

(2015) 09 MEG CK 0007

In the Meghalaya High Court

Case No : Review Petn. No. 9 of 2014 in CRP No. 28 of 2013

Venetta Kharsyntiew and Others

APPELLANT

Vs

Tushar Nath Bhattacharjee and Others

RESPONDENT

Date of Decision : 10-09-2015

Acts Referred:

Assam Autonomous Districts Administration of Justice Act, 1960 — Section 1, 2
Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, Order 47 Rule 47, 114, 115
Contract Act, 1872 — Section 42
Criminal Procedure Code, 1973 (CrPC) — Section 9
Registration Act, 1908 — Section 17
Transfer of Property Act, 1882 — Section 53-A

Citation : (2015) 09 MEG CK 0007

Hon'ble Judges : U.N. Singh, C.J;T. Nandakumar Singh, J;S.R. Sen, J

Bench : Full Bench

Advocate : H.S. Thangkhiew and S.P. Mahanta, Senior Advs., for the Appellant;
B.K. Singh, N. Bharali and O.A.I. Bang, Advocates for the Respondent

Final Decision : Dismissed

Judgement

U.N. Singh, C.J—This review petition has been filed against the judgment and order dated 23.06.2014 passed in CR(P) No. 28 of 2013 by the then Hon'ble the Chief Justice whereby the Court has declined to interfere with the order passed by the appellate court. The Court has also discussed the judgments rendered in the case of (i) Shrimant Shamrao Suryavanshi and Another Vs. Pralhad Bhairoba Suryavanshi by Lrs. and Others, AIR 2002 SC 960 : (2002) 2 JT 24 : (2002) 2 SCALE 118 : (2002) 3 SCC 676 : (2002) 1 SCR 393 : (2002) 1 SCT 844 : (2002) 1 UJ 515 : (2002) AIRSCW 659 : (2002) 1 Supreme 583 (ii) Ramesh Chand Ardawatiya Vs. Anil Panjwani, AIR 2003 SC 2508 : (2003) 4 JT 450 : (2003) 134 PLR 636 : (2003) 4 SCALE 652 : (2003) 7 SCC 350 : (2003) 3 SCR 1149 : (2003) 2 UJ 1210 : (2003) AIRSCW 2590 : (2003) 4 Supreme 27 (iii) Narender Singh and Others Vs. Jai Bhagwan and Others, AIR 2005 SC 582 : (2005) 1 CTC 605 : (2004) 10 JT 345 : (2004) 10 SCALE 335 : (2005) 9 SCC 157 : (2005)

AIRSCW 156 : (2005) 1 Supreme 112 and (iv) Alka Bose Vs. Parmatma Devi and Others, AIR 2009 SC 1527 : (2008) 16 SCALE 281 : (2009) 2 SCC 582 : (2009) AIRSCW 1030 .

2. It appears that the land in question measuring 19,585 sq ft (Numbered as Plot No, 80 in Patta No. 58) situated at Lachumiere, Shillong, had been acquired by the father of the respondents (Late) Aghor Nath Bhattacharjee, the predecessor-in-title from the then Assam Govt. (now Govt. of Meghalaya) on 13.04.1967. He enjoyed the possession with all the legal rights and title in, with complete dominion over the property till he died on 19.03.1984. After his death, the property devolved upon his legal heirs, namely, Sabitri Bhattacharjee (Widow), Tushar Nath Bhattacharjee, plaintiff No. 1, (son/respondent No. 1 herein), Binoy Nath Bhattacharjee (Son/since died), Smti Sujata Bezbaruah, plaintiff No. 2 (daughter/respondent No. 2) and Smti Sabita Goswami, plaintiff No. 3 (daughter/respondent No. 3). Thus, Tushar Nath Bhattacharjee, plaintiff/respondent No. 1, his mother, Smti Sabitri Bhattacharjee, and brother, Shri Binoy Nath Bhattacharjee, applied for mutation. The Extra Assistant Commissioner (Revenue), Shillong in mutation case No. 15 of 1991, vide order dated 20.03.1991 recorded their names. Thereafter, Smti Sabitri Bhattacharjee, mother of the plaintiffs/respondents died in the year 1994 and Shri Binoy Nath Bhattacharjee, brother of respondents, who was a bachelor passed away in the year 1998. As per pleadings in case records, defendant/review petitioner No. 1, namely, Smti Venetta Kharsyntiew and her husband, defendant/review petitioner No. 2 Shri SP Mahanta allegedly got a forged sale deed dated 28-11-1991 claiming to have been executed by Shri Tushar Nath Bhattacharjee, plaintiff No. 1, his brother, Binoy Nath Bhattacharjee and his mother, Sabitri Bhattacharjee, in respect of vacant piece of land measuring 5300 sqft out of 19,585 sqft, mutated in their names after the death of their father (Late) Aghor Nath Bhattacharjee. It also appears from the allegations in the pleadings that the defendants/review petitioners forcibly dispossessed the plaintiffs/respondents and their mother and brother from 5300 sqft of land being the subject matter of sale deed dated 28.11.1991. Thus, the plaintiffs/respondents filed another suit, namely, TS No. 50 (T)/1992 against the review petitioners/defendants in the court of Assistant to Deputy Commissioner, East Khasi Hills, Shillong for declaration of their right, title and recovery of possession. However, that suit was dismissed. Thereafter, plaintiff/respondent No. 1 Tushar Nath Bhattacharjee went to Sydney (Australia), after he and his two sisters appointed one TS Bareh (since died) as their Attorney on 1-12-1992, to look after their property in Shillong. The defendants/review petitioners as per further allegations, having already occupied 5300 sq.ft under the garb of sale deed dated 28-11-1991 trespassed over the remaining piece of land, namely, 14,285 sqft as mentioned in Schedule-B of the plaint. Thus the plaintiffs/respondents instituted Title Suit No. 10 (T) of 2004 on 7-4-2004 against the review petitioners for declaration of right, title and interest and recovery of possession and permanent injunction in respect of land measuring 14,285 sq.ft. along with one main house and one out house standing there on.

