaring the sale of the suit lands to the Respondent, but the document is an unregistered one, thereby legally invalid. That, infact the property was transferred to Dhan Bahadur Chettri, the Appellant's elder brother directly from his grandfather Ganja Singh Chettri. The boundaries on the West of the transacted land, detailed in

Exhibit 'A' are also the lands of Dhan Bahadur Chettri and the land allegedly sold also belonged to him and not Nayan Singh Chettri, thereby rendering Nayan Singh incompetent to sell the property. That, Exhibit 'B' the "*Parcha Khatian*" showing Plot Nos.344 and 345 in the name of the Respondent is also a false document, as Exhibit 'A' the Sale Deed, was registered on 29-06-1979, but copying fees seeking a copy of the document was deposited on 06-06-1979, prior to its registration, thus disclosing falsehood. The Learned Trial Court was in error in considering Exhibit 'G' the money receipt relied on by the Respondent to establish that a sum of Rs.5,000/- (Rupees five thousand) only, was paid by the Respondent to the Power of Attorney Holder Chabilal Khulal, which is devoid of Plot Numbers and could well be referring to any other plot of land besides being an unregistered document. Hence, in the light of the evidence on record, the impugned Judgment and Decree, both dated 24-03-2017, deserves to be set aside.

8. The allegations of the Appellant came to be strongly repudiated by Learned Senior Counsel who contended that all that the Appellant has done to establish his case is by referring to the weaknesses of the Respondent's case but has failed to establish the strength of his case by any evidence, documentary or otherwise, contrary to legal principles. Inviting the attention of this Court to the documents of the Appellant it was submitted that Exhibit 1 records the name of Dhan Bahadur Chettri, son of Nayan Singh Chettri and was obtained on 11-01-2011. The document is manifestly a manufactured document as Plot Nos.

344 and 345 mentioned are those as existing in 1950-52 records but the area reflected on it is in hectares as per the 1977-78 records, instead of in acres which was prevalent during that period. That, Exhibit 'D' relied on by the Respondent depicts the correct picture inasmuch as the original owner shown therein is Nayan Singh Chettri, son of Ganja Singh Chettri which was subsequently corrected by scoring out Ganja Singh and inserting the name of Dhan Bahadur Chettri, son of Nayan Singh Chettri, vide O.O. (Office Order) No.135 of 1982-83. This document obtained in 2016 correctly depicts the absence of Plot Nos.344 and 345 therein indicating the sale of the two disputed Plots in 1978, which now stand recorded in the Respondent's name having been purchased by him then. These circumstances thus fortify the details recorded in Exhibit 'A', revealing the name of the seller correctly as "Nayan Singh Chettri", as the property was his. The name Dhan Bahadur Chettri on Exhibit 'A', on the Western boundary, is of another entity and not the alleged imaginary sibling of the Appellant. The seller and Dhan Bahadur both owned land on the western boundary of the transacted land which has been reflected in Exhibit 'A'. The said Dhan Bahadur Chettri was also a witness to the transaction which took place vide Exhibit 'A' and had affixed his signature thereon as a witness. That, Exhibit 'D' which was prepared in 1982-83 stands testimony to the sale of the two plots, while Exhibit 1 is a false and manufactured document. Exhibit 3 reflects information obtained by the Appellant from the Sub-Divisional Magistrate (HQ) Gyalshing, revealing that Plot

Nos.344 and 345 measuring 4.75 and 0.13 acres respectively had been sold to Lachuman Chettri, son of Late Amar Bahadur Chettri of Lungjik Block, thus establishing the sale. Learned Senior Counsel also relied upon Exhibit 'F' (collectively), which indicated that the land rent in the year 1962 was deposited by Nayan Singh Chettri thereby fortifying the claim of his ownership over the property. That, infact it was the Appellant who was variously and interchangeably addressed as "Dhan Bahadur Chettri" and "Damber Singh Chettri". The Appellant had at no stage handed over the property to the Respondent for its maintenance and the property was legitimately purchased by him from Nayan Singh Chettri as validated by all documents relied on by the Respondent. So far as the question of unregistered documents was concerned, strength was drawn from Section 90 of the Indian Evidence Act, 1872 as the documents were above 30 years. That, the additional evidence ordered to be recorded by this Court has established that Chabilal Khulal was the Power of Attorney holder of Nayan Singh Chettri, while the Office notes Exhibit 'T' clarified that Nayan Singh Chettri was indeed the owner of 6.69 acres of land and not Dhan Bahadur as claimed. To further fortify the Respondent's case reliance was placed on ***K. B. Bhandari*** vs. ***Laxuman Limboo and Another***[1], ***Mahesh Kumar (Dead) by Lrs.*** vs. ***Vinod Kumar and Others***[2] and ***H. P. Vedavyasachar*** vs. ***Shivashankara and Another***[3]. That, in view of the documentary

