
(2015) 08 SIK CK 0006
In the Sikkim High Court
Case No : Regular First Appeal No. 15 of 2013

Lachungmu Lepcha and Others	Vs	APPELLANT
Gyatso Lepcha and Others		RESPONDENT

Date of Decision : 12-08-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 1, Order 13 Rule 13, Order 13 Rule 3, Order 13 Rule 4, Order 13 Rule 6
Constitution of India, 1950 — Article 371(F)(k)
Evidence Act, 1872 — Section 50, 91, 92
Registration Act, 1908 — Section 17, 20, 23, 26, 49
Transfer of Property Act, 1882 — Section 54

Citation : (2015) 08 SIK CK 0006

Hon'ble Judges : Meenakshi Madan Rai, J

Bench : Single Bench

Advocate : Jorgay Namka, Zola Megi, Chenga Doma Bhutia, Panila Theengh and Pema Bhutia, for the Appellant; Umesh Ranpal, Kesang Choden Tamang and Sashi Rai, Advocates for the Respondent

Final Decision : Allowed

Judgement

Meenakshi Madan Rai, J—The Appellants have preferred the instant Appeal against the impugned Judgment and Decree passed by the Learned District Judge, Special Division - II at Gangtok on 16.07.2013, partly allowing the prayers of the Respondents/Plaintiffs No. 1, 2 & 3 in Title Suit No. 1 of 2011, Shri Gyatso Lepcha and Ors. v. Smt. Lachungmu Lepcha and Ors.

2. The Appellant Nos. 1 and 2 were the Defendant Nos. 1 and 2 before the learned Trial Court.

3. To appreciate the points canvassed on behalf of the Appellants, the relevant facts may be briefly stated. As per the Plaintiff Nos. 1, 2 and 3 (Respondent Nos. 1, 2 and 3 herein), one Late Manu Lepcha owned and possessed landed properties described in Schedule "A" to the Plaint. That, Late Manu Lepcha was married to one Kiden Lepcha (since deceased) and from the wedlock they had

three sons i.e. the Plaintiff No. 1, the Proforma Defendant No. 7 (Respondent No. 8 herein) and the late father of the Plaintiff Nos. 2 and 3. During the life time of Late Kiden Lepcha, the Defendant No. 1 started living with Manu Lepcha, admittedly without solemnizing a marriage. That, after the death of Kiden Lepcha and Manu Lepcha, the Defendant No. 1 illegally and fraudulently transferred and mutated the Schedule "A" property in her name during the survey operation of 1978-79 of which the Plaintiffs were oblivious, no notice having been received by them from the concerned office. Subsequently, the Defendant No. 1 transferred Schedule "B" lands in favour of the Defendant No. 2 in the year 2003 by executing three Gift Deed documents, which according to the Plaintiffs are void documents.

4. That, the Plaintiffs came to learn of the illegal transaction of Schedule "B" lands in the year 2008. On the failure of the Defendant Nos. 5 and 6 (Respondents 6 and 7 herein) to furnish any information to the Plaintiffs in this regard, queries were made under the Right to Information Act, 2005. The Revenue Officer, Mangan, vide letter dated 22.10.2008 informed the Plaintiffs that there were no records indicating requests made by the Defendant No. 1 for mutation of the Suit Lands in her name from that of Manu Lepcha.

5. That, in the year 2009 the Defendant No. 2 in connivance with Defendant No. 1 illegally received compensation of an amount of Rs. 40,93,949/- (Rupees forty lakhs ninety three thousand nine hundred and forty nine) only, by alienating two plots from Schedule "B" lands when the property did not belong to either of them. Hence, the cause of action arose on 13.8.2008, 12.12.2008 and thereafter on 9.3.2009, 1.6.2009 and 20.6.2009 and is continuing.

6. The Plaintiffs before the Learned Trial Court inter alia prayed for a declaration that the Gift Deeds between the Defendant No. 1 and Defendant No. 2 are null and void and cancellation thereof, partition of the Suit Lands amongst the Plaintiffs. The Plaintiffs also sought refund of the compensation received by Defendant Nos. 1 and 2 on account of acquisition of two plots of land by a Hydro Power Company.

7. The Defendant Nos. 1 and 2 resisting the Suit of the Plaintiffs denied and disputed the contentions raised therein and averred that the Suit properties did not belong to Manu Lepcha and were properties acquired by the Defendant No. 1 through hard work and the assistance of her parents and first husband, therefore the question of the property being the ancestral property of the Plaintiff No. 1 to 3 and Proforma Defendant No. 7 does not arise. That, infact the Defendant No. 1 was the legal wife of one Mon Lepcha from which union they had a son, Sonam Tshering Lepcha (since deceased) and three grandsons, including the Defendant No. 2. That, the Defendant No. 1 had no relations with the sons of Manu Lepcha from his wife Kiden Lepcha in terms of legal rights. That, the Defendant No. 1 raised the Defendant No. 2 from the age of five who in reciprocation is taking care of her now. The Defendant Nos. 1 and 2 objected to the locus standi of the Plaintiffs and to the non-joinder of necessary parties, under valuation of the Suit

and also contended that the Suit was barred by Limitation.

8. Defendant No. 3 relied on the Written Statement filed by Defendants No. 5 and 6.

9. Defendant No. 4 filed no Written Statement and Proforma Defendant No. 7 submitted that he had no Written Statement to file.

10. Defendants No. 5 and 6 denied and disputed the claims of the Plaintiffs No. 1 and 2 and asserted that the Gift Deeds were registered as per law after hearing both the parties and thus the Plaintiffs are not entitled to any of the reliefs claimed.

11. The Learned Trial Court after hearing all parties on Issues, settled ten Issues for determination fixing the onus, as reproduced below:--

"1. Whether the suit is maintainable? (Defendants)

2. Whether the suit is barred by law of limitation? (Defendants)

3. Whether the Plaintiffs have any locus standi to file the instant suit against the defendants? (Defendants)

4. Whether the suit property is an ancestral property of late Manu Lepcha or self acquired property of Defendant No. 1? (both Plaintiffs and Defendants)

5. Whether the Defendant No. 1 is legally married wife of late Manu Lepcha (both Plaintiffs and Defendants)

6. Whether the Defendant No. 2 is legal heir of late Manu Lepcha and has right, title and interest over the suit land? If not, whether the Defendant No. 1 legally transferred Plot Nos. 636, 637, 437, 644, 699/2029 and 689 at Lingdong, Upper Dzongu, North Sikkim in the name of Defendant No. 2? (Plaintiffs)

7. Whether the three registered gift deed in respect of the suit property executed by Defendant No. 1 in favour of Defendant No. 2 is legal, valid and liable to be cancelled? (Plaintiffs)

8. Whether the Plaintiffs are entitled to partition and possession of the suit property? (Plaintiffs)

9. Whether the Defendant No. 2 in connivance with Defendants No. 1, illegally received the land compensation in respect of suit property amounting to Rs. 40,93,949/-? If so, whether the Defendants are liable to refund of the same (Plaintiffs).