Thus, obviously, they also sought restoration of possession of property mentioned in Schedule-B, i.e. 14,285 sqft out of 19,585 sqft.

3. On the contrary, the review petitioners/defendants have admitted the ownership of (Late) Aghor Nath Bhattacharjee over the suit land but pleaded that there was execution of a sale deed dated 28-11-1991 in their favour by Tushar Nath Bhattacharjee, plaintiff/respondent No. 1, his mother and his brother. It is mentioned by the review petitioners/defendants that plaintiffs/respondents No. 2 and 3 (both daughters of (L) Aghor Nath Bhattacharjee) had no concern whatsoever with the suit property. As per the revenue record, the property was mutated only in the name of Plaintiff/respondent No. 1 Tushar Nath Bhattacharjee, his mother and his brother upon death of (Late) Aghor Nath Bhattacharjee. It is pleaded in the written statement that after 5300 sqft land (mentioned in Schedule-A to the plaint) was purchased by the review petitioners/defendants from plaintiff/review petitioner No. 1, his mother and his brother vide the aforesaid sale deed dated 28-11-1991 for consideration amount of Rs. 2,65,000/-, the possession of said land was handed over to them. Moreover, it is also pleaded that the remaining property measuring 14285 sq ft as shown in Schedule B was also sold to the review petitioners/defendants by an unregistered agreement dated 04.03.1992 for an amount of Rs. 12,00,000/- by Tushar Nath Bhattacharjee, plaintiff No. 1, his mother (Sabitri Bhattacharjee) and his brother (Binoy Nath Bhattacharjee). Out of the said amount, Rs. 2,00,000/- was paid as part of consideration as mentioned in the agreement. It is also pleaded that on 04-04-1992, an amount of Rs. 1,00,000/- was paid and thereafter again on 13.05.1992 Rs. 30,000/- was paid. Lastly, the review petitioners also paid Rs. 1,00,000/- on 26-5-1992. In respect of such payments, endorsements were also made by Tushar Nath Bhattacharjee, plaintiff/respondent No. 1, his mother and brother, Binoy Nath Bhattacharjee (since died) vide Money Receipt dated 04.03.1992. It is further pleaded that the respondents also handed over the possession of land as mentioned in Schedule B to the defendants/review petitioners. Further there is also denial of allegation of trespassing over the land in question. It is also pleaded that the sale deed was to be executed in respect of the said land by 14.05.1992 and it is only on the request of Tushar Nath Bhattacharjee, plaintiff/respondent No. 1 that the date was extended and deferred to November, 1992. It is also a pleading in the written statement that on 18.06.1992 the plaintiffs/respondents sent a message to the review petitioners to come with remaining amount of Rs. 7,70,000/- by 13.06.1992 for execution of the sale deed. Thus, the review petitioners/defendants went to the plaintiffs at Guwahati on the said date, namely, 13.06.1992 with the amount of Rs. 7,70,000/-. However, plaintiff/respondent No. 2, the sister of Tushar Nath Bhattacharjee, intervened in the matter and started misbehaving with defendant/review petitioner No. 1. Tushar Nath Bhattacharjee and his sister plaintiff/respondent No. 2 started demanding higher amount against the terms of the agreement. Thereafter, plaintiff/respondent No. 2 Smti Sujata Bejbaruah also got issued a notice dated 22.06.1992 through her counsel Shri S.R. Sen, Advocate

