

IN THE COURT OF THE DISTRICT JUDGE, KALIMONG

**Present : Shri Utpal Misra (JO Code : WB00659),
District Judge, Kalimpong**

Title Appeal No. 1/2025
CNR NO: WBDJ070000492025
CIS NO: 01 of 2025

Arjun Kumar Yogi

.... Appellant

Versus

1. Krishna Bahadur Yogi
2. Bholanath Yogi @ Ram Bahadur Yogi

... Respondents

3. The Collector for the District of Darjeeling
4. The Administrator D.I.F.

5. The Sub-Divisional Officer and Administrator

... Proforma Respondents

Ld. Lawyer for the Appellant : Mr. Nripen Das

Ld. Lawyer for the Respondents : Mr. Jaydeep Chettri

Date of delivery of Judgment : 5th June, 2026

JUDGMENT

1. The instant appeal is directed against the judgment and decree dated 12.03.2025 in connection with O.C. Suit No. 3 of 2010 delivered by the Ld. Civil Judge (Junior Division), Kalimpong.

2. Facts leading to the filing of the instant appeal is that the plaintiff/appellant instituted the suit being no. O.C. Suit No. 3/2010 against the defendants/respondents and proforma defendants/respondents for declaration and injunction with respect to the property as described in the plaint of the suit, injunction against the defendants from further construction and entering into the suit property as well as mandatory injunction to account for the cost of construction of the suit property to the plaintiff.

3. According to the plaintiff/appellant, he along with defendants/respondents no. 1 and 2 are all brothers and they are sons of Late Chakra Bahadur Yogi. The suit

property was purchased in the name of the appellant and respondent no. 2 on 19.11.1973 by virtue of a registered deed of sale from the vendor Jambi Maya Tamang who had a transferable lease from D.I.F., Darjeeling. Subsequently, the land was extended a bit as allowed by D.I.F., Darjeeling through valid instrument. It is the further case of the plaintiff/appellant that he along with respondent no. 2 i.e. the owners of the suit property decided to reconstruct the building situated thereon and accordingly made a prayer before Kalimpong Municipality and obtained a sanction plan in the year 2000. According to the plaintiff/appellant, respondent no. 1 who happens to be his another brother was a contractor and had sufficient knowledge of construction and offered him to help them in construction and as it was agreed so, a Special Power of Attorney was executed in his favour on 28.02.2007. It is the further contention of the appellant that there were some tenants as well in the suit premises and the respondent no. 1 assured them to do all needful and the appellant also paid him adequately for removal of those tenants and to undertake the construction work. When the demands of the respondent no. 1 could not be met by them, he created some cloud over the ownership and as such the suit was instituted by the appellant with the reliefs as prayed for before the Ld. Trial Court.

4. It appears from the LCR that the defendants/respondents no. 1 and 2 contested the suit before the Ld. Trial Court by way of filing two separate written statements and their principal bone of contention is that :

- (a) although the said land and house was purchased in the names of appellant and respondent no. 2, it was denied that appellant and respondent no. 2 are the absolute owners and claimed that the same was a joint family property purchased by Dilnath Yogi for the benefit of the family;
- (b) it was further stated when the defendant/respondent no. 1 was studying in Kalimpong, he started residing with his grandfather in the said house purchased by him and also lived with him during his student life;
- (c) the respondent no. 1 contended that in the year 2002, as the father of both the parties was ailing and getting old, a bonafide oral family settlement took place amongst the family members of both the parties. As per the said family settlement, the appellant categorically relinquished all rights, title and interest in and over the suit property which was allotted to the share of the respondent no. 1 since the appellant expressed his inability to manage the suit property which was dilapidated and full of tenants;
- (d) there were further averments that it was specifically, amicably and voluntarily agreed amongst the family members that the respondent no. 1 should get the suit

property and the appellant claimed lion share of the ancestral property in Sindebong, save and except 12½ decimals of land and a green house over there so built by him; and

(e) it was specifically stated by respondent no. 1 that in view of the oral settlement already arrived at between the parties and their family members, a further memorandum was executed on 21.03.2008 wherein the right, title and interest of the suit property was renounced in favour of the respondent no. 1.