10. Whether the Plaintiffs are entitled to any relief or reliefs? (Plaintiffs)"

12. After allowing the parties to examine their witnesses and on hearing the matter, the learned Trial Court decided the Issues and arrived at the ultimate conclusion that the Plaintiffs had partially succeeded in establishing their case in regard to Plot Nos. 636, 637, 644 situated at Lingtham and Plot No. 437 situated

at Lingdong Block. The suit was decreed accordingly, hence this Appeal.

13. Issue No. 4 being the core issue was taken up first by the learned Trial Court which is as follows:--

"Whether the Suit is an ancestral property of Late Manu Lepcha or self acquired property of Defendant No. 1? (Defendants)"

On analysing the evidence on record and examining the documents, the learned Trial Court reached the finding that ".....the portion of the Schedule "A" property bearing Plot Nos. 636, 637 and 644 under Lingthem Block and Plot No. 437 under Lingdong Block belongs to Late Manu Lepcha. Plot Nos. 117, 691, 698, 699/2027, 707, 708, 709 and 609/2031 belongs to Defendant No. 1. "

14. Mr. Jorgay Namka, learned Counsel for the Defendant Nos. 1 and 2, before this Court advanced the argument that the question of the landed property belonging to Manu Lepcha does not arise as he originally belonged to Sosing (South Sikkim) and had come to North Sikkim in search of work. That, there are no documents to substantiate the said stand of the Plaintiffs, besides, it was apparent that Manu Lepcha passed away only in 1999, while the Suit Lands were already mutated in the name of the Defendant No. 1 in 1978-79.

15. Apart from reiterating the facts put forth in the Written Statement, it was contended that Exhibits-1, 2 and 3 relied on by the Plaintiffs are all unregistered documents specifying only the boundaries therein but contains no other identification of the land and therefore does not establish that the Suit Lands ever belonged to Manu Lepcha. That, Exhibits-7 and 8 the Gift Deeds between the Defendant No. 1 and Defendant No. 2, clarifies that the boundaries described in Exhibit-1 are not the same as the boundaries described in Exhibits-7 and 8. That, the learned Trial Court in Paragraph 45 of its Judgment erroneously reached the finding that Plot Nos. 636, 637 and 644 in Exhibits-7 and 8 have the same boundaries as mentioned in Exhibit-1 and were the lands sold by Agoak Lepcha to Manu Lepcha. It is also emphasised that infact Exhibits-7 and 8 together indicate five plots of land, which is not so in Exhibit-1. That, while Exhibits-7 and 8 pertain to properties at "Lingthem", Exhibit-1 clearly refers to land at "Lingdem". The learned Trial Court while discussing the variance in boundaries has deemed it fit to opine that "There are no doubt certain changes in the topography and ownership of the lands around Plot Nos. 636, 637 and 644. These changes are however natural and inevitable over a period of more than 40 years, " without any basis and erroneously concluded that the boundaries in the hand written Agreement Exhibit-1, corresponds to Plot Nos. 636, 637 and 644. Further, that the learned Trial Court compared Exhibit-3 with Exhibit-6 and reached a conclusion that both documents depicted the same land by opining that there were minor variations in the boundary but these changes would occur naturally over the years. That, to the contrary the question of Exhibit-3 tallying with Exhibit-6 does not arise at all.

16. It was further urged that as per the Plaintiffs Witness No. 1 Tashi Choden

Lepcha @ Bhutia, plot numbers to lands were only allotted after the survey settlement operation of 1977-78, however Exhibit-4 (in two pages) would belie this as the said documents are a duplicate copy of the Parcha issued as per Manual Records of 1976-78 and the plot numbers have clearly been indicated therein.

17. It was also strenuously contended by the Learned Counsel for the Defendant Nos. 1 and 2, that the interpretation pertaining to admissibility of unregistered documents in Evidence, made at Paragraph 59 and 60 of the impugned Judgment while relying on the ratio of *S. Kaladevi Vs. V.R. Somasundaram and Others*, AIR 2010 SC 1654 : (2010) 3 JT 610 : (2010) 5 SCC 401 : (2010) 4 SCR 515 is erroneous. That, Exhibits-1, 2 and 3 being documents pertaining to immoveable property have to be registered as per the existing Rules in Sikkim before such documents can be admitted in Evidence.

18. It was put forth that PW-2 Surya Kumar Koirala, although in his evidence-in-chief stated that he had prepared the document Exhibit-2, under cross-examination he retracted the statement. On reexamination, however he deposed that Exhibit-2 was executed by him and he knew the boundaries thereof but failed to detail the boundaries, hence in view of his vacillating evidence this witness is an unreliable witness. Accordingly, the decision of the learned Trial Court on this Issue be set aside.

19. Per contra, Learned Sr. Counsel Mr. N. Rai, while vociferously defending the case of Plaintiff Nos. 2 and 3 argued that Ongchu Lepcha the Defendant No. 2, is not a descendant of Manu Lepcha but is the grandson of Mon Lepcha, his father being one Sonam Tshering Lepcha. The lands belonging to Manu Lepcha thus cannot be transferred to Defendant No. 2 by the Defendant No. 1, who is the wife of Late Manu Lepcha. That, Exhibit-12 the letter addressed by the Revenue Officer, North District, Mangan dated 22.10.2008 to one Shri N. Lepcha, Additional Secretary, Land, Revenue and Disaster Management Department refers to the Defendant No. 1 as the wife of Manu Lepcha, which proves that the Suit Lands were transferred to her or mutated in her name from that of Manu Lepcha. While relying on the evidence of DW-2 Sonam Lepcha, learned Sr. Counsel submits that in the village there is an established practice of buying land in the name of the wife of any given villager, which lends credence to the contention that the Suit Lands belonged to Manu Lepcha. That apart, Exhibit-5, Exhibit-6, Exhibit-7, Exhibit-8 and Exhibit-9 and Exhibit-12 all refer to the Defendant No. 1 as the wife of Manu Lepcha. It is only subsequently while swearing an Affidavit dated 3.10.2012 that she has identified herself as the wife of Mon Lepcha. Infact, the Defendant No. 1 herself has admitted that she was living with Manu Lepcha. According to Learned Sr. Counsel, all these circumstances categorically point to the fact that the properties recorded in Exhibits- 1, 2 and 3 being documents of Title in the name of Manu Lepcha were transferred to the Defendant No. 1. That, Exhibits-1, 2 and 3 although documents of Title are not required to be registered as they are essentially

Money Receipts signifying transfer of lands. That, the Parcha Khatiyani Exhibit-4 (in two pages colly) which is in the name of Defendant No. 2 are not documents of Title. It is contended that there is nothing erroneous in the finding of the Learned Trial Court with regard to Issue No. 4 which thus requires no interference.

20. Learned Counsel Shri Umesh Ranpal for the Plaintiff No. 1 and learned Counsel Shri Deven Rai for Proforma Defendant No. 7, agreeing to the submissions of learned Counsel for the Plaintiffs 2 and 3, submitted that they adopt the same and had nothing further to add.