on which some negotiations started in the chamber of that Advocate and it was settled that the sale deed would be executed within a period of ten days. Later the plaintiffs/respondents backed out but on the basis of unregistered agreement the Officer on Special Duty (Revenue) vide letter dated 14.04.1992 addressed to Deputy Commissioner accorded the sanction for transfer of land in favour of defendant/respondent No. 1. It is also submitted that the defendants/review petitioners are making all the payments regarding municipal dues and electricity bills etc. It appears that the suit T.S. No. 10(T) of 2004 (renumbered as T.S. No. 10 (T) of 2011 upon separation of judiciary from the executive) was dismissed vide the judgment and order dated 10.02.2012 while holding that the possession of defendants/review petitioners was protected under Section 53-A of the Transfer of Property Act, 1882. Thereafter, being aggrieved by the said judgment and decree, regular First Appeal (RFA No. 1(T) 2012) was preferred by the plaintiffs/respondents before the District Judge, Shillong, which was allowed vide judgment and order dated 06.05.2013.

4. Being aggrieved by the aforesaid judgment and order dated 06.05.2013, the defendants/review petitioners filed the revision [CR(P) No. 28 of 2013] on 23.06.2014 under Rule 36-A of the Administration of Justice and Police (in Khasi and Jaintia Hills) Rules, 1937. Hon'ble the then Chief Justice while sitting single has dismissed the revision holding that in view of the fact that Smti Sujata Bezbaruah (plaintiff No. 2) and her sister Smti Sabita Goswami (Plaintiff No. 3) did not execute any agreement of sale in favour of the defendants/review petitioners in respect of their shares in the property mentioned in Schedule - B, the defendants/review petitioners have no right of possession over the shares. It is also held that the agreement of sale alleged to have been executed on 04.03.1992 for a consideration amount of Rs. 12,00,000/- is admittedly an unregistered document. However, even the unregistered document can be acted upon, if executed prior to insertion of Sub-section 1-A in Section 17 of the Registration Act, 1908 in respect of State of Meghalaya. Revisional Court also found that Smti Sabitri Bhattacharjee and Shri Binoy Nath Bhattacharjee (both since died) had executed an agreement of sale in respect of their shares in the remaining land measuring 14,285 sq ft of Plot No. 80 situated in Lachumiere. It also appears that the suit for specific performance of contract namely, TS No. 27(T) 2004 renumbered as TS No. 154 (T) 2012 had been instituted by the defendants/review petitioners for specific performance of contract against the plaintiffs/respondents, namely, Shri Tushar Nath Bhattacharjee, Smti Sujata Bezbaruah and Smti Sabita Goswami and is still pending before the trial court. As to whether Tushar Nath Bhattacharjee, plaintiff/respondent No. 1 was a party to the unregistered agreement alleged to have been executed on 04.03.1992, review petitioner No. 1 Smti Venetta Kharsyntiew, who appeared as DW 1 in the suit herself admitted in her cross-examination that Tushar Nath Bhattacharjee was in Australia on that date. It also appears that she showed her ignorance as to whether on the date of execution of agreement, Tushar Nath Bhattacharjee had any knowledge about the execution of agreement. It was argued in revision

that Tushar Nath Bhattacharjee, respondent No. 1 having returned to India had signed the agreement but the fact is denied and in that view of the matter the Court has come to the conclusion that the present plaintiffs/respondents cannot be said to be bound by the said agreement of sale except to the shares they have inherited from their late mother and brother (Late) Binoy Nath Bhattacharjee.

5. Being aggrieved by the judgment and order passed in civil revision dated 23.06.2014, the defendants/review petitioners have filed this review petition mainly on that ground that the suit in question arose from tribal areas in Meghalaya and is governed by the Rules for Administration of Justice and Police (in Khasi and Jaintia Hills) Rules, 1937 where the Court of Assistant to Deputy Commissioner is the original Court of Civil jurisdiction and an appeal arising there from would lie to the Deputy Commissioner or Addl. Deputy Commissioner empowered in that behalf by the Governor under the Meghalaya Autonomous District and Administration of Justice Act, 1960. When the regular First Appeal arising out of the order in suit was pending for hearing before the Presiding Officer (Smti B Giri), the Court of Deputy Commissioner, vide notification No. LJ(A)77/2000/226 dated 21.03.2013 Smti MB Challam, Addl. District and Sessions Judge of the Fast Track Court, Shillong was appointed as Addl. Deputy Commissioner, East Khasi Hills District amongst others to hear all civil and criminal revisions, appeals etc. from the decisions of the Assistant to the Deputy Commissioner within the District of East Khasi Hills and to exercise the powers of the Deputy Commissioner. As such the Presiding Officer (Smti B Giri) hearing the appeal did not have power after 21.03.2013 to hear or decide any civil or criminal appeal or revision against an order passed by the Assistant to Deputy Commissioner. The said notification was brought to the notice of the learned Presiding Officer. However, learned Presiding Officer, inspite of the fact that she ceased to have the powers and jurisdiction of Deputy Commissioner/Addl. Deputy Commissioner to hear, decide civil or criminal revisions, appeals against an order passed by Asst. to Deputy Commissioner went ahead to hear and decide the matter against the order dated 06.05.2013. As such the order passed by the Presiding Officer of the lower appellate court is Coram non-judice and thus a nullity. According to defendant/review petitioner No. 1, this ground was specifically pleaded in the revision application and urged at the time of oral arguments by the learned counsel. But the same was not addressed by this Court while passing the impugned judgment and order dated 23.06.2014. That apart, the defendants/review petitioners have tried to assail and question the basis of findings/observations as noted in the impugned judgment passed in revision. Such finding is stated to be in para as: "However, as far as execution of the said agreement of sale dated 4.3.1992 by plaintiff No. 1 Tushar Nath Bhattacharjee is concerned, though it purports to have been signed by said party, but DW-1, Venetta Kharsyntiew has herself admitted in her cross examination that the said plaintiff, namely, Tushar Nath Bhattacharjee was in Australia on that date and she further told that she has no knowledge whether on the date of execution of