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[1] Sikkim Law Reports (2017) Sikkim 41
[2] (2012) 4 SCC 387
[3] (2009) 8 SCC 231 (Paragraph 7 and 10)

evidence on record, the impugned Judgment of the Learned Trial Court suffers from no infirmity and consequently the Appeal be dismissed.

9. The rival contentions of Learned Counsel for the parties were heard *in extenso*. The evidence, documents on record and the citations placed at the Bar have also been carefully perused as also the impugned Judgment.

10. To finally determine the question framed hereinabove, it would be essential to first take into consideration Exhibit 1 relied on by the Appellant which is a *"Parcha-Khatian"*. The document *inter alia* indicates registration of Plot Nos.344 and 345 in the name of Dhan Bahadur, son of Nayan Singh, caste 'Chettri'. The document is an attested copy. Section 61 of the Indian Evidence Act, 1872, provides that the contents of documents must be proved either by primary or by secondary evidence. Section 63 of the Evidence Act enumerates what secondary evidence means and includes. Section 76 deals with certified copies of public documents. It is clear from a consideration of the aforestated provisions of the Indian Evidence Act, 1872, that primary documentary evidence must be furnished to prove the contents thereof. The existence of primary evidence generally excludes secondary evidence. Secondary evidence is not admissible until the non-production of primary evidence is satisfactorily accounted for. Secondary evidence is receivable sometimes as forming an exclusion to the rule which provides that the best evidence alone can be given

and the party tendering it has proved that primary evidence is not obtainable. In other words, the reasons for non-production of the original document must be supported with sufficient evidence, whereby it must be established that the original document indeed existed but was either lost, misplaced or for some other circumstance unobtainable by the party relying on it. The Plaintiff himself has not given any reasons for non-production of the original of Exhibit 1. His evidence is to the effect that Exhibit 1 is a "certified copy" of the *"Parcha-Khatian"*. On a perusal of Exhibit 1, it is evident that the document is an "attested" photocopy of a "certified to be true copy", allegedly attested by the Additional District Collector, Gyalshing, West Sikkim. Exhibit 1 is therefore not even the photocopy of the original document but a photocopy of a "certified to be true copy". The Appellant has failed to furnish any reasons as to why such an attested copy was produced before the Court. No mention of the original or the certified copy from which photocopy of Exhibit 1 was reproduced was made by the Appellant nor reasons furnished for its non-production. P.W.2 H. K. Chettri, SDM, Gyalshing admitted that Exhibit 1 was an "attested copy" of the *"Parcha-Khatian"* of Lungjik Block, recorded in the name of Dhan Bahadur Chettri, son of Nayan Singh Chettri, attested by ADC, West Sikkim. He did not identify the signature of the Attesting Officer and infact stated that the said document is required to be verified from the records of 1950-52 maintained in the Head Office, viz., the Land Revenue and Disaster Management Department, a clear indication that he

did not endorse the contents or the authenticity of the document. No questions were put to P.W.3 Bikram Rai, the Revenue Supervisor with regard to Exhibit 1, while P.W.4 the Revenue Officer-cum-Assistant Director, Land Revenue Department, Gyalshing, admitted that Exhibit 1 is not a certified copy, but is an attested copy. That, the column for measurements in Exhibit 1 mentioned 'hectares' but the area was described in 'acres' and had been attested by the ADC, West Sikkim. This witness also failed to identify the signature of the Attesting Authority while the attesting authority was never produced as a witness. Section 76 of the Evidence Act requires that every public officer having the custody of an public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees certifying that the copy is a true copy of such document. Exhibit 1 as already noticed is not a certified copy but merely an attested one rendering Section 76 also obsolete for its purposes and on account of these circumstances Exhibit 1 is infact inadmissible in evidence. In the light of the aforestated discussions Exhibit 1 fails to inspire confidence and renders no assistance whatsoever to the Appellant's case.

