

HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (M/S) No.3577 of 2023

Ramesh Ram

.....Petitioner

Versus

Vijay Bhusan Garg & others

.....Respondents

Presence:-

Mr. Deepak Bhatt, learned counsel for the petitioner.

Mr. B.D. Pande, learned counsel for respondent nos.1 & 2.

Ms. Anjali Bhargava, learned counsel for respondent no.5.

Hon'ble Pankaj Purohit, J. (Oral)

Petitioner-plaintiff has moved this Court by means of this petition under Article 227 of the Constitution of India challenging the order dated 08.11.2023, whereby the revision bearing Revision No.59 of 2022-2023, Ramesh Ram vs. Bacchi Ram & others under Section 333 of the U.P. Zamindari and Abolition and Land Reforms Act, 1950 (for short "the Act") has been rejected and the order passed by learned Assistant Collector, First Class dated 12.10.2022 was affirmed, whereby the application under Order 1 Rule 10 of CPC moved by respondent nos.1 & 2 has been allowed.

2. Heard learned counsel for the parties.

3. A Revenue Suit No.22 of 2019 was instituted by the petitioner-plaintiff against his brothers-i.e. respondent nos.3 & 4, in respect of the property of Village Danpur, Tehsil Rudrapur, District U.S. Nagar. In the said revenue suit, an application under Order 1 Rule 10 of CPC was filed by respondent nos.1 & 2 on 21.03.2022 to implead as party respondent in the aforesaid revenue suit on the ground that the part of the subject matter in the revenue suit was agreed to be sold out to the respondent nos.1 & 2 by respondent no.4-

defendant and the date of agreement to sale is 14.01.2013 and in pursuance of the aforesaid agreement, a sum of Rs.31,75,000/- was paid to the respondent no.4-defendant. The said application was allowed by learned Magistrate by reason of its order dated 12.10.2022 mainly on the ground that the respondent nos.1 & 2 has parted with some consideration towards agreement to sale dated 14.01.2013 and on the basis of the principle of natural justice, the application was allowed and they were directed to be made party to the proceedings. Feeling aggrieved by the aforesaid order dated 12.10.2022, petitioner-plaintiff moved the Commissioner, Kumaon Division, Nainital by filing a Revision No.59 of 2022-2023, which too was rejected by learned Commissioner, Kumaon Division Nainital vide impugned order dated 08.11.2023.

4. It is feeling aggrieved by the aforesaid judgments and orders passed by learned trial court as well as by the learned Revisional court, petitioner before this Court.

5. Learned counsel for the petitioner submits that by merely entering into an agreement to sale with respondent no.4-defendant, no rights and interest have been created in favour of the respondent nos.1 & 2 to be impleaded as a party in the proceedings. The agreement to sale can only be enforced by the respondent nos.1 & 2 by bringing a suit for specific performance under the provisions of the Specific Relief Act. When the petitioner had not filed any suit against the respondent no.4-defendant for specific performance of the said agreement to sale, it is all the more weakens his case for

impleadment in the present suit between the parties.

6. Per contra, learned counsel for respondent nos.1 & 2 submits that the agreement to sale was entered into between the parties on 14.01.2013 much later of execution of the said agreement to sale, the present suit under Section 176 of the Act for partition was filed and the same is collusive in nature, therefore, respondent nos.1 & 2 has got right to defend their right in respect of the portion of the subject matter of the property, which was agreed to be sold to them by the respondent no.4-defendant. He further submits that in case, in his absence, the suit is decreed and the partition is effected between the parties and the share of respondent no.4-defendant comes to lesser than the land agreed to be sold to him by the respondent no.4-defendant, the respondent nos.1 & 2 shall be deprived of their right.

7. Having considered the rival contentions of the parties, there is no manner of doubt in the mind of this Court that mere executing an agreement to sale would not create any right in favour of the respondent nos.1 & 2. If, there is no right created in favour of the respondent nos.1 & 2, there is no question of interfering with the proceedings, which is between the parties under Section 176 of the Act. So far as the apprehension of the petitioner of his subsequent deprivation of his property, under the agreement to sale, is concerned, under the law, the respondent nos.1 & 2 has got all remedies available to bring an action against the respondent no.4-defendant for damages and recovery of the amount, which he had taken from the respondent nos.1 & 2 for that agreement to sale and may also bring an action for

specific performance of the agreement to sale by bringing a suit, if the same is still persists.

8. Both the courts committed error of law and facts while allowing the application under Order 1 Rule 10 CPC of the respondent nos.1 & 2.

9. In this view of the matter, the writ petition is allowed. Accordingly, both the orders and judgment impugned in the present writ petition are hereby set-aside.

10. No order as to costs.

(Pankaj Purohit, J.)
28.12.2023

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