21. Learned Counsel Mr. S.K. Chettri, Assistant Government Advocate for Defendants No. 5 and 6, for his part argued that Exhibits 6, 7 and 8 were transferred by Defendant No. 1 in the name of Defendant No. 2 after duly complying with established procedure towards which he placed reliance on Exhibit D1-2. That, this document, according to him clearly reveals that a preliminary hearing of the case was conducted on 14th November, 2005 before the Defendant No. 5. That, the Plaintiff No. 1 was present as was the Defendant No. 1 along with the Panchayat President of Lingthem Lingdem GPU and the Panchayat Secretary. After both the parties were heard and cross-examined, the learned District Collector, North reached a finding that the Defendant No. 1 was the real owner of the disputed land and the objections made by the Plaintiff No. 1 was found to be baseless. Reliance was also placed by Mr. S.K. Chettri on Exhibit D1-5 dated 9.11.2004, which clearly showed that the Plaintiff No. 1 had been issued a Show Cause Notice with reference to the Suit properties. That, the contention of the Plaintiffs that the Suit Lands are their ancestral property have no legs to stand.

22. Having considered the arguments of the learned Counsel for all parties, perused the evidence and documents on record, it is first to be examined whether Exhibits-1, 2 and 3, purportedly "land transfer documents" executed in favour of Manu Lepcha cover the properties mentioned in Schedule "A" of the Plaint.

23. According to Mr. N. Rai, Exhibit-3 covers Plot No. 437 which is a part and parcel of Schedule "A" land, shown in Schedule "B" as the land alienated by DW-1 vide Exhibit-6 the Gift Deed in favour of DW-2.

24. The boundaries of Exhibit-3 and Exhibit-6 when compared are as follows are:--

25. The Learned Trial Court while reaching the finding that Plot No. 437 was the same land as depicted in Exhibit-3 and Exhibit-6 took into consideration the evidence of PW-1 Tashi Choden Lepcha @ Bhutia and PW-3 Norden Wangchuk Lepcha, who have both affirmed under cross-examination that Plot No. 437 corresponds to the land under sale in Exhibit-3.

26. It has to be borne in mind that Tashi Choden Lepcha @ Bhutia (PW-1) was

aged about 57 years when her evidence was recorded in 2013, making her barely 16 years at the time of the transaction pertaining to Exhibit-3. Being the daughter-in-law of Manu Lepcha, she would obviously not be able to vouch for the transaction at the time of its execution. PW-3 Norden Wongchuk Lepcha, was aged about 28 years when his evidence was recorded in 2013, he was not even born at the time of the execution of Exhibit- 3.

27. The boundaries of Exhibit-3 and Exhibit-6 reproduced supra on a bare perusal emphatically indicate no similarities.

28. The learned Trial Court has stated at Paragraph 54 of his Judgment thus; "54. Substantially, the boundaries of the land depicted in sale agreement (marked Exhibit-3) matches with the boundaries described in the gift deed (marked Exhibit-6). Of course, there are minor variations in the boundary. But these changes are innate which would occur naturally over the years. It must be borne in mind that the first part of the sale agreement was prepared in the year 1958 and the second part of the agreement was prepared in the year 1972. Taking 1972 as the base year would show that more than 30 years have passed. In these many years there is bound to be change and the boundary holders (new or old), would naturally change. "

29. The learned Trial Court while opining so, placed reliance on the decision of this Court in *Chewag Dorjee Lama Vs. Lerap Dorjee Bhutia and Others*, AIR 2006 Sikk 37 . In the said matter, this Court placed reliance on the decision of the Madras High Court in *Subbayya Chakkiliyan Vs. Manjam Muthia Goundan and Another*, AIR 1924 Mad 493 , accordingly it was held that in case of conflict between dimension and boundary of a given land in dispute, it is the boundary which prevails and where the boundary described is partly correct and partly incorrect, the incorrect part of the description may be ignored and if what remains after rejecting the erroneous part is sufficient to identify the thing and enable the court to ascertain with legal certainty, the property to which the instrument really applies then the instrument would be allowed to take effect.

30. What can be culled out from the above is that essentially there has to be a conflict between "dimension" and "boundary" of the land in dispute and in such an event, boundary prevails. "Dimension" as per the Concise Oxford English Dictionary, Twelfth Edition, Reprint 2012, 2013 refers to a measurable extent such as length, breadth or height.

31. On revisiting the Exhibit-3, a clear picture emerges in as much as there is no evidence of any dimension/area of the land to talk of. At best the land is described as "Ek Tukra Elaichi Bari" (a piece of cardamom field), situated at Dzongu, "Lidung" within the four boundaries, described in the document. Exhibit-6 on the other hand reflects a specific area of 2.9120 hectares. In such a situation, the question of the boundary prevailing over the area does not arise as there is no mention of any area in Exhibit-3. Infact, the reverse page of Exhibit-3 is the relevant portion for the purposes of this lis. On perusing this document, no

mention even of any boundary is made therein, let alone area, the land being merely identified as "pool chheuko elaichi baari" (Cardamom field near the bridge). Thus, the argument that boundary prevails over area is not tenable in the instant context as Exhibit-3 does not indicate area at all.

32. Apart from which, on pain of repetition it has to be emphasized that a comparative study of the boundaries in Exhibit-3 and Exhibit-6 reveal that they are completely different from each other. There cannot be innate and natural changes in the landscape to the extent of difference in boundaries as evident in Exhibit-3 and Exhibit-6, in my view, even if struck by natural calamity of gigantic proportions. The question of the land bearing Plot No. 437 having belonged to Manu Lepcha does not arise. Therefore, I cannot agree with the findings of the learned Trial Court on this aspect.

33. It may be remarked here that PW-1 Tashi Choden Lepcha @ Bhutia, has stated that plot numbers were not issued at that time (probably meaning 1958, Exhibit-3 having been executed then) in Dzongu and this formality began only after the survey settlement operation of 1977-78. To the contrary, besides Exhibit-4 (2 pages colly.), Paragraph 3 of the Sikkim Darbar Gazette No. 5, of October 1951 clearly indicates that the plot numbers to landed property was being issued in the erstwhile Kingdom of Sikkim from the year 1951 itself.

34. Exhibit-3 and 6 having been laid to rest in view of the above discussions, I now consider the next point of argument. Learned Sr. Counsel for the Plaintiffs 2 and 3 stressed that Plot Nos. 636, 637 and 644 are the landed properties described in Exhibit-1, while Exhibit-2 comprises of Plot Nos. 691, 707, 708 and 709 and that PW-1 Tashi Choden Lepcha @ Bhutia has deposed as much in her evidence. That Exhibit-1, Exhibit-2, Exhibit-7 and Exhibit-8 are to be read together.