11. Although it is the Appellant's claim that the property belonged initially to his grandfather Ganja Singh Chettri and was transferred in the name of Dhan Bahadur, however no proof of registration or of such ownership or transfer thereof was produced by the Appellant in support of his claim. The voluntary stance of the Appellant during cross-examination was

that his paternal great grandmother had transferred some of the lands in the name of his elder brother, late Dhan Bahadur Chettri, much earlier in time when his father Nayan Singh Chettri went missing during the survey operation of 1950-52, this statement of his father having gone missing indeed adds a new twist to his tale, bereft of pleadings and is palpably an afterthought and not worthy of consideration. Besides this evidence elicited from him during cross-examination appears to be in contradiction to his evidence-in-chief, wherein, he has stated that all the landed properties were directly transferred to the title and possession of his elder brother Late Dhan Bahadur Chettri, for its temporary management, as the Appellant was too young to manage his ancestral property at the relevant point of time. At this juncture, brief reference can be made to Exhibit 'D' filed by the Respondent. It was argued by Learned Counsel for the Appellant that Exhibit 'D' stands in the name of Dhan Bahadur Chettri, showing his ownership over the disputed plots, thereby divesting Nayan Singh of powers to alienate the property to the Respondent. On the contrary, perusal of Exhibit 'D' reveals that the plot numbers recorded therein are 343, 349, 352, 356 and originally stood recorded in the name of Nayan Singh, son of Ganja Singh. The document also reveals that vide O.O. (Office Order) No.135 of 1982-83 the name of Ganja Singh came to be struck off and the name of Dhan Bahadur, son of Nayan Singh was shown to be the owner. In other words, in 1982-83 evidently after the demise of Nayan Singh the properties mentioned therein came to be recorded in the name

of Dhan Bahadur, son of Nayan Singh which earlier were recorded in the name of Nayan Singh, son of Ganja Singh. Despite the above exercise it is pertinent to notice that Exhibit 'D' makes no mention of Plot Nos.344 and 345, but only reflects Plot Nos.343, 349, 352 and 356. The evidence of D.W.5, the Head Surveyor and D.W.6, the Revenue Officer of the Land Revenue and Disaster Management Department, has fortified the contents of Exhibit 'D' by deposing that Late Nayan Singh Chettri son of Ganja Singh Chettri was the registered owner of Plot Nos.343, 344, 345, 349, 352 and 356 of which Plot Nos.344 and 345 had been sold out to the Defendant. It therefore concludes vide Exhibit 'D' that Plot Nos.344 and 345 did not belong to Dhan Bahadur.

12. Exhibit 2, is a certified true copy sketch map showing the disputed plots of land and its surrounding plots. The document was filed by the Appellant to prove that the disputed plots, i.e., Plot Nos.344 and 345, were recorded in the name of Dhan Bahadur Chettri. However, this document remained unproved by the Appellant as also his witnesses, P.W.2, P.W.3 and P.W.4 as none of them shed light on its contents while P.W.2 stated deposed that Exhibits 1, 2 and 3 were required to be verified from the records of 1950-52 maintained in the Head Office. Mere filing of a document and reliance on it does not tantamount to proof, the contents thereof must be proved in terms of the legal provision. Hence, Exhibit 2 requires no consideration being an unproved document.

13. The Appellant's claim that he handed over the entire property of Dhan Bahadur Chettri to the Respondent in 1982 for maintenance also finds no substantiation in view of the admitted position that no documents were infact executed between both of them contracting such a settlement and no witnesses existed to such an agreement either. The Respondent's persistent stand was that the property was purchased by him from the Appellant's father in view of the exigencies mentioned in Exhibit 'H'. That having been said, reference to Exhibit 7 is appropriate, which is a letter addressed by the Appellant to the District Collector seeking information with regard to the old Plot Nos.343, 349, 352 and 356 as per the survey records of 1950-52 and 1979-80. No information pertaining to Plot Nos.344 and 345 was sought by the Appellant in Exhibit 7. In response to this application, a spot verification was conducted by the concerned authority in the presence of the Appellant. Exhibit 8, the report of the spot verification reveals that Plot Nos.349 and 352 stand in the name of Nayan Singh Chettri, son of Ganja Singh Chettri, while Plot No.356 was found to be recorded in the name of Aita Ram, son of Gajur Singh Limboo during the survey operation of 1977-78. Plot No.343 is alleged to be in the name of the Respondent, Lachuman Chettri, son of Amber Bahadur Chettri. Since Exhibit 7 made no query about Plot Nos.344 and 345, the response, i.e., Exhibit 8 consequently bore no reference to the said plot numbers. Suffice it to note in this context, that, the Respondent in his evidence claims to be in possession of only two plots of land, i.e., Plot Nos.344 and 345, out of the entire