Ext-C, if Tushar Nath Bhattacharjee had any knowledge or not of the documents.....".

6. The explanation given by the defendants/review petitioners, in support of the argument is that Smti Venetta Kharsyntiew in her cross-examination has only stated like: "before entering into the agreement dated 4.3.92 (Exhibit C) I did not have any discussion, negotiation and stipulation with the plaintiff No. 1 Shri Tushar Nath Bhattacharjee about the subject matter of the agreement because he was in Australia".

7. Likewise other findings and observations that are also said to be contrary to the records, according to the review petitioners are: "There is no specific plea of Part performance of Contract in the written statement filed by the defendants in the present case. It should have been specifically pleaded to take benefit of Sec. 53-A of the Transfer of Property Act, 1882 as to what some act has been done in furtherance of the contract. In absence of such plea in the written statement, no evidence could be led by the defendants nor can any benefit be given to them. Trial Court had erred in law in dismissing the suit on the said ground".

Whereas, vide para 24 of the written statement, there is a specific statement of fact as, "subsequently, the mother of the Plaintiff could realize their mistake and to mitigate the future legal action, apologized for the act of plaintiff No. 2 and asked the defendant No. 1 to take possession of the suit property from 29.6.92 pending registration of the sale deed."

Similarly, in para 25 of the written statement, the defendants have stated that "the defendants have been paying municipal dues, electricity bill etc right from 30.6.1992 till now." It is thus clear that such actions of the Defendants/review petitioners are only in furtherance of part performance of the contract. Ext-S in Series are the payment receipts of the same which were paid by the defendants right from 30.6.1992 onwards. As such, from para 24 and 25 and other paras of the written statement, it is evident that the defendants have specifically pleaded "protection of part performance" under Sec. 53-A of the Transfer of property Act.

It is also pointed out, obviously in favour of review petitioners, that the revisional Court has given a categorical finding in para 8 of the judgment that, "From the money receipt dated 4.3.1992 (Ext-D) read with the copy of the agreement for sale dated 4.3.1992 (Ext-C), it appears that Smti Sabitri Bhattacharjee (since died) and Binoy Nath Bhattacharjee (since died) did execute an agreement to sell in respect of their shares in the land measuring 14,285 Sq. ft of Plot No. 80 situated in Lachumiere (now their shares stand devolved on the present plaintiffs)." In view of the above finding, learned Sr. counsel for review petitioners submitted that as required under Sec. 42 of the Contract Act, 1872, the plaintiffs must fulfill the promise made by Smti Sabitri Bhattacharjee and Binoy Nath Bhattacharjee.

8. The defendants/review petitioners have also contended that the scope of revisional jurisdiction under Section 36-A of the Rules for Administration of

Justice and Police (in Khasi and Jaintia Hills) Rules, 1937 is similar to, and has to be exercised in conformity with revisional powers of High Court under Section 115 of the CPC.

9. He has referred to a judgment of Hon''ble the Apex Court in *Shyam Sunder Agarwal and Co. Vs. Union of India*, (1996) 1 AD 600 : AIR 1996 SC 1321 : (1996) 1 ARBLR 153 : (1996) 1 JT 222(1) : (1996) 1 SCALE 237 : (1996) 2 SCC 132 : (1996) 1 SCR 245 , in support of the aforesaid contentions.