35. On examining the documents, Exhibit-7 mentions Plot No. 636 and Plot No. 637, while Exhibit-8 mentions Plot No. 644 apart from Plot No. 699/2027. Placing the documents in juxtaposition, it would be worthwhile examining whether the boundaries of Exhibit-1 and 2 have any similarity with the boundaries in Exhibit-7 and 8.

36. As evident from the above Table, the boundaries of Exhibit-1 do not tally whatsoever with the boundaries mentioned in Exhibit-7 and 8 on any aspect. Exhibit-2 has not been reflected in the Table supra as it may be emphasized here that the said document prescribes no boundaries at all.

37. Exhibit-1 describes the property being transferred as "Ek Tukra Sukha Zameen - Lingtin bhanney" (piece of dry land called Lingtin), thereby identifying the transferred land as "one plot of dry land" probably with the nomenclature "Lingtin". It does not speak of several plots of land. PW-4, the scribe of Exhibit-1, under cross-examination admitted that Plot Numbers of the Suit Land have not been mentioned in Exhibit-1. Even if PW-4, to support the Plaintiffs case had merely specified in his evidence the boundaries butting the land in Exhibit-1,

then one could have reached the conclusion on the basis of the boundaries that the Plot Nos. 636, 637 and 644 are indeed the same ones which pertain to the land in Exhibit-1. In the absence of any such evidence and on the face of the glaring differences in the boundaries depicted above, I have to opine that the conclusion in the impugned Judgment that Plot Nos. 636 and 637 reflected in Exhibit-7 are the same lands as described in Exhibit-1, defies logic.

38. Although, the learned Trial Court while relying on the evidence of PW-4 recorded that during the cross-examination learned Counsel for the Defendants did not dispute the authenticity of the statement of PW-4, I have to differ on this count in view of the fact that PW-4 has specifically admitted that Exhibit-1 does not indicate any plot number, besides which it cannot be fathomed as to how in the same breath he was able to identify Exhibit-1 as consisting of Plot Nos. 636, 637 and 644 when he has failed to mention the boundaries or the areas of the land. His evidence thus is speculative and inspires no confidence.

39. The learned Trial Court has also held in Paragraph 45 of its Judgment that "There are no doubt, certain changes in the topography and ownership of the land around Plot No. 636, 637 and 644. These changes are however natural and inevitable over a period of more than 40 years. " While disagreeing with this finding also, I do not see how the Cliffs mentioned in Exhibit-1 being boundaries on the North and South could have changed to "Private Holding of Bhanu Lepcha" or "Forest Bungalow Compound and Khasland" as described in Exhibit-7 and Exhibit-8. Thus, I have reached the conclusion that Exhibit-1 by no stretch of the imagination corresponds to Plot Nos. 636, 637 and 644 as claimed by the Plaintiffs, added to which it may be reiterated that Exhibits-1, 2 and 3 are devoid of any specific area.

40. While coming to Exhibit-2, the argument of learned Sr. Counsel Mr. N. Rai was that the said document corresponds to Plot Nos. 691, 707, 708 and 709. On this count, while revisiting the evidence of PW-2 Surya Kumar Koirala, he identified Exhibit-2 in respect of the land transaction between one Bangcha Lepcha and Late Manu Lepcha to have been prepared by him, although this statement was retracted in cross-examination, on re-examination he has stated that Exhibit-2 was executed by him and he knew the boundaries of the land mentioned therein. Surprisingly having stated that, he did not narrate the boundaries pertaining to Exhibit-2 nor was any question put to him under re-examination to identify the boundaries.

41. On careful examination of the document Exhibit-2, it is seen that one Bangcha Lepcha of Lingchem Busty had "given" a "small portion" of his land to Manu Lepcha. It does not speak of "Sale". The document neither mentions the area nor the boundaries or the plot numbers of the property that was alienated by Bangcha Lepcha in favour of Manu Lepcha. Thus, Exhibit-2 cannot be said to comprise of Plot Nos. 691, 707, 708 and 709 in the absence of any proof whatsoever.

42. It may also be mentioned that Exhibit-5, collectively the Maps showing the lands recorded in the name of Lachungmu Lepcha Defendant No. 1, has been carefully scrutinized. Despite such scrutiny, I am unable to arrive at the conclusion that the lands mentioned therein, corresponds to the lands mentioned in Exhibit-1, Exhibit-2 and Exhibit-3.

43. It was argued vehemently by learned Counsel for the Plaintiffs No. 2 and 3 that the Defendant No. 1 was a housewife and could not have acquired the property on her own strength besides which, there is no document indicating as to how the lands came to be registered in her name. On this count, a reverse argument would be that although the Plaintiffs have brought the instant Suit but at the same time have failed to furnish any documents as proof to establish that the lands in dispute indeed belonged to Manu Lepcha. Exhibits-1, 2 and 3 as already discussed do not establish even by a preponderance of probability, which is the standard of proof in a Civil dispute, that they pertain to the disputed plots of land. It is trite to state that the Plaintiffs have to prove their own case and cannot rely on the weakness of the Defendants case.

44. It was also reasoned in the impugned Judgment that although DW-1 (Lachungmu Lepcha) had stated in her evidence on Affidavit that she had purchased various immovable properties through hard work and financial help from her parents and her husband, however, under cross-examination she had admitted that land in Exhibit-4 had been purchased through Exhibits-1, 2 and 3. That, moreover, she had no documents to substantiate her evidence. That, DW-3 one Adup Lepcha had admitted under cross-examination that the Defendant No. 1 was a simple housewife and did not have any other means of earning. Thus, the admission made by the above DW-1 and DW-3 indicates that the rightful owner of the disputed property was Late Manu Lepcha and not Defendant No. 1.

45. On this aspect, it would also be useful to walk through the provisions of Section 91 and Section 92 of the Indian Evidence Act, 1872. If one were to peruse the provisions of Section 91, this Section deals with Evidence of Terms of Contracts, Grants and other Disposition of Property reduced to form of documents.

46. For convenience, Section 91 is reproduced herein below:--

"91. Evidence of Terms of Contracts, Grants and other Disposition of Property reduced to form of documents.--When the terms of a contract, or a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained. "

47. Hence, the above lays down the cardinal rule of evidence viz; where written documents exist they shall be produced as being the best evidence of their own

contents, Section 91 is thus based on what is sometimes described as the "best evidence rule". This Section excludes the admission of oral evidence for proving the contents of the document except in cases where secondary evidence is allowed to be led under the relevant provisions of the Evidence Act. The rule with regard to writings is that, oral proof cannot be substituted for written evidence of any contract which the parties have put into writing. The reason being that the writing is tacitly considered by the parties themselves as the only repository and the appropriate evidence of their agreement. In other words, if there was a document evidencing the contract between the parties then that, and that alone is the repository of the terms of the contract between the parties and everything else is reduced to silence. Oral proof therefore cannot be substituted for written evidence of any disposition of property.