plots of land mentioned in the Schedule to the Plaint. That, he is ready to part with any extra lands found to be in his possession, on physical verification. The Respondent's claim that Plot Nos.344 and 345 measuring 4.75 and 0.13 acres now measuring 2.0800 hectares, bearing Plot Nos.482, 488, 486, 987, 489, 490 and 541 was sold to him by Nayan Singh Chettri is duly substantiated by Exhibit 'G' and Exhibit 'H' besides Exhibit 'A', filed by him. Vide Exhibit 'G', Nayan Singh Chettri acknowledged receipt of a sum of Rs.5,000/- (Rupees five thousand) only, from the Respondent as consideration amount for the lands sold by him to the Respondent. Exhibit 'H' is a document explaining to the Block, 'Mandol' and Gram Panchayat of Lungjik the exigencies prompting such alienation. The argument of Learned Counsel for the Respondent that the Learned Trial Court was in error in considering Exhibit 'G' and Exhibit 'H' being unregistered documents holds no water. Relevant reference may be made to Rule 7 of the Sikkim State Rules Registration of Documents, 1930, extracted hereinbelow;

> **"**7. The person or persons executing the deed on his or their authorised representative with one or more witnesses to the execution of it, shall attend at the Registrar's office and prove by solemn affirmation before the Registrar the due execution of deeds upon which the Registrar shall cause an exact copy of the deed to be entered in the proper register and after having caused it to be carefully compared with the original shall attest the copy with his signature and shall also cause the parties or their authorised representative in attendance to subscribe their signatures to the copy and shall then return the original with a certificate under his signature endorsed thereon specifying the date on which such deed was so registered with REFERENCE to the book containing the registry

> thereof and the page and number under which the same shall have been entered therein.**"**

14. Hence, the Rules require registration of the Sale Deed document, Exhibit 'A' is undeniably and undisputedly a registered document thereby fulfilling the requisites of the Rules. The Sale Deed came to be executed on 08-02-1978 and was registered on 26-09-1979. Pursuant to Exhibit 'G', Exhibit 'A' the Sale Deed document came to be executed and registered in terms of the legal provisions and the consideration value of Rs.5,000/- (Rupees five thousand) only, as having been made on 08-02-1978 reflected in Exhibit 'G' has been duly acknowledged in Exhibit 'A' as well. Exhibit 'H' requires no registration as it only bears the reasons for alienation of the land by the seller.

15. On the other hand, a reading of Exhibit 'A' which is the Sale Deed document executed by Nayan Singh Chettri admittedly the father of the Appellant, in favour of the Respondent, reveals Plot Nos.344 and 345, bearing measurement 4.75 and 0.13 acres, akin to the measurements detailed by the Appellant's witness, i.e., 4.75 and 0.13 acres, now measuring 2.0800 hectares. Exhibit 'A' is to be read along with Exhibit 'E', the boundaries as given in Exhibit 'A' finds substantiation in Exhibit 'E', the document having been prepared by the Revenue Surveyor, checked by the Head Surveyor and such preparation duly attested by the Revenue Officer with original official ink stamps, reflecting the genuineness of the document. Hence, it is clear that Plot Nos.344 and 345 was

transferred by way of Exhibit 'A', the Sale Deed document prepared between Nayan Singh Chettri and the purchaser Lachuman Chettri.

16. Although it was vehemently argued that Exhibit 'A' does not bear the signature of the seller and doubts were raised by the Appellant regarding the Power of Attorney given by Nayan Chettri to Chhabilal Khulal, this is belied by the additional evidence recorded. In this regard, it may pertinently be mentioned that this Court had vide Order dated 30-09-2019, remanded the matter to the Learned Trial Court for recording additional evidence with regard to the documents as detailed in I.A. No.02 of 2019. It may be recapitulated that I.A. No.02 of 2019 was an application filed by the Respondent seeking to file additional documents at the appellate stage. The grounds put forth by the Respondent for non-production of the documents before the Learned Trial Court were found to be adequate and satisfactory. Hence, for clarity in the matter and for conclusion sans ambiguities the additional documents were permitted to be taken in evidence. Consequently, the Respondent furnished the documents relied upon him and additional evidence was recorded whereby Exhibit 'T' to Exhibit 'Z' and Exhibits 'AA' to 'AI' were furnished by the Respondent. Exhibit 'AB' reflects a Notice bearing No.4(218)79-80 dated 09-05-1979, issued by the Registrar, West District Gyalshing, giving notice to all concerned that Naina Singh Chhetri was giving the Power of Attorney to Chabi Lall Chhetri for the purpose of executing and completing the registration of Sale Deed in favour of Lachuman Chettri of

