



2024:UHC:9454

HIGH COURT OF UTTARAKHAND AT NAINITAL

Second Appeal No. 160 of 2023

Smt. Sunita and others Appellants

Versus

Bharat Heavy Electricals Limited
And another Respondents

Presence:-

Mr. Kirti Sharan Agarwal, counsel for the appellant.

Mr. Aakib Ahmad, proxy counsel for Mr. Lalit Miglani, counsel for
respondent no.2.

Dated : 12.12.2024

Hon'ble Vivek Bharti Sharma, J. (Oral)

This second appeal is filed by the appellants against the judgment and decree dated 21.08.2023 passed by the 3rd Additional District Judge, Haridwar in Civil Appeal No. 60 of 2014.

2. Brief facts of the case are that the appellant had filed Civil Suit No. 117 of 1993 with the prayer that respondent no.1 be restrained to remove the nursery and house of the appellant/plaintiff and not to evict him out of the same by making any interference, directly or indirectly in the same, and further that the decree of permanent prohibitory injunction be passed in his favour; that, during pendency of the said suit, the respondent no.1/BHEL had initiated the proceedings under Section 4 r/w Section 5 of the Act, 1971, which



was decided against the appellant/plaintiff; that, the suit filed by the appellant/plaintiff was also dismissed by the learned Civil Judge (Junior Division), Haridwar vide its judgment and order dated 29.09.2014; that, during pendency of the said suit, the appellant Lekhraj died and his son, being his legal heir, filed Civil Appeal No. 60 of 2014 in the court of 3rd Additional District Judge, Haridwar; that, the said court vide judgment and order dated 21.08.2023 dismissed the said appeal affirming the order dated 29.09.2014. Hence, this appeal.

2. Heard.

3. Counsel for the appellant/plaintiff would submit that trial court has committed mistake by observing that the appellant/plaintiff was not able to prove his possession over the land in dispute and without considering the fact that the property in question is in possession of the appellant/plaintiff for last more than 50 years; that, the trial court, without considering the written statement of the respondents/defendants, which clearly and specifically admitted the possession of the appellant/plaintiff over the property in question, has proceeded to passed the impugned order.

4. Perusal of the impugned order dated 29.09.2014 would reveal that based on the submissions of both the parties, the trial court framed issues in the



said suit. The trial court also framed issue no.10 as to whether the case is barred by Section 15 of the U.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1972.

After hearing the arguments, the Trial Court decided the preliminary issue no. 10 against the plaintiff by holding that as per Section 15 of the U.P. Public Premises (Eviction of unauthorized Occupant) Act, 1972 (*in short 'the Act, 1972'*), the Civil Court has no jurisdiction to entertain the suit, therefore, it decided the said issue against the appellant/plaintiff.

5. For a better understanding, Section 15 of the Act, 1972 is reproduced as under:

15. Bar of Jurisdiction - *No court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person who is in unauthorized occupation of any public premises, or the recovery of the arrears of rent payable under sub-section (1) of Section 7 or the damages payable under sub-section (2) of that Section or the costs awarded to the State Government or the corporate authority under sub-section (5) of Section 9 or any portion of such rent, damages or costs.*

6. In terms of Section 15 of the Public Premises Act, 1972, a Civil Court will not have jurisdiction to entertain any suit or proceeding in respect of eviction of a person who is in unauthorized occupation of the public



premises.

Obviously, the issue of eviction of any person in unauthorized occupation of public premises will necessarily have to include a decision to be given by the Estate Officer. All defences therefore that the eviction proceedings cannot go on before the Estate Officer because the person who is alleged to be in an unauthorized occupation, is not an unauthorized occupant needs to be raised earlier, the same is to be decided by the Estate Officer acting under provisions envisaged in the Public Premises Act, 1972.

The issue in the present suit also would have been or ought to have been raised by the present plaintiff in the proceedings before the Estate Officer. If these issues are permitted to be raised which arise in this suit, the judgment of the Estate Officer, subject to any decision in the appeal, will operate as *res judicata*. If there are certain issues, which the present plaintiff wanted to raise but did not raise, then the principles of constructive *res judicata* would apply against the plaintiff.

7. It is admitted that during pendency of the suit, the respondent no.1-BHEL/defendant no.1 had filed eviction suit as M.C.A/ No. 99/1998, whereby the proceedings under Section 4 r/w Section 5 of the Public



Premises (Eviction of Unauthorized Occupants) Act, 1971 (in short 'the Act, 1971) were drawn against the appellant/plaintiff.

8. More so, in view of Section 15 of the Public Premises Act, 1972, the trial court is not empowered to entertain any suit involving unauthorized occupation, since the said power vests in the Estate Officer/only nominated under the Public Premises Act, 1972. In such view of the matter, the trial court rightly dismissed the suit filed by the appellant/plaintiff. More so, the First Appellate Court being fully convinced with the findings of the trial court, too rightly dismissed the appeal. As such, there is concurrent finding of fact against the appellant/plaintiff.

9. In such view of the matter, this Court is of the firm opinion that no substantial question of law actually arises in this second appeal.

10. Resultantly, the second appeal is hereby dismissed *in limine*.

11. No order as to costs.

(Vivek Bharti Sharma, J.)
12.12.2024

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