48. Along with this Section, it is essential to refer to Section 92 of the Indian Evidence Act, 1872 which deals with exclusion of evidence of oral agreement which to prevent prolixity is not reproduced herein. The principle underlying this Section is that when a transaction has been reduced to or recorded in writing either by requirements of law or agreement of the parties, extrinsic evidence is inadmissible to contradict, vary, add to or subtract from the terms of the document. In other words, when parties have deliberately put their mutual engagements into writing it is only reasonable to presume that they have introduced every material term and circumstances into the written instrument. Consequently any other and extrinsic evidence will be rejected, because such evidence while deserving far less credit than the writing itself, would invariably tend, in many instances, to substitute a new and different contract for the one really agreed upon. The document has to be placed beyond the reach of future controversy, bad faith or treacherous memory. Thus, the party is precluded by his oral evidence from disputing what has been acknowledged in the document.

(See Sir John Woodroffe & Syed Amir Ali's Law of Evidence, 17th Edition, 2002, S.V. Joga Rao, LexisNexis(tm), Butterworths)

Although, it is open to the party to challenge the document as not being genuine, in the case at hand this is not in controversy.

49. Bearing in mind, the above principles enunciated in law it would be worthwhile to elucidate that once a document has been executed between the parties they cannot traverse beyond its contents in order to derive or infer a meaning which does not exist in the document neither can the contents be added to or subtracted from, as per the convenience of the parties nor is the Court to read between the lines and draw a meaning different than what is intended by the document. The Exhibits having been put to the test clearly indicate that the landed properties as described as Exhibits-1, 2 and 3 do not tally with the properties described in Exhibits-6, 7 and 8 and no oral evidence can change the contents of Exhibits-1, 2 and 3 foisting therein a meaning not intended by the documents.

50. More than adequate discussions have been put forth with regard to the contents of Exhibit-1 to Exhibit-8 and do not need to be reiterated. It may be pointed out that the Plaintiffs have omitted to even indicate as to how Manu Lepcha was employed or what was his source of income to enable him to acquire the disputed lands. In addition to this, Exhibit-12 relied on by the Plaintiffs themselves, explicitly records that there is no application or request made by Defendant No. 1, seeking mutation of plots of lands in her name from that of Manu Lepcha of Lingthem. Hence, the allegation of fraudulent transfer of lands made by the Plaintiffs against the Defendant No. 1 have no legs to stand.

51. On the question of admissibility of Exhibit-1, 2 and 3 in evidence, it was argued by the learned Counsel Mr. Jorgay Namka that the documents although being documents for transfer of land, were unregistered in contravention of Notification bearing No. 385/G dated 11 April, 1928 and Notification No. 2947/G dated 22 November, 1946 and are therefore inadmissible in evidence. That, the learned Trial Court has erred in its interpretation of *S. Kaladevi Vs. V.R. Somasundaram and Others*, AIR 2010 SC 1654 : (2010) 3 JT 610 : (2010) 5 SCC 401 : (2010) 4 SCR 515 , while allowing Exhibits-1, 2 and 3 in evidence on grounds that they are for the purpose of identification of the plots and boundaries.

52. Per contra, it was expostulated by learned Sr. Counsel Mr. N. Rai that there was no necessity of registering the documents being Money Receipts and that the learned Trial Court has correctly allowed the documentary evidence relying upon the decision in *S. Kaladevi's* case supra. To further buttress his submissions, reliance was made to the decision of this Court in *Bishnu Kumar Rai Vs. Minor Mahendra Bir Lama and Others*, AIR 2005 Sikk 33 , based on which it was argued that Exhibits-1, 2 and 3 being Hand Receipts require no registration.

53. Having considered the rival contentions, it would be necessary to examine the Notifications in question which are quoted herein below for convenience:--

"SIKKIM STATE GENERAL DEPARTMENT Notification No. 385/G;

All Kazis, Thikadars and Managers of Estates.

In continuation of the previous rules on the subject, His Highness the Maharaja of Sikkim is pleased to order that the Law of Registration applicable in the State shall be amended. Notification No. 314 and 2283-36/G., dated the 23rd January, 1907 and 19th July, 1922, respectively shall be read and applied as under:--

"Any document such as mortgage and sale deeds, and other important documents and deeds, etc. will not be considered valid unless they are duly registered.

The contents of an unregistered document (which ought in the opinion of the court to have been registered) may be provided in court but a penalty upto fifty times the usual registration fee shall be charged.

Exception :--Hand notes duly stamped shall be exempt from registration penalty".

BY ORDER OF HIS HIGHNESS THE MAHARAJA OF SIKKIM

"SIKKIM STATE GENERAL DEPARTMENT Notification No. 2947 G.

Amendment of para 2 of Notification No: 385/G dated the 11th April, 1928.

An unregistered document (which ought in the opinion of the court to have been registered) may however be validated and admitted in court to prove title or other matters contained in the document on payment of a penalty upto fifty times the usual registration fee.

Issued by order of H.H. the Maharaja of Sikkim.

54. The Notifications are self explanatory, suffice it to elucidate that the concerned Courts have been clothed with the discretion of opining as to which unregistered document ought to be registered for the purpose of admitting it in evidence in a pending matter. Pertinently, at this juncture it may be mentioned that neither the learned Trial Court has invoked and applied the provisions of Order XIII Rule 3 of the Code of Civil Procedure, 1908 nor have the parties sought to validate the documents. On careful perusal of the Notifications, it would be worth mulling over the fact that the Notifications do not lay down the period of limitation for validation, nor does it clarify as to whether the validation is to be made only by the parties executing it or can be done by their heirs and successors at any stage, including posthumous to the executants, if authenticity of the documents are unchallenged. These questions however not having been raised are not relevant for the present purposes.

55. That having been said, if one is to look into the Sikkim State Rules Registration of Document, 1930 dealing with registration of documents, Paragraph 20, lays down as follows;

"20. All instruments required to be registered (Excepting a will) shall be produced within four months from the date of execution thereof but if any instrument owing to unavoidable delay has not been presented within the time prescribed above, it would be lawful for the Registrar in cases where the delay in presentation has not exceeded six months to direct that on payment of a penalty not exceeding ten times the amount of the proper registration fee such instrument may be accepted for registration."

(Emphasis supplied)

56. Thus, from this Rule it is clear that documents for registration have to be presented within four months of execution, and if delayed, the period shall not exceed six months provided penalty not exceeding ten times the amount of the proper registration fee is paid.

57. Apart from the two Notifications and the Rules supra, the Rules relating to Transfer of Immoveable Property based on the Transfer of Immoveable Property

(based on the Law of Contract and Transfer of Property Act of India) dated 18.1.1950 also provides that all contract for sale of immoveable property must be in writing, signed by the parties and attested by not less than two witnesses. The Rules relying on Section 54 of the Transfer of Property Act, 1882 lays down that sale of immoveable property for a value of one hundred rupees and above can be made by a registered instrument. That, the sale must be registered as provided under the Registration Rules. These Notifications and the Rules are protected under Article 371(F)(k) of the Constitution of India and thus are prevalent and in use in Sikkim. Resultant, they postulate that documents pertaining to sale of immoveable property are necessarily to be registered.