He has also referred to two judgments of Gauhati High Court in (1) *Ka Idis Mary Kharkongor v. Ka Theirit Lyngdoh*, ALR 1969 A&N 93 and (2) *Ka Methilda Kharmalki v. Ka Sabina Nongrum*, (1997) 2 GLR 100. As per ratio of judgments, from the reading of the provisions of Section 36-A of the Rules of 1937, it is clear that the revising authority may pass any order as it may deem fit. Thus there is no reason as to why the revising authority should not be competent to reappraise the evidence. The High Court has very wide powers in the matter of revision and it can go into the facts like the appellate court.

As to the argument that the exercise of powers by learned Appellate Judge suffered from the vice of Coram non-judice, learned counsel has referred to various judgments of Hon''ble the Apex Court and the Gauhati High Court.

10. On the other hand from the affidavit dated 13.11.2014 filed by Smti Sujata Bezbaruah, respondent No. 2, it appears that this case has got a chequered history. The review petitioners herein instituted TS No. 10(T) 2004 against the plaintiffs/respondents on 07.04.2004 for declaration of right, title and interest and recovery of possession and for permanent injunction in respect of land measuring 14,285 sq ft along with one main house and one out house standing thereon. During the course of trial of that suit of 2004, which started sometime in October, 2007, the Presiding Officers were not available for one reason or the other: for, they either went on leave or got transferred or remained sitting idle. This position continued even after specific directions issued by the High Court in CR(P) No. 14(SH) 2009. However in March, 2011 the Division Bench headed by Chief Justice took suo motu cognizance of the matter on the letter submitted to him by the plaintiffs/respondents by registering WP(C) (Suo-Motu) No. 71 of 2011 and passed directions on 30.03.2011 and also on the subsequent dates in exercise of powers of superintendence. In the mean time there was separation of judiciary from the executive and the Title Suit had to be re-numbered as TS No. 10(T) 2011 (in place of 2004). The title suit was, however, finally decided on 10.02.2012 when it was dismissed by Assistant to the Deputy Commissioner (Munsiff), Shillong.

11. Having given our anxious consideration to rival submissions and upon careful examination of impugned judgment, it is noticeable that the revisional Court has noted that the Title Suit No. 50(T) of 1992 filed by the plaintiff/respondent No. 1 Tushar Nath Bhattacharjee in respect of suit land measuring 5300 sq ft mentioned in Schedule A in the plaint was dismissed by Assistant to Deputy

Commissioner. It is also noticeable that revisional Court has recorded a finding with certain observations in para 8 of the judgment, which seemingly appears to be in favour of the review petitioners. The findings and observations are reproduced as hereunder:

"..... From the money receipts dated 4.3.1992 (Ext D) "read with the copy of agreement of sale dated 4.3.1992 (Ext C), it appears that Smti Sabitri Bhattacharjee (since died) and Binoy Nath Bhattacharjee (since died) did execute an agreement of sale in respect of their shares in the land measuring 14,285 sq ft of Plot No. 80 situated in Lachumiere (now their shares stand devolved on the present plaintiffs). It is also pertinent to mention here that learned counsel for the parties conceded that suit for Specific Performance of Contract, TS No. 27(T) of 2004, renumbered as TS No. 154(T) of 2012 has been instituted by the defendants for Specific Performance of Contract against the present plaintiffs, which is pending before the trial court. "

12. Now, coming to the argument on Coram non-judice on the part of appellate court, the review petitioners in ground No. 1 have referred to Meghalaya Autonomous District Administration of Justice Act, 1960 but in fact the State of Meghalaya was not created till before the Assam Reorganization (Meghalaya) Act, 1969 (55 of 1969) came into force. In fact the correct title of the Act would be The Assam Autonomous District Administration of Justice Act, 1960? (for short The Assam Act of 1960?). It appears that as per item No. 29 of Schedule 2 of the Meghalaya Adaptation of Laws and Orders, Sub-section 2 & 3 of Section 1 have been omitted. Thus, now only Section 2 of the Act may be relevant for the issue in hand. The said provisions on reproduction would read as:

"2. Appointed of Additional Deputy Commissioner.--(1) Notwithstanding anything contained in the rules for administration of justice and police in the autonomous districts as adapted and modified by the Assam Autonomous Districts (Administration of Justice) Regulation, 1952 and as in force for the time being; or in any other law in force, the State Government may, when it thinks fit, appoint one or more Additional Deputy Commissioner for an autonomous district either generally, or for the trial of a particular case, or particular cases, civil or criminal, and may direct that such Additional Deputy Commissioner shall, for the general or special purposes aforesaid, exercise all or any of the powers of the Deputy Commissioner.

(2) An Additional Deputy Commissioner, if and when appointed for the united District of Mikir and North Cachar Hills and when so directed by the State Government, shall also exercise the powers mentioned in Sub-section (1) in the tribal areas of the North Cachar Hills specified in Part "A" of the table appended to the Sixth Schedule to the Constitution.

