

HIGH COURT OF UTTARAKHAND
AT NAINITAL

Second Appeal No.147 of 2023

Rajbahadur Thapa

... Appellant

Vs.

Virendra Pratap Singh and Another

... Respondents

Advocate: Mr. I.P. Kohli and Mr. V.P. Bahuguna, learned counsel for
the appellant.
Mr. Siddhartha Singh, learned counsel for the caveator.

Hon'ble Sharad Kumar Sharma, J.

It is a defendant's Second Appeal, preferred being aggrieved as against the judgment and decree dated 24.07.2023, as it has been rendered by the Court of 6th Additional District Judge, Dehradun in Civil Appeal No.57 of 2015, "Rajbahadur Thapa and Another Vs. Virendra Pratap Singh", whereby the learned First Appellate Court, had dismissed the First Appeal and, consequently, has affirmed the judgment dated 03.04.2015, which was passed in Original Suit No.116 of 2010, "Virendra Pratap Singh Vs. Rajbahadur Thapa and Another".

2. If the plaint itself is taken into consideration, the plaint as instituted by the plaintiffs/ respondents herein, being Suit No.116 of 2010, it was confined to a grant of decree of permanent injunction in relation to the property,

which was appropriately described in paragraph no.1 of the suit itself i.e. land lying in Khata No.725, Khasra No.421घ (Old No.77), having an area of 0.0250 hectare, situated at Mauja Banjarawalamafi, Pargana Pachhwadun, District Dehradun.

3. The plaintiffs in the suit have come up with the case, that the cause of action for him to institute the suit has accrued with the defendants without holding any title over the property in question i.e. the property, which is subject-matter of the suit and had forcefully tried to interfere on 18.03.2010, hence, he has filed a suit on 22.03.2010, describing the disputed property by its leaps and bounds at the foot of the plaint, which is extracted hereunder:-

“भूमि खाता संख्या 725, खसरा नं० 421घ (पुराना नं० 77)
 रकबा 0.0250 है०, स्थित मौजा बंजारावालामाफी, परगना
 पछवादून, जिला देहरादून जिसकी सीमार्ये निम्न प्रकार हैं:-
 उत्तर में- पुश्ता टी०एच०डी०सी०।
 दक्षिण में- कारगीचौक, बंजारावाला रोड।
 पूरब में- मकान श्री आर०के० कोठियाल।
 पश्चिम में- भूमि अन्य।”

4. What is astonishing is that, at the stage of trial, when the respective parties were leading their evidence qua the issues framed before the trial Court with regards to the title and possession dealing with issue no.1, the plaintiffs have filed a list of documents by way of paper no.9ग, survey

report by way of paper no.1071, Khatauni and Khasra also in order to establish that he happens to be an exclusive owner of Khara No.4217 measuring 0.0250 hectares.

5. While, on the contrary, if the evidence led by the defendant is taken into consideration at the trial stage, the defendants has filed only paper no.4671/2 issued by the MDDA and the consequent decision rendered as such on it, but has not produced any document to establish, that he has got any right, title or possession over the property, as claimed by the plaintiffs belonging to them with regards to Khasra No.4217 (Old No.77).

6. Consequently, the learned trial Court dealing with the evidence has decreed the suit and had injuncted the defendants from their wrongful interference with regards to the property, which was defined in the suit by its leaps and bounds.

7. The matter travelled in appeal at the behest of the defendant/ appellant herein being Civil Appeal No.57 of 2015, "Rajbahadur Thapa and Another Vs. Virendra Pratap Singh", and the appeal too has been dismissed by the judgment of 24.07.2023.

8. In fact, if the Appellate Court's judgment too is scrutinized, the observations, which had been made in paragraph no.9, show that the defendant/appellant has placed certain documents

on record by way of filing an application as preferred under Order 41 Rule 27 of the CPC.

9. This Court is of the view and apart from the fact that, it happens to be a settled proposition of law, that merely the fact of placing a document in support thereof, is not sufficient enough to establish a right or title over the property, based on those documents, they have to be proved as per law, to establish its admissibility.

10. The pleadings and the documents filed in support of the pleadings has had to be proved by law of evidence and the same cannot be isolatedly accepted until and unless the propriety of the documents which has been made in co-relation to its pleadings are established and proved by leading evidence.

11. In fact, no attempt, as such, has been made even at the appellate stage by the defendant /appellant herein. Consequently, the appeal too was dismissed.

12. Learned counsel for the defendant/appellant apprehends that since he is in possession of Khasra No.411ख (this Court is not dealing, at this stage, about the title and possession over the said property, since not being the subject matter of the suit) and even continue to enjoy the possession of Khasra No.411ख but, merely on the basis of an apprehension, that the decree rendered in the

plaint of the plaintiffs is being utilized for a wrongful interference over Khasra No.411ख also, is an agreement which cannot be used to invoke the jurisdiction under Section 100 of the CPC, since it will amount to be travelling over the subject, which was not even agitated before the learned trial Court and under the garb of the decree rendered in favour of the plaintiff pertaining to Khasra No. No.421घ, there could be any probability of the plaintiffs interfering in Khasra No.411ख .

13. Since the decree obviously as rendered in the suit and later on affirmed in the Appellate Court has had to be confined with regards to the property, as it has been described at the foot of the plaint, the apprehension as expressed by the defendant /appellant, though not being based on any foundation or sound material, the same cannot be accepted by this Court. Consequently, the Second Appeal stands dismissed.

14. It goes without saying, that the decree, concurrently, rendered by both the Courts, should be confined to the property, which was detailed in the foot of the plaint, as mentioned above.

15. Subject to the aforesaid, the Second Appeal stands dismissed.

(Sharad Kumar Sharma, J.)

19.12.2023