58. Notwithstanding the above, even if the provisions of Section 54 of the Transfer of Property Act, 1882 are taken into consideration, the said Section reads as follows:--

"54. "Sale" defined.-"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made- Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Thus, stating that transfer of tangible immoveable property can only be by a registered document.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property."

59. Thus, the Transfer of Property Act, 1882 also requires that where there is transfer of immoveable property above the value of one hundred rupees, it is to be by a registered instrument.

60. Exhibit-1 and Exhibit-3 both being "Razinama kagaz" are evidently Agreements of Sale, pertaining to immoveable property each of a value of above rupees one hundred. If this be so, then the Rules relating to Transfer of Immoveable Property (based on the Law of Contract and Transfer of Property Act of India) dated 18.1.1950 and the Sikkim State Rules Registration of Document, 1930 as well as Section 54 of the Transfer of Property Act, 1882 comes into play and therefore require compliance i.e Exhibit-1 and Exhibit-3 ought to have been registered, of course Exhibit-2 mentions no sale, but considering there is no decipherable description of the land, this document hardly assists the case of the Plaintiffs.

61. Although, Mr. N. Rai sought to substantiate his argument of there being no requirement of registration of Exhibits-1, 2 and 3 by placing reliance on Bishnu Kumar Rai Vs. Minor Mahendra Bir Lama and Others, AIR 2005 Sikk 33 . On careful perusal of the said Judgment, I find that the document in question in the

said matter was found to be only a Money Receipt. Thus, their Lordships opined that "This document Exhibit D-1 is a money receipt, on the face of it without Revenue Stamp/Fee and also not a registered document and without bearing the date of execution or writing of such document on it. According to us, it is difficult to treat this document Exhibit D-1 as an agreement for Sale or Deed of Sale" Consequently, it was opined that the document Exhibit D-1 could not be validated or admitted in court to prove the Title or other matters contained in the document on payment of penalty, as such document could not be registered as Sale Deed, even if the Appellant therein desired to avail the protection of his case by the Notification dated 11th April, 1928 and 22nd November, 1946. The matter in hand is on a different footing, Exhibit-1 and Exhibit-3, as already stated being found to be and admitted to be Agreements of Sale of immoveable property.

62. The learned Trial Court while allowing Exhibits-1 and 3 in evidence was of the opinion that they can be admitted for the purpose of "identification of the plots and boundaries" although the same are unregistered. Reliance was placed on the decision of S. Kaladevi's case supra. Firstly, attention must be drawn to the fact that neither of the Exhibits above, indicate any plot numbers. Secondly, the Hon'ble Apex Court in Paragraph 11 of the said Judgment while dealing with the Provisions of Section 17 and Section 49 of the Registration Act, 1908, has inter alia laid down that "Such an unregistered Sale Deed can also be admitted in evidence as an evidence of any collateral transaction not required to be affected by registered document. When an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement, the deed can be received in evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the Proviso to Section 49 of 1908 Act"

(Emphasis supplied)

63. The Hon'ble Apex then held as follows:

"1. A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act.

2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to Section 49 of the Registration Act.

3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.

4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immoveable property of the value of one hundred rupees and upwards.

5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.

To the aforesaid principles, one more principle may be added, namely, that a document required to be registered, if unregistered, can be admitted in evidence as evidence of a contract in a suit for specific performance."

64. Thus, the Hon"ble Apex Court has succinctly laid down the principles pertaining to admission of a document in evidence when it necessarily to be registered but is unregistered. The Judgment supra allows an unregistered document to be admitted in evidence only for a collateral purpose. For a better understanding of the meaning of "Collateral" we may refer to the Black's Law Dictionary, 8th Edition, 2nd Reprint-2007 wherein Collateral is defined as supplementary; accompanying but secondary and subordinate to.

65. In my considered view Exhibit-1 and Exhibit-3 are Sale Agreements and are being urged into evidence by the Plaintiffs as proof of Sale and ownership and not for a collateral purpose. The documents deal with the main transaction which is sale of land by different persons to Manu Lepcha and are sought to be admitted as such and not for a collateral purpose and are therefore necessarily to be registered. The interpretation of the learned trial court in this regard therefore appears to be erroneous.

66. In conclusion, the reasoning of the learned Trial Court in its Judgment at Paragraph 61 that "61. I find that the sale agreement (marked Exhibit 1 and 3) can safely be admitted in evidence for the purpose of identification of the plots and boundary even though the same is unregistered document....." appears to be contrary to Law, in the face of the above discussions.

67. Accordingly in the sum total, I have to disagree with the entire findings of the learned Trial Court on Issue No. 4 for the aforesaid reasons and consequently also find that the Plaintiffs have no locus standi to file the Suit, in the absence of evidence to establish that the suit properties even belonged to Manu Lepcha. Thus, reversing the decision of the learned Trial Court on Issue No. 3 as well.

68. Coming to Issue Nos. 1 and 2.

Issue No. 1 reads as

Whether the suit is maintainable? (Defendants)

The learned Trial Court, reached a finding that the suit was maintainable on the premise that the contention of non-joinder of necessary party could not be sustained as it was found that the Plaintiffs had no dispute with Himagiri Hydro Energy Limited which was therefore not a necessary party.

69. Although, I have to agree with the finding of the Learned Trial Court that there was no necessity of adding Himagiri Hydro Power Limited as a necessary party as urged by the Defendants No. 1 and 2 but attention is drawn to the fact that from the discussions in Issue No. 4, it is clear that when the Suit Lands all belong to Defendant No. 1, how she alienates it or what compensation she receives for it, is for her to decide and consequently in the above circumstances

there was no requirement of making Himagiri Hydro, the persons who purchased the disputed properties, a party to the Suit. Hence, contrary to the finding of the learned Trial Court, I find that the Suit is not maintainable.

70. Issue No. 2.

Whether the suit is barred by limitation? (Defendants).

The suit filed by the Plaintiffs is for Declaration, Partition, Cancellation of Documents, Injunction and other Consequential Reliefs. Article 58 of the Limitation Act, 1963 provides a limitation of 3 years for obtaining any other Declaration besides what has been laid down in Article 56 and 57. The time from which the period begins to run is when the right to sue accrues. Article 59 deals with cancellation or setting aside an instrument or decree or for the rescission of a contract of prescribing the period of limitation as 3 years from the time when the facts entitling the Plaintiff to have the instrument and decree cancelled or set aside or the contract rescinded first became known to him.

71. The Plaintiff No. 1, under cross-examination has admitted that there was a case before the Office of the District Magistrate in connection with the present suit property in the year 2004. He further added that "It is not a fact that I did not raise the issue of the case filed before the District Magistrate in the year 2004 in the present suit. " He also further admitted that on 14.11.2005, he appeared before the District Magistrate at Mangan in connection with the complaint that he had lodged against the Defendant No. 1 and that by an Order of the same date it was mentioned that the case was won by the Defendant No. 1 and she was allowed to mutate the land. He went on to admit that the Suit Land in respect of which he lodged the complaint before the District Collectorate is the same Suit Land mentioned in the Schedule to the Plaint in the present Suit.