(3) An Additional Deputy Commissioner appointed for the United Khasi-Jaintia Hills District if and when so directed by the State government shall also exercise the powers mentioned in Sub-section (1) in the Jowai District constituted under

Government Notification No. TAD/R/50/64, dated the 23rd November, 1964."

13. From a bare reading of the aforesaid provisions, it would be clear that the State Govt. may appoint one or more Additional Deputy Commissioner for an Autonomous District either generally or for the trial of particular case or particular cases civil or criminal, and may direct that such Additional Deputy Commissioner shall, for the general or special purpose, exercise all or any of the powers. But it is nowhere provided that with the appointment of another Addl. Deputy Commissioner, and that too on ad hoc basis for the Fast Track Court, the powers of regular and senior most Addl. Deputy Commissioner (Judl) who held the charge of District & Sessions Judge would stand withdrawn. Moreover, when the case of the review petitioners was decided, the District judiciary has been separated from the executive.

14. Thus, it would also be pertinent to reproduce the notifications issued by the State Government of Meghalaya regarding jurisdiction of Smti MB Challam, Addl. Deputy Commissioner (Ad hoc), Fast Track Court as under:

"IN THE GAUHATI HIGH COURT (The High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram & Arunachal Pradesh) SHILLONG BENCH

N O T I F I C A T I O N Dated Shillong the 5th July, 2012

No. HC(SB)II/114/2010/_____. The High Court is pleased to promote temporarily Smti M.B. Challam in Grade - II to Grade - I of the Meghalaya Judicial Service on ad-hoc basis in usual scale of pay plus other allowances as admissible under the Rules until further order solely for the purpose of her appointment as Additional District & Sessions Judge of the Fast Track Court. Such appointment shall not amount to her regular promotion. On expiry of the term of the Scheme of the Fast track Courts (ad-hoc) under the 11st Finance Commission, as extended from time to time by the Government of Meghalaya. She will be repatriated to her parent cadre in the Meghalaya Judicial Service unless promoted regularly in the meantime. The ad-hoc promotion of the Officer will take effect from the date of her assuming charge.

No. HC(SB)II/114/2010/_____. In exercise of the powers conferred under Sub-section (3) of Section 9 of the Code of Criminal Procedure, 1973, the High Court is pleased to appoint Smti. M.B. Challam, of the Meghalaya Judicial Service, who have been temporarily promoted to ad-hoc basis to Grade-I from Grade-II of the said service and to post her as Additional District and Sessions Judge within the local limit of jurisdiction with effect from the date of assuming charges as such.

No. HC(SC)II/114/2010/_____. The Hon'ble Gauhati High Court has been pleased to post Smti. C. Dkhar, Assistant District & Sessions Judge, Shillong, as Chief Judicial Magistrate, Shillong, vice Smti. M.B. Challam promoted.

Smti M.B. Challam will hand over charge of her court and office to Smti. C. Dkhar on assuming charge at her new posting.

By Order,

Sd/- REGISTRAR GAUHATI HIGH COURT SHILLONG BENCH

Memo No. HC(SB)II/114/2010/2635-45 Dated, Shg 5/7/2012

GOVERNMENT OF MEGHALAYA LAW(A) DEPARTMENT

(ORDERS BY THE GOVERNOR) NOTIFICATION

Dated Shillong , the 18th July, 2012

No. LJ (A) 77/2000/219 - In exercise of the powers conferred by Section 8 of the Bengal, Agra and Assam Civil Courts Act 1887 (Bengal Act No. XII of 1887 as adapted by Meghalaya) and with the approval of the Gauhati High Court, Guwahati, the Governor of Meghalaya is pleased to invest Smti. M.B. Challam, Additional District and Sessions Judge, Fast Track Court, Shillong, with powers of Additional District Judge with immediate effect to exercise such powers within the local limits of her jurisdiction.

Sd/- (L.M. Sangma) Secretary to the Government of Meghalaya Law Department .

Memo No. LJ(A) 77/200/219-B

Dated Shillong, the 18th July, 2012

GOVERNMENT OF MEGHALAYA LAW(A) DEPARTMENT

(ORDERS BY THE GOVERNOR) NOTIFICATION

Dated Shillong, the 21st March, 2013

No. LJ (A) 77/2000/226 - In exercise of the powers conferred by Sub-section (1) of Section 2 of Meghalaya Autonomous District Administration of Justice Act (Assam Act XIV of 1960 as adopted and amended by Meghalaya) the Governor of Meghalaya on the recommendation of the Gauhati High Court, Gauhati is pleased to appoint Smti. M.B. Challam, Additional District & Sessions Judge of the Fast Track Court, Shillong as Additional Deputy Commissioner, East Khasi Hills District for trial of all offences punishable with death, imprisonment for life or imprisonment for a term of not less than 5(five) years under the Indian Penal Code or under any Law for the time being applicable to the District and also to hear all Civil & Criminal Revisions, appeals etc. from the decision of the Assistants to the Deputy Commissioner within the said District and shall also for the purposes aforesaid, exercise all the powers of the Deputy Commissioner within the said District.