5. It is the further contention of the appellant that it was finally concluded by the Ld. Trial Court that the suit property stood in the name of the appellant and respondent no. 2 but unfortunately it was held by the Ld. Trial Court that the plaintiff/appellant made a prayer of declaration of 50% share of the suit property without making any prayer of the partition of the same and that omission by the plaintiff/appellant is hit under Section 34 of the Specific Relief Act as held by the Ld. Trial Court in the impugned judgment and subsequently, dismissed the suit on that score only. Being aggrieved by and dissatisfied with the said judgment and decree dated 12.03.2025 delivered by the Ld. Trial Court in connection with O.C. Suit No. 03/2010 of the Ld. Civil Judge (Junior Division), Kalimpong, the plaintiff/appellant has preferred the instant appeal on the grounds mentioned in the Memo of Appeal.

6. POINTS FOR CONSIDERATION

- (i) Whether the Ld. Trial Court has erred in law and facts of this case?
- (ii) Is there any scope to interfere with the findings of the Ld. Trial Court?

7. DECISION WITH REASONS

Both the points are taken up together for discussion for the sake of convenience and brevity.

8. Ld. Lawyer for the appellant argued that the impugned judgment is incorrect and not sustainable in law as it suffers from material irregularity in the factual aspects as well and the Ld. Trial Court made some palpable error in appreciating the legal perspective too. In the impugned judgment, although the Ld. Trial Court held that the suit property stands in the name of plaintiff/appellant and defendant/respondent no. 2 but the Ld. Trial Court raised the plea of the provision of Section 34 of the Specific Relief Act which is strange and peculiar. The Ld. Trial Court further held that the suit filed by the plaintiff/appellant is not maintainable as the plaintiff/appellant has failed to claim the consequential relief of partition. Ld. Lawyer for the appellant argued that the

plea of partition was not raised by either of the parties and the Ld. Trial Court has misdirected itself by making a third case. According to him, since the defendant/respondent no. 1 against whom the principal relief has been claimed is not the joint owner of the property, so, the partition in this suit cannot be claimed against him. He further argued that it was found in Section 34 of the Specific Relief Act that the legislation has not used other relief but further relief. The further relief must consequently be relief in relation with legal character or right of the property which the plaintiff is entitled to and whose title of such character or right, the defendant denies or is interested to deny, it must also be relief appropriate to and necessarily consequent on the right or title asserted and such relief flows directly and necessarily from the declaration sought for. The words able to seek further relief means that the plaintiff must be in a position to seek further relief. In case, it is not possible to him to seek further relief, the provision must not be attracted. As such the observation of the Ld. Trial Court is incorrect and not legally sustainable and the impugned judgment passed by the Ld. Trial Court be set aside.

9. Per contra, Ld. Lawyer for the respondents argued that the Ld. Trial Court rightly dismissed the original suit of the appellant/plaintiff after considering all the materials in the record as per the mandate of Section 34 of the Specific Relief Act, 1963.

10. Having heard the submissions of the Ld. Lawyers for the respective parties and considering further, the pleadings of the respective parties, it appears that the plaintiff/appellant instituted a suit against the defendants/respondents for declaration of title and permanent injunction being O.C. Suit No. 03/2010 before the Ld. Trial Court with respect to a piece of land as described in the schedule of the plaint. It is averred in the pleading that the said plot of land was purchased by Sri Dilnath Yogi, the grandfather of the plaintiff in the name of plaintiff/appellant and defendant/respondent no. 2 Bholanath Yogi @ Ram Bahadur Yogi. As such the plaintiff has prayed for declaration of title with respect to 50% of that property. The said property was purchased in the year 1973 from one Jambi Maya Tamang who had a transferable lease under Darjeeling Improvement Fund (D.I.F.). Subsequently, the land was extended a bit as allowed by D.I.F. through a valid instrument. Both the brothers started living with their grandfather in the said premises. Thereafter, both the owners, plaintiff/appellant and defendant/respondent no. 2 decided to construct a building and obtained a sanction plan from the Kalimpong Municipality in the year 2000. The defendant/respondent no. 1, their another brother who happened to be a contractor with sufficient knowledge of construction, offered himself to help them in construction and it was so

agreed by way of executing a special Power of Attorney on 28.02.2007 by both the plaintiff/appellant as well as defendant/respondent no. 2.

11. It is the further case of the plaintiff/appellant that as there were some tenants in the suit property as well so, the defendant/respondent no. 1 assured them to do all the needful and the plaintiff/appellant also paid him adequately for removal of the tenants and to undertake the construction work. The defendant/respondent no. 1 submitted written statement with some specific contention that the property purchased by said Dilnath Yogi was a joint family property meant for the benefit of the family and he too used to stay in the said premises for his education. It has been further contended that in the year 2002, a family settlement was held amongst all the family members and according to the said family settlement, the plaintiff/appellant categorically relinquished all right, title and interest of the suit property and allotted the same in the share of the defendant/respondent no. 1. It has been further stated that in view of the oral settlement already arrived at between the parties and their family members, a further Memorandum was executed on 21.03.2008 wherein the right, title and interest of the suit property was renounced in favour of the defendant/respondent no. 1.