72. While perusing the evidence of PW-1 Tashi Choden Lepcha @ Bhutia, she has admitted that she knew about the objection filed by Gyatso Lepcha before the District Collector, Mangan with respect to the Suit Lands and that the objection was rejected by the concerned officer. This reveals that PW-1 witness was also aware of the objection filed by Gyatso Lepcha (Plaintiff No. 1) in the year 2005. PW-3 Norden Wangchuk Lepcha, in his evidence stated that he was in college at the relevant time but added that "When the registration of the gift deed pertaining to Exhibit 6, 7 and 8 was being placed before the Registrar, we were in college and Plaintiff No. 1 being Uncle (sic) pursued the matter and gave assurance to the effect that our interest shall also be taken into consideration. It was true that we were made aware of the matter persuaded (sic) by Plaintiff No. 1 against Defendant No. 1."

73. The Defendant No. 1 for her part under cross-examination stated "It is not a fact that no notice of the proposed registration of the said documents were given to the Plaintiffs by the registering authority. (Witness volunteers to say that they did not want to come after receiving of the notice) Her evidence supported by the evidence of DW-4 Ongchu Lepcha indicates that in the year 2003, when

DW-1 had applied for transfer of land in his favour, the Plaintiff No. 1 and other family members of Manu Lepcha had raised and filed written objection against the said transfer, stating that the said suit lands were actually their ancestral lands. However, the Plaintiff No. 1 failed to appear and had to be issued a Show Cause Notice on 9.11.2004 by the concerned SDM, Mangan Sub-Division. On 14.11.2005, the Office of the District Magistrate, Mangan, North Sikkim, after almost two years of enquiry finding no substance in the objection raised by the Plaintiffs and on the failure of Plaintiff No. 1 to produce any evidence, the District Collector rejected their objection. This evidence was clearly not demolished under cross-examination.

74. The evidence of DW-5 Phurba Wongden Lepcha, the SDM Mangan, North Sikkim lends credence to the above evidence as he stated that; "It is not a fact that we did not issue a public notice at the time of registration of Exhibits 6, 7 and 8. We also received the objection from Gyatso Lepcha against the registration of said documents. " According to this witness, he put up the matter before the District Collector which culminated in the decision dated 14.11.05 (Exhibit D1-6)

75. On going through the contents of Exhibit D1-6, it emerges that the Defendant No. 1 was present as was the Plaintiff No. 1, his Nephew the Plaintiff No. 2 having already admitted that the matter was being pursued by the Plaintiff No. 1. Hence, it transpires that not only the parties but the Panchayat President of Lingthem-Lingdem and the Panchayat Secretary were also present before the concerned authority when the matter pertaining to the suit lands was taken up. Both parties were heard and cross-examined, subsequently the District Collector came to the finding that Defendant No. 1 is the real owner of the land. The objection made by Plaintiff No. 1 was found baseless. Exhibit D1-8 reveals that a Notice was issued by the Sub-Registrar, North District, Mangan dated 29.11.2005 to all concerned that DW-1 was selling/sharing her plots of land bearing No. 636, 637, 644, 699/2027, 698 and Plot No. 437.

76. Exhibit D1-3 is a Certified to be True Copy pertaining to order dated 7.7.09 of the Revenue Officer, Mangan, North Sikkim who has reiterated therein that both the parties were present in the office and in regard to the application raised by Karma Dorjee Lepcha and brothers regarding compensation of land under Plot No. 437, it was recorded therein that the D.C. North vide order dated 14.11.2005 had already decided the matter in favour of the Defendant No. 1 and the Plot No. 437 was found to be recorded in the name of Ongchu Lepcha (Defendant No. 2).

77. Thus, from a perusal of the documents relied on by the Defendants and from the oral evidence supporting the documentary evidence as already discussed hereinabove, it is clear that the Plaintiff No. 1 and his nephews as well as Tashi Choden Lepcha @ Bhutia (PW-1) were aware of the matter pertaining to alienation of suit properties mentioned in Exhibit 6, 7 and 8 by Defendant No. 1 in favour of Defendant No. 2 in the year 2005 itself.

78. Although, the learned Trial Court in Paragraph 75 of his Judgment has held that the evidence on record shows that on or about 22.10.2008, the Plaintiff No. 1 realised that Schedule "A" properties were mutated and recorded in the name of Defendant No. 1 and that mutation of Schedule "B" property in favour of Defendant No. 2 was confirmed. That, it was thereafter that the Plaintiff No. 1 began to take active steps and the suit being filed on 28.11.2009 was within the period of limitation. But while discussing Issue No. 7, at Paragraph 99 the learned Trial Court has to the contrary alluded to the fact that cross-examination of Plaintiff No. 1 (Gyatso Lepcha) revealed that he was aware of a case regarding the disputed properties before the learned District Collector (North) although he was not aware whether the case proceeded to its logical conclusion. Thus, the learned Trial Court is in contradiction with regard to its findings in Paragraph 75 and Paragraph 99.

79. As already discussed, the Plaintiffs were aware of the transfer of the Schedule properties in the year 2005 itself. Hence, in consideration of the discussions above and in terms of the statutory provisions the period of limitation for Declaration, Partition, etc. was already over. Accordingly, there is no doubt that the Suit is barred by Limitation.

80. Issue No. 5.

Whether the Defendants No. 1 is legally married wife of late Manu Lepcha?

The learned Trial Court after considering the relevant evidence on record has reached the finding that the Defendant No. 1 is not the legally married wife of late Manu Lepcha by giving a reasoned explanation. To this, it may be added that the Indian Evidence Act, 1872 at Section 50 provides for Opinion or relationship when relevant. Illustration (a) would be relevant herein, however there is no independent evidence to vouch that Manu Lepcha and the Defendant No. 1 were treated as husband and wife. The entire arrangement appears to me of convenience for the concerned parties. Thus, I am in agreement with the said finding of the learned Trial Court on Issue No. 5.

81. Issue No. 6,

Whether the Defendant No. 2 is legal heir of late Manu Lepcha and has right, title and interest over the suit land? If not, whether the Defendant No. 1 legally transferred Plot Nos. 636, 637, 437, 644, 699/2029 and 689 at Lingdong, Upper Dzongu, North Sikkim in the name of Defendant No. 2? (Plaintiffs)

The learned Trial Court has reached a finding that Defendant No. 2 is not the progeny of Late Manu Lepcha and thus not the legal heir of Manu Lepcha but proceeded to state that since Defendant No. 1 is not the real owner of Plot Nos. 636, 637 and 644 and 437, she could not have transferred the lands in the name of Defendant No. 2.