This shall deemed to have effect from 18th July, 2012 and also supercede Notification No. LJ(A) 77/2000/219 dt. 18.07.2012.

Sd/- (L.M. Sangma) Secretary to the Government of Meghalaya Law Department .

Memo No. LJ(A) 77/200/219-B

Dated Shillong, the 18th July, 2012"

15. It appears from the notification dated 05.07.2012 with Memo No. HC(SB)II/114/2010/2635-45 issued by the Registrar Gauhati High Court, Shillong Bench, that Smti MB Challam of the Meghalaya Judicial Service was promoted from Grade-II to Grade-I temporarily and was posted as Addl. District and Sessions Judge. The notification of the High Court was reiterated in the notification dated 18.07.2012 issued by the Govt. of Meghalaya, Law (A) Department under the orders of the Governor with reference to Memo No. LJ(A)77/2000/219-B. It appears from the aforesaid notification that Smti MB Challam was promoted as Addl. District and Sessions Judge on temporary basis and given the powers of Addl. District Judge. As her jurisdiction was not clearly provided, therefore, another notification dated 21.03.2013 was issued whereby she was empowered as Addl. District and Sessions Judge of the Fast Track Court, Shillong to exercise the powers of Addl. Deputy Commissioner, East Khasi Hills District for trial of all offences punishable with death, imprisonment for life or imprisonment for a term of not less than 5(five) years under the Indian Penal Code or under any law for the time being applicable to the District and also to hear all Civil and Criminal Revisions, appeals etc. from the decision of the of the Assistants to the Deputy Commissioner within the said District and for that purpose she was to exercise of powers of Deputy Commissioner within the said Districts. But, that notification does not provide for supersession of the notification appointing Smti B Giri as regular Addl. Deputy Commissioner-cum-District and Sessions Judge, Shillong in respect of her powers and functions.

16. However, in the aforesaid provisions, we do not find anything to notice that only because one or more Additional Deputy Commissioner was empowered to decide civil and criminal cases, the powers of senior most Additional Deputy Commissioner being the District and Sessions Judge, East Khasi Hills District, would stand automatically withdrawn. Moreover, when the Presiding Officer Mrs. B. Giri decided the appeal on 06.05.2013, the judiciary had separated from the Executive and thus, she happened to be the District and Sessions Judge of East Khasi Hills District and on that count she being the in-charge of Judicial District of East Khasi Hills District was empowered to decide any or all cases in that capacity. Moreover, as submitted by respondent No. 2 in her affidavit, that the proceedings of the appeal pending before Mrs. B. Giri were being monitored by the High Court in WP(C) (Suo-Motu) No. 71 of 2011. The High Court had issued a strict direction including the direction for personal appearance and initiation of contempt against the Judicial Officer, if the case was not decided within the timeframe on 25th and 26th April, 2013. Thus, the submission of learned senior counsel does not find favour with this Court and deserves to be rejected.

17. Besides, at the conclusion of hearing of this review petition, learned senior counsel, Mr. HS Thangkhiew, confined his arguments only to the plea of Coram non-judice in respect of the appellate proceedings and the consequent decision in RFA No. 1(T)/2012 passed by learned Presiding Officer, Mrs. B Giri. Regarding the

finding like the one relating to the statement made by review petitioner No. 1, Smti Venetta Kharsyntiew, while appearing as DW 1 in the suit before the trial court to the effect that Shri Tushar Nath Bhattacharjee, plaintiff/respondent No. 1 was not a party to the agreement dated 04-03-1992, we have carefully examined the findings of the revisional Court and also the plea raised to assail such findings but we do not find any serious error apparent on the face of record. Needless to say that such minor error cannot be said to be vital enough to affect the findings and conclusions recorded in the judgment under review, or would go to the roots of the matter so as to invite our interference with the judgment by exercising our powers under Section 114 and Order 47 Rule 1 of the CPC. Similarly, the position of other observations as noted hereinabove also does not seem to be any different. Further, if we are to consider such submissions on the observations of the Court, then that may amount to reappraisal of evidence which is forbidden by law.

18. Now, coming to the legal position as settled by Hon''ble the Apex court from time to time on the issues in hand in various judgments, it would suffice to refer to a few as follows : In *Aribam Tuleswar Sharma Vs. Aribam Pishak Sharma and Others*, AIR 1979 SC 1047 : (1979) 4 SCC 389 : (1979) 11 UJ 300 , it has been held that the power of review is not the same as appellate powers. In the case of *Inderchand Jain (D) through L.Rs. Vs. Motilal (D) through L.Rs.*, (2009) 9 JT 537 : (2009) 14 SCC 663 : (2009) 11 SCR 252 , it is laid down that while hearing a review petition, the Review Court cannot sit in appeal over its own order. A rehearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that the exercise of the inherent jurisdiction is not invoked for reviewing any order. In *Lily Thomas v. Union of India* reported in (2006) 6 SCC 224, it has been clarified that the review is not an appeal in disguise. In para 56 of the judgment, it is observed as:

"56. It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise."