Siri Badam Block in respect of Plot Nos.344 and 345 measuring 4.88 acres of Lungchik Block and any person having objection to such a step was to file his claim or objection. The authenticity of this document is supported by the evidence of D.W.8 Amrit Raj Rai posted as Revenue Officer-cum-Assistant Director at Land Revenue Department, Gyalshing, West Sikkim, in February, 2019. Exhibit 'AC' issued by the same Authority states that Exhibit 'A' will be registered on 10-06-1979 if no objection is received. Evidently, none were forthcoming in response to both the Notices *supra*. The Respondent went on to depose that Exhibit 'T' are documents pertaining to the request for registration of Sale Deed made by Nayan Singh Chettri to the concerned authority dated 08-02-1978. The documents being office notings of the concerned Registering Authorities reflects *inter alia* as follows;

> **"***……*
>
> *While verifying the above sold land according to the sellers purchase the sold land stands in the name of seller. Seller possesses only 6.69 acres land in his name. Purchaser do not possess any landed properties, but he is Sikkim Subject holder S.S. No.125 Volume No.XII Shrinagi block.*
>
> *……***"**

The seller mentioned hereinabove is Nayan Singh Chettri who had applied to the concerned authority for registration of Sale Deed and issuance of Power of Attorney to Chabilal Khulal, while the purchaser is identified as Lachuman Chettri. The document also reveals as follows;

> **"***……*
>
> *In this connection the seller has stated that due to ill health he cannot attend in the*

> *Court for the execution of seller (sic). Therefore, he has given a power of attorney to one Shri Chabillal Chettri of Maneybong Block ……*
>
> *As such, power of attorney notice for one month may kindly be issued ……"*

17. Exhibit 'T', the official records, maintained in the concerned Department is also revelatory of the fact that the properties stood recorded in the name of Nayan Singh Chettri who as per the Registering Authorities owned 6.69 acres of land. Nayan Singh Chettri, vide Exhibit 'U', dated 08-02-1978 had pleaded to the Registering Authority that Plot Nos.344 and 345 sold by him to Lachuman Chhetri be registered. These documents unambiguously establish that the Sale Deed document Exhibit 'A' was duly executed by Chabilal Khulal as the holder of the Power of Attorney of the seller who was ailing and consequently registered in the name of Lachuman Chettri, thus soundly quelling all doubts raised by the Appellant in this context.

18. The Appellant failed to establish by any evidence whatsoever the existence of his sibling. No villagers who would have been in the know of such matters were brought before the Court as witnesses. The alleged "sibling" appears to be a figment of the Appellant's imagination sans evidence on this aspect.

19. On the question of limitation, the Learned Trial Court was correct in holding that the Appellant did return to Sikkim in 1982 after the death of his father and was thus aware of the occupation and possession of a portion of the disputed properties

by the Respondent but took no steps. It may be added that although the Appellant averred in his pleadings that he returned home permanently in 2001, it is his evidence however that he returned in the year 2000 and as already mentioned in 1982 as well. The Suit was filed only in the year 2014. The lapse of time as discussed above is clear, suffice it to observe that the Suit was indeed barred by limitation. The Appellant's claim that he had given the landed properties for management by the Respondent brooks no consideration as no documentary evidence or witnesses thereof have been furnished for augmentation of the claim. On examining Exhibit 'B' the argument raised by the Appellant pertaining to its falsity is apparently farfetched and the authenticity of the document cannot be doubted.

20. In conclusion, it emanates with clarity from the foregoing discussions that the Appellant has failed to establish his case. The impugned Judgment and decree of the Learned Trial Court warrants no interference.

21. No order as to costs.

22. A copy of the Judgment be transmitted forthwith to the Learned Trial Court along with records.

(Meenakshi Madan Rai)
Judge
01-06-2020

Approved for reporting : **Yes**

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