82. In response to the first portion of Issue No. 6, I have to hold that the Defendant No. 2 is not a descendant of Manu Lepcha. At the same time, the

question of him having right, title and interest over the Suit Land is irrelevant when the finding in Issue No. 4 is that none of the lands in Schedule "A" or "B" belonged to Late Manu Lepcha. Thus, there is no illegality in the transfer of Plot No. 636, 637, 437, 644, 699/2027 and 698 situated at Lingdong, Upper Dzongu in the name of Defendant No. 2 by Defendant No. 1, contrary to what the learned Trial Court has opined.

83. Issue No. 7

Whether the three registered gift deeds in respect of the suit property executed by Defendant No. 1 in favour of Defendant No. 2 is legal, valid and liable to be cancelled? (plaintiffs)

On this issue, learned Trial Court came to the finding that although the Gift Deeds reveal that more than two years had lapsed between the execution and registration of the Sale Deed, however, the notices marked Exhibit D1-5, Exhibit D1-7 and Exhibit D1-8 shows that in the interim the Defendant No. 5 was making enquiries about the disputed land and finally vide order marked Exhibit D1-6, the Defendant No. 5 had permitted registration of the Sale Deed. Accordingly, the Gift Deeds marked Exhibit 6, 7 and 8 cannot be termed invalid or void. It was further opined that portion of the Gift Deeds marked Exhibit 6, 7 and 8 suffers from an inherent defect i.e. Defendant No. 1 not being the real owner of Plot No. 636, 637, 644 and 467, has transferred the said Plots in the name of Defendant No. 2, which is an illegal transfer. Consequently, it was opined that the Gift Deed marked Exhibit-6, the Gift Deed for Plot Nos. 636 and 637 marked Exhibit-7 and a portion of Gift Deed marked Exhibit-8, so far as Plot No. 644 is concerned, is liable to be cancelled, being invalid. Exhibit-8 was found to be valid.

84. Pausing here for a moment, we may once again revert to the provisions of the Sikkim State Rules, Registration of Document 1930 which at Section 20 denotes the period for documents to be registered.

85. Section 23 of the same Rules lays down that the Registering Officer in his discretion is to give a public notice of the fact of a document having been presented for registration and invite objections and while hearing such objections, the officer is not to make any enquiry into the merits of a disputed claim relating to any property mentioned in the instrument presented for registration. He is required to adjourn the registration proceedings to enable the parties to move the Courts.

86. Although Exhibits-6, 7 and 8, the Gift Deed documents were executed on 9.9.2003, the reverse page of each document reveals that the same were "Presented for Registration on 20.02.2006". This in my view does not appear to be the correct state of affairs as it is evident from Exhibit D1-5 dated 9.11.2004, the Show Cause Notice issued to the Plaintiff No. 1 by the Sub-Divisional Magistrate, Mangan Sub-Division, that a preliminary hearing had infact already taken place on 9.11.2004 in regard to distribution of landed properties of DW-1. Therefore, in the absence of any details to indicate what transpired between

January 2004 when the period for registration of the assailed documents accrued till 20.02.2006, it would be incorrect to hold that the Defendant No. 1 and Defendant No. 2 had not presented the documents for registration after four months of its execution, the date of execution being 9.9.2003.

87. Since the registering authority instead of complying with the provisions of Section 20 or Section 23 or for that matter Section 26 of the Registration of Document Rules, 1930 embarked on a prolonged procedure of enquiry which Section 23 of the Rules specifically prohibits. In my considered opinion, the Defendant No. 1 and 2 cannot be held to ransom for the ignorance of the registering authority. In any event, as already discussed at length in Issue No. 4, the Suit property having been found to belong to Defendant No. 1, the transfer to Defendant No. 2 is neither illegal nor invalid and in view of the above discussions the question of the Gift Deeds being liable to be cancelled as they are illegal or valid does not arise. Thus, I am in agreement with the findings of the learned Trial Court as detailed in Paragraph 100 of the impugned Judgment, though on a different footing, which has been explained above. I have to however disagree with the findings at Paragraph 101 of the impugned Judgment which for brevity is not being reproduced here.

88. Issue No. 8

Whether the Plaintiffs are entitled to partition and possession of the suit property? (plaintiffs)

The learned Trial Court has reached the finding that this issue is to be answered in the affirmative so far as Plot Nos. 636, 637 and 647 are concerned, however, in consideration of the finding in Exhibit 4, I have to disagree with the learned Trial Court, as there is no question of the plaintiffs being entitled to partition and possession of the suit property.

89. Issue No. 9

Whether the Defendant No. 2 in connivance with Defendant No. 1, illegally received the land compensation in respect of suit property amounting to Rs. 40,93,949/-? If so, whether the Defendants are liable to refund of the same. (plaintiffs)

On this issue, as the Defendant No. 1 is found to be the owner of the Suit lands and that being so, if the Defendant No. 1 received the land compensation amounting to Rs. 40,93,949/- (Rupees forty lakhs ninety three thousand nine hundred and forty nine) only, for suit properties bearing No. 636 and 637 and shared the same with Defendant No. 2, the question of connivance does not arise.

90. Issue No. 10

Whether the Plaintiffs are entitled to any relief or reliefs? (plaintiffs)

In the end result in consideration of the detailed discussions on the various Issues, I have to opine that the Plaintiffs are not entitled to any of the reliefs

claimed by them.

91. Consequently, the Appeal succeeds.

92. Judgment and Decree of the learned Trial Court so far as it goes against the Defendant Nos. 1 and 2 (Appellant Nos. 1 and 2) is set aside.

93. In the circumstances there is no order as to costs.

94. Records of the learned Trial Court be returned forthwith.

95. While concluding the matter, in parting I deem it essential to remark here that the learned Trial Court has not passed any speaking order with regard to admissibility of any of the documents in evidence as enjoined by Order XIII of the Code of Civil Procedure, 1908. In this regard, the attention of the learned Trial Court is drawn to the provisions of Order XIII of the Code of Civil Procedure, 1908.

96. Rule 1 of Order XIII of the Code of Civil Procedure, 1908 directs the parties to produce all original documents along with an accurate list and requires the Court to receive the documents.

97. Order XIII Rule 3 of the Code of Civil Procedure, 1908 enjoins upon the Court at any stage of the Suit to consider which documents are relevant and admissible and which are irrelevant and inadmissible. It is the duty of the Court to reject the document if it is irrelevant or inadmissible. It may be pointed out that there is a difference between a relevant document and one that is inadmissible. The Court can reject a document which is not relevant to the matter in controversy despite no objection being raised against it. Where it comes to admissibility, however, an objection has to be raised by the party objecting to such a document, putting forth the grounds of objection. The objection against admissibility and the decision of the Court thereof should be arrived at by a reasoned order the parties having been heard thereof. Admissibility of a document should not be reserved until judgment is pronounced.

98. Once the admissibility of a document has been decided by a reasoned order, thereafter endorsements on the documents admitted in evidence should be made in terms of Order XIII Rule 4 of the Code of Civil Procedure, 1908, where the document is found to be inadmissible the Proviso of Order XIII Rule 6 shall be duly complied with by the learned Court.

99. Copy of this Judgment be transmitted to all the learned Trial Courts for compliance of Paragraphs 95 to 98.