

(2019) 05 SIK CK 0002

In the Sikkim High Court

Case No : Regular Second Appeal No. 01 Of 2016

Furden Tshering Bhutia And Ors

APPELLANT

Vs

Payzee Bhutia (Sherpa) And Ors

RESPONDENT

Date of Decision : 07-05-2019

Acts Referred:

Citation : (2019) 05 SIK CK 0002

Hon'ble Judges : Bhaskar Raj Pradhan, J

Bench : Single Bench

Advocate : B. Sharma, Bhola Nath Sharma, S.S. Hamal, Priyanka Chhetri, Mahesh Subba, Srijana Chettri, Prasanna Chettri, Karma Thinlay, Thinlay Dorjee Bhutia

Final Decision : Disposed Off

Judgement

Bhaskar Raj Pradhan, J

1. This litigation has a long chequered history of almost 15 years with several rounds before this Court itself.
2. Dissatisfied with the judgment and decree passed on 07.04.2016 in Title Appeal No. 03 of 2015 the present Regular Second Appeal was registered before this Court and on completion of the pleadings matter taken up for hearing on 27.02.2019.
3. During the course of arguments, on a query raised by this Court regarding the possibility of an amicable settlement, the respective parties and the Counsels submitted that they were willing to explore the possibility to resolve the matter amicably.
4. On 20.03.2019 Mr. U.P. Sharma, learned Advocate and a trained Mediator was appointed to mediate between the parties in dispute. Barely a month thereafter the Sikkim State Legal Services Authority vide communication bearing reference No.18/SLSA/02/MC dated 27.04.2019 to the Registry of this Court forwarded the

Deed of Compromise stating that the matter has been amicably settled. The Compromise Deed is dated 25.04.2019 and it is signed at Gangtok, East Sikkim.

5. The five Appellants are personally present in Court. The Appellant No.5 and 6 are minors and are represented by their mother who is Appellant No. 4. She is also personally present in Court. The three private Respondents are represented by the Respondent No. 2 who states that the other two Respondents have agreed on the Compromise Deed. The Compromise Deed has been signed by all the parties before this Court in the Regular Second Appeal. The learned Counsels representing the State-Respondents submit that the Compromise Deed has also been signed by the State. The Compromise Deed is taken on record and marked as (X). The Compromise Deed reads as under:

"COMPROMISE DEED

This Compromise Deed made on this the 25th day of April, 2019 at Gangtok, East Sikkim

BETWEEN

1. Shri Furden Tshering Bhutia, s/o Late Karma Tshering Pintso Bhutia @ Sepchung Bhutia
2. Shri Karma Sonam Bhutia @ Karma Tshering Bhutia, s/o late Karma Tshering Pintso Bhutia @ Sepchung Bhutia
3. Shri Norbu Sonam Bhutia @ Norbu Tshering Bhutia, s/o Late Karma Tshering Pintso Bhutia @ Sepchung Bhutia
4. Mrs. Dawa Doma Bhutia, w/o Late Sandu Bhutia @ Sandup Bhutia
5. Miss Hissey Palmu Bhutia (minor), d/o Late Sandu Bhutia @ Sandup Bhutia Represented through her mother Dawa Doma Bhutia
6. Master Kalden Dorjee Bhutia (minor), s/o Late Sandu Bhutia @ Sandup Bhutia @ Sandup Bhutia Represented through her mother Dawa Doma Bhutia
7. Shri Dadul Bhutia, s/o Late Karma Tshering Pintso Bhutia, @ Sepchung Bhutia.

All residents of Bermiok Tokal, P.O. Bermoik, P.S. Temi, South Sikkim (hereinafter referred to as the FIRST PARTY and which expression shall mean and include their legal heirs, successors, successors-in-interest, executor, administrators, legal representative, attorney and assigns) of the first part.

AND

1. Smt. Payzee Bhutia (Sherpa), w/o passing Sherpa, r/o Mungrung Busty, P.O. & P.S. Namchi, South Sikkim
2. Smt. Diki Palmoo Bhutia, w/o Dr. Thinley Nidup Bhutia, r/o Bermoik Thangsing Block P.O. Bermoik, P.S. Temi, South Sikkim

3. Dr. Thinley Nidup Bhutia, s/o Shri Pala Tshering Bhutia, r/o Lower Pelling, P.O. & P.S. Pelling, West Sikkim.

(hereinafter referred to as the SECOND PARTY and which expression shall mean and include their legal heirs, successors, successors-in-interest, executors, administrators legal representatives, attorney and assigned of the second part.

AND

1. The Secretary, Land Revenue Department, Government of Sikkim, Gangtok
2. District Collector, South District at Namchi, South Sikkim
3. Sub-Divisional Magistrate, Office of the District Collectorate, South Sikkim at Namchi.