12. It appears from the LCR that after considering the pleadings of the respective parties, ten issues were framed and trial was held, evidence was adduced by both the parties and documents were also exhibited. It is also revealed that no specific issue was framed by the Ld. Trial Court in respect of the non-maintainability of the instant suit as per Section 34 of the Specific Relief Act.

13. After going through the judgment of the Ld. Trial Court, it appears that the Ld. Trial Court has made the following observations :

- (a) From the exhibited documents it was held that the plaintiff and defendant no. 2 were the owners of the suit property which was also in fact admitted by the defendant no. 1 in his cross-examination and no substantial evidence was produced in support of his contention that the suit property was purchased out of the nucleus of the joint family fund;
- (b) The defendant no. 1 has also failed to produce any evidence of so called family settlement, as other brothers during their evidence have denied such contention of family settlement;
- (c) It has been observed by the Ld. Trial Court that had it been a joint family property or any settlement so arrived at, then how a Power of Attorney was executed by the owners of the suit property in favour of the defendant no. 1;
- (d) The defendant no. 1 has also failed to submit any evidence about the Memorandum

of Relinquishment so claimed by him on 21.03.2008;

(e) It has also been observed by the Ld. Trial Court that if the plaintiff and the defendant no. 2 renounced their right, title and interest in respect of the suit property, then how the defendant no. 1 at the same time has claimed that it was a joint family property belonging to all and the plaintiff and defendant no. 1 are not the absolute owners;

(f) It has already been held by the Ld. Trial Court that the plaintiff is the co-owner of the suit property and has title over the suit property but dismissed the suit and observed that as the plaintiff did not claim consequential relief of partition so the suit was hit by Section 34 of the Specific Relief Act.

14. Section 34 of the Specific Relief Act, 1963 :

Section 34. Discretion of court as to declaration of status or right. : Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

15. The proviso uses the words 'able to seek further relief'. It is well settled that object of the proviso of Section 34 of the Specific Relief Act is to prevent the multiplicity of the suit by preventing a person from getting a mere declaration of right in one suit and then later seeking the remedy without which the declaration would be useless. The words 'further relief' referred to in the proviso mean a relief flowing directly and necessarily from the declaration sought, a relief appropriate to and necessarily consequent on the right and title asserted. As Section 34 of the Act intends to avoid the multiplicity of the suit so, if possible, plaintiff must conclude all possible reliefs in a single suit. The words 'able to seek further relief' mean that the plaintiff must be in a position to seek further relief. If it is not possible for him to seek further relief the proviso is not attracted. Since, the defendant no. 1 against whom the principal relief has been claimed is not the joint owner of the property, so, the partition in this suit cannot be claimed against him. So, I am constrained to hold that the observation of the Ld. Trial Court made in this regard is not correct. Moreover, it appears from the impugned judgment that Issue nos. 7, 8, 9 and 10 have also not been decided on merit by the Ld. Trial Court

16. So, considering all, this Court has no other option but to interfere with the findings of the Ld. Trial Court by way of setting aside the impugned judgment and

decree. In my opinion, view taken by the Ld. Trial Court below was wholly erroneous in law. The case is sent back to the Ld. Trial Court below for fresh decision, in accordance with law, after hearing the parties, on the materials already on record. However, one observation which must be necessarily kept in mind by the Ld. Trial Court is that if the plaintiff of the present suit file an application for amendment of the plaint in order to avoid any objection on the part of the defendants of the present suit about the bar of Section 34 of the Specific Relief Act, then the Ld. Trial Court will dispose of that application, after hearing the parties on its own merit.

Memo of appeal is sufficiently stamped.

Hence, it is,

ORDERED

that the instant appeal be and the same is allowed on contest without any order as to costs.

Judgment and decree dated 12.03.2025 in connection with O.C. Suit No. 3 of 2010 passed by the Ld. Civil Judge (Junior Division), Kalimpong is hereby set aside.

All the pending applications, if any, stand disposed of.

Let a copy of this judgment along with LCR be sent at once to Ld. Trial Court below for information.

The instant appeal is thus accordingly disposed of.

Dictated and Corrected,

Sd/-

District Judge,
Kalimpong
05.06.2026

Sd/-

District Judge,
Kalimpong
05.06.2026