

(2021) 07 SIK CK 0014

In the Sikkim High Court

Case No : Writ Petition (C) No. 05, 06, 07, 08, 09 Of 2021

Chandu Sherpa And Ors

APPELLANT

Vs

Sunita Rai And Ors

RESPONDENT

Date of Decision : 08-07-2021

Acts Referred:

Code Of Civil Procedure, 1908 — Order 8 Rule 1A(3)

Citation : (2021) 07 SIK CK 0014

Hon'ble Judges : Jitendra Kumar Maheshwari, CJ

Bench : Single Bench

Advocate : Zangpo Sherpa, Lusiya Thapa, N. Rai, Yozan Rai, Vani Vandana Chhetri, Sudesh Joshi, Sujan Sunwar

Final Decision : Allowed

Judgement

Jitendra Kumar Maheshwari, CJ

All these Writ Petitions have been filed by the plaintiffs arising out the Order passed on 12.11.2019 in different suits bearing Title Suit Case No. 08 of

2017 (Chandu Sherpa & Ors. vs. Sunita Rai & Anr.), Title Suit Case No. 09 of 2017 (Chandu Sherpa & Ors. vs. Sunita Rai & Anr.), Title Suit Case

No. 10 of 2017 (Chandu Sherpa & Ors. vs. Sunita Rai & Anr), Title Suit Case No. 11 of 2017 (Chandu Sherpa & Ors. vs. Sunita Rai & Anr.) and

Title Suit Case No. 12 of 2017 (Chandu Sherpa & Ors. vs. Sunita Rai & Anr.) allowing the application filed by the defendant under Order VIII Rule

1A (3) of the Code of Civil Procedure, 1908, for short, CPC. Learned Trial Court vide Order passed on 24.12.2020, observed that under Order VIII

Rule 1A (3) of the CPC gives discretion to the Court to allow the additional documents but it ought to be used according to well established principles.

Those principles may be relevancy of the documents showing of sufficient or

good cause for not producing it earlier. Thereafter, the Court proceeded to hold that the documents are relevant and are necessary for effective determination of the issues, however, subject to payment of cost of Rs.4000/- to the plaintiffs, the application filed by the defendants is allowed.

In view of the findings so recorded by the Trial Court it is to be seen from the fact that during cross-examination on the plaintiff one document having signature of late Lakey Sherpa was shown by the counsel of defendants to the plaintiffs on the question of resemblance of the signature of late Lakey Sherpa, father of the plaintiff. Admittedly the said document is not related to the defence of the defendants, however, it is only for the purpose of resemblance of the signature of late Lakey Sherpa. The said document, at this stage, cannot be a relevant document to adjudicate the subject matter of the case. At the subsequent stage the question of verification of signature arise at that time the said issue may be taken for consideration by the Court.

It is to further observe here the provision of Order VIII Rule 1A (3) which confers discretion on the Court is not a unfettered discretion on the Court.

The Court must see the bona fides, genuineness, relevance of the document to the subject matter of the suit determining the controversy in question.

At present, merely by denial of the plaintiffs to the document having transaction with other persons by late Lakey Sherpa cannot be relevant to the

merit of the present case. In that view of the matter with the observations as made hereinabove all these Writ Petitions are hereby allowed. Impugned

Orders passed by the Trial Court are set aside.

All the aforesaid Writ Petitions stand disposed of with the above observation.