(hereinafter referred to as the THIRD PARTY of the third part.

WHEREAS the First Party had filed R.S.A. No. 01/2016 (Furden Tshering Bhutia & Ors. -vs- Payzee Bhutia & Ors) against the Second Party and Third Party before the Hon'ble High Court of Sikkim. With the consent of the parties the matter was referred to mediation at Gangtok where it was taken up as Mediation Case No. 08 of 2019.

AND WHEREAS during mediation the parties have agreed to settle their long pending disputes on certain terms and conditions and desires that for the record the terms and conditions on which they have agreed to settle their disputes in writing.

NOW THIS COMPROMISE DEED WITNESSETH AS FOLLOWS:

1. The landed property i.e. bearing plot no. 257, 258, 332, 333 & 334 measuring 2.892 hectares (approx) situated at Chalamthang more particularly described in the Schedule of T.S. No. 02 of 2014 pending before the court of the Ld. Civil Judge, South Sikkim at Namchi shall be mutated on the application of the First Party to the First Part in their joint names from the concern Revenue Office at their expenses for which the Second Party to the Second Part shall have no objection.
2. The possession of the aforesaid property described in Para-1 of this Compromise Deed is handed over today i.e. 25.04.2019 to the First Party to the First Part by the Second Party of the Second Part in token thereof the parties have put their respective seal and signatures.
3. The First Party of the First Part shall withdraw Title Suit No. 02 of 2014 pending before the Court of Ld. Civil Judge, Namchi, South Sikkim.
4. A portion of property from the property i.e. plot no. 76, 77 and 78 (more particularly described in T.S. No. 07 of 2014) shall be handed over by the Second Party to the First Party with the boundaries as earlier agreed by them on the spot on 18.04.2019 after demarcation by the surveyor on the joint application of the

parties.

5. The portion of properties (supra) so demarcated by the surveyor shall be demarcated in the joint names of the First Party for which the Second Party shall have no objection and the remaining portion of the properties of schedule of T.S. No. 07 of 2014 shall be peacefully enjoyed by the Second Party.

In witness whereof the parties above named have put their respective signatures on the date, month and year as mentioned above.

FIRST PARTY

SECOND PARTY

THIRD PARTY

Sd/-

Sd/-

Sd/-

Sd/-

Sd/-

Sd/-

Sd/-

Sd/-

Dawa

(on behalf of Appellant No. 5 & 6)

Sd/-"

6. The learned Counsels representing the Appellants and the private Respondents submits that clause 4 of the Compromise Deed requires a small clarification with regard to the extent of land mentioned therein. To ascertain the exact area comprising the portion of property from the property i.e. plot nos. 76, 77 and 78 (more particularly described in T.S. No. 7 of 2014) which is required to be handed over to the Appellants a copy of a map titled "showing the map of Diki Palmo Bhutia of Thangsing Block, South Sikkim" under the signature of the VLO, Bermiok Tokal, South Sikkim has been handed over to the Court by the Appellants. The map has been duly examined by the Respondent No.2 along with her Counsel in Court and she states that it is correct. The said map is also taken on record and marked as (Y).

7. The parties to the present Regular Second Appeal and their respective Counsels state that all issues pending between the Appellants and the private Respondents have been amicably settled.

8. The learned Counsel for the State submits that when the parties approaches the authorities for mutation of the immovable properties in terms of the Compromise Deed it shall be done. The parties agree to approach the authorities to take such steps accordingly in right earnest.

9. It is said that mediation is as ancient as human civilization. It is not without any reason that this innovation survives and thrives even today. A dispute which had not been able to be fully resolved through the process of adversarial litigation in Court for 15 long years has been amicably settled through the efforts of the learned Counsels and the Mediator who has facilitated the parties to reach a common agreement.

10. The Appellants as well as the private Respondents have realized that it is better to bury their differences and live peacefully than to litigate in this manner for such a prolonged period without any complete resolution. This Court records its appreciation of the yeomen service rendered by the learned Mediator. This Court also records its appreciation of the earnest efforts made by the learned Counsels representing not only the parties in dispute but also the State-Respondents. Quite clearly, this has been possible only because the learned Counsels have considered themselves the guardians of their client's interest.

11. In view of the Compromise Deed the Appellants shall withdraw Title Suit No 02 of 2014 pending before the Court of the learned Civil Judge, South Sikkim at Namchi. The present Regular Second Appeal No. 01 of 2016 is disposed of in terms of the Compromise Deed (X) and the map (Y) which shall be read as part of the Compromise Deed. Nothing further remains to be considered and decided. Let a decree be drawn in terms of the Compromise Deed (X) and the map (Y) explaining clause 4 of the Compromise Deed.

12. The parties shall bear their own costs.