In *Haridas Das Vs. Smt. Usha Rani Banik and Others*, AIR 2006 SC 1634 : (2006) 2 CTC 321 : (2006) 3 JT 526 : (2006) 3 SCALE 287 : (2006) 4 SCC 78 : (2006) AIRSCW 1771 : (2006) 3 Supreme 125 , the Hon''ble Court has discussed the issue in great detail vide para 13 as:

"13. In order to appreciate the scope of a review, Section 114 CPC has to be read, but this section does not even adumbrate the ambit of interference expected of the court since it merely states that it "may make such order thereon as it thinks fit". The parameters are prescribed in Order 47 CPC and for the purposes of this lis, permit the defendant to press for a rehearing " on account of some mistake or error apparent on the face of the records or for any other sufficient reason". The former part of the rule deals with a situation

attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the court and thereby enjoyed a favourable verdict. This is amply evident from the Explanation to Rule 1 of Order 47 which states that the fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment. Where the order in question is appellable the aggrieved party has adequate and efficacious remedy and the court should exercise the power to review its order with the greatest circumspection. This court in *Thungabhadra Industries Ltd. V. Govt. of AP* held as follows (SCR p. 186)

[T]here is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterized as vitiated by "error apparent". A review is by no means and appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error..where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out."

This review petition is pressed on one and only ground, namely, the point of "Coram non-judice" against the exercise of powers by the appellate court. Thus, we can confine our area of consideration to that limited question irrespective of other points, if worth considering, raised in the review. This view of ours also finds support in the judgment of a constitution Bench of Hon"ble the Apex Court in the case of *Daman Singh and Others Vs. State of Punjab and Others*, AIR 1985 SC 973 : (1986) 60 CompCas 1 : (1985) 1 SCALE 664 : (1985) 1 SCALE 644 : (1985) 2 SCC 670 : (1985) 3 SCR 580 : (1985) 17 UJ 1080 . The Hon"ble Court has held in para 13 that "...it is not unusual for parties and counsel to raise innumerable grounds in the petitions and memoranda of appeal etc., but, later, confine themselves, in the course of argument to a few only of those grounds, obviously because the rest of the grounds are considered even by them to be untenable. Thus, no party or counsel is thereafter entitled to make a grievance that the grounds not argued were not considered."

19. We may also like to clarify that the point raised as to the scope of revisional powers of the Deputy Commissioner and High Court under Section 36-A of Rules of 1937, the judgment of Gauhati High Court (supra) in the cases of *Ka Idis Mary Kharkongor v. Ka Theirit Lyngdoh*, ALR 1969 A&N 93 and (2) *Ka Methilda Kharmalki v. Ka Sabina Nongrum*, (1997) 2 GLR 100 , have to be applied only in line with the judgment of Hon"ble the Apex Court in the matter of *Shyam Sunder Agarwal and Co. Vs. Union of India*, (1996) 1 AD 600 : AIR 1996 SC 1321 : (1996) 1 ARBLR 153 : (1996) 1 JT 222(1) : (1996) 1 SCALE 237 : (1996) 2 SCC

132 : (1996) 1 SCR 245 . Moreover, the second judgment of Ka Methilda Kharmalki has been rendered by a revisional Court who has not considered the judgment of Hon"ble the Apex Court in Shyam Sundar Agarwal's case. In Shyam Sundar Agarwal's case, Hon"ble the Apex Court has clarified that the revisional powers provided under Rule 36-A of the Rules of 1937, has to be exercised in conformity with revisional powers as contained in Section 115 of the CPC. Thus, now the judgment of Hon"ble the Apex Court in Shyam Sundar Agarwal's case alone would govern the field.

20. Further, before parting with the judgment, it would not be out of place to say that admittedly, the land of the plaintiffs/respondents is situated in the European Ward, Shillong, where there is no restriction on purchase of land by non-tribal or tribal. It is also a common knowledge that there is acute shortage of land in the European Ward of Shillong. It is also not uncommon to hear complaints against the members of the legal profession about the unethical practice of purchasing the property of litigants or under litigation, in their own name or that of their family members, direct or indirect relatives. The plaintiffs/respondents are said to be old and aged persons with Indian and immigrant domicile. Thus, we record the note of caution against indulging in such practice in this case.

21. With the aforesaid observations, this review petition is dismissed.