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HIGH COURT OF UTTARAKHAND AT NAINITAL

Second Appeal No. 32 of 2023

03 January, 2025

Maharaj Singh & Another

...Appellants

Versus

Pandit Purnanand Shiksha Samiti & Others

...Respondents

With

Second Appeal No. 55 of 2023

Maharaj Singh & Another

...Appellants

Versus

State of Uttarakhand & Others

...Respondents

Present:-

1. Mr. M. S. Tyagi, learned Senior Counsel assisted by Mr. Ramji Shrivastava, counsel for the appellants.
2. Mr. Siddhartha Singh along with Mr. Vipul Sharma, learned counsel for the respondent no.1/defendant no.7.
3. Mr. A. D. Tripathi, counsel for the respondent nos. 3 & 4.
4. Mr. Raveendra Singh Bisht, counsel for the respondent nos. 5 & 6.
5. Mr. I. P. Kohli, learned Standing Counsel for the State.

Hon'ble Vivek Bharti Sharma, J.

Both these second appeals are being heard together as the questions of law and facts involved in both these appeals are same.

The parties to these second appeals are being referred as they appear in the array of parties in the memo of appeal in Second Appeal No. 32 of 2023.



2. These above two second appeals are arising out of the Original Suit No. 77 of 2002, in which the impugned judgment and decree dated 12.04.2016 was passed by the Civil Judge (*Junior Division*) Kashipur, District Udham Singh Nagar, whereby the suit of the appellants/plaintiffs for permanent injunction was dismissed and counter-claim of respondent no.1/defendant no.7 for possession of the suit property was decreed against the appellants/plaintiffs, and the judgments in two Civil Appeal Nos. 26 & 27 of 2016 dated 30.01.2023 passed by the 1st Additional District & Sessions Judge, Udham Singh Nagar.

3. By the impugned judgments dated 30.01.2023, the learned 1st Additional District & Sessions Judge, Udham Singh Nagar confirmed the judgments of dismissal of suit of permanent injunction & decreeing the counter-claim of respondent no.1/defendant no.7 for possession of suit property.

Submissions on behalf of the Appellants

4. Mr. M. S. Tyagi, learned Senior Counsel assisted by Mr. Ramji Shrivastava, counsel for the appellants would submit that the learned trial court and the Appellate Court grossly erred in not appreciating the fact that the Division Bench of this Court in its judgment in *Writ Petition (PIL) No. 1197 of 2005* together with *Writ Petition (M/S) No. 1125 of 2007 (Annexure No. 5 to the Second Appeal)* had categorically held in paragraph no. 36 of its judgment



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dated 25.11.2008 that the lease granted by the State Government in favour of the respondent no.4 Shiksha Samiti (*respondent no.1/defendant no.7 in present second appeal*) shall be restricted only to the extent of the area, which was in its possession i.e.

(i) The land ad-measuring 0.016 hectare of Plot No. 363Kha

(ii) Land ad-measuring 0.387 hectare of Plot No. 364

Total area 0.403 hectare of Village Amritpur, Tehsil Jaspur.

5. He would further submit that the alleged Lease Deed stated in paragraph no. 21 of the written statement/counter claim of the respondent no.1/defendant no.7 has been restricted with the observation by the Division Bench, in view of the judgment in Writ Petition (PIL) No. 1197 of 2005, only to the land 0.403 hectare; that, it was specifically observed by the Division Bench that the Lease Deed cannot be given effect to regarding the rest of the land comprised in *Plot No. 363Kha and Plot No. 364 of Village Amritpur, Tehsil Jaspur* as the same is invalid in view of the provision of *Section 107(2) of The U.P. Kshettra Panchayats and Zila Panchayats Adhiniyam, 1961*; that, notwithstanding, this clear observation of the Division Bench, the trial court erred in not considering this fact that no decree of possession could have been passed on the basis of counter claim of respondent no.1/defendant no.7 on the basis of this lease deed, which had already been held inoperative in respect of rest of the land.



6. He would further submit that the counsel for the respondent no.1/defendant no.7 in the said Writ Petition (PIL) conveniently concealed the fact from the Division Bench that the respondent no.1/defendant no.7 had already filed a counter-claim in Original Suit No. 77 of 2002 by way of the counter-claim.

7. He would further submit that no decree of possession could be passed in favour of the person, who has no title to the property even if the defendant is the trespasser of the land; that, in view of the fact that when the Division Bench of this Court had already stated in its observation (*supra*) that the Lease Deed is restricted only to 0.016 hectare comprised in Plot No.363Kha and 0.387 hectare in Plot No. 364 situated at Village Amritpur, Tehsil Jaspur, then the respondent no.1/defendant no.7 did not have claim or interest consequently any right to pray for possession of suit property in the counter-claim, hence, no decree of possession could have been passed; that, this point was raised in the first appeal but the first Appellate Court also failed to appreciate this position of law.

8. He would further submit that the Writ Petition (PIL), stated above, neither was filed by the appellants, nor they were party to that PIL and another writ petition which was disposed of by the Division Bench; that, had the appellants been party to that PIL and connected writ petition, then the appellants would have brought this fact before the



Division Bench that respondent no.1/defendant no.7 had filed counter claim in the original suit giving rise to the second appeal.

Hence these Second Appeals.

Submissions on behalf of the respondent no.1/defendant no.7.

9. Per contra, learned counsel for the respondent no.1/defendant no.7 would contest the submissions made by the learned Senior Counsel for the appellants and would submit that the appellants have conveniently not disclosed the fact that in another *Original Suit No. 19 of 2002* filed by the appellants for decree of permanent injunction in respect of the suit property, **the appellants were held to be the encroachers on the suit property and their suit for permanent injunction was dismissed.**

10. He would further submit that in present Second Appeal No. 55 of 2023, the appellants were directed by this Court vide order dated 28.06.2023 for filing the judgment dated 04.05.2005 passed by the trial court in Original Suit No. 19 of 2002; that, the same was not complied with as appellants/plaintiffs want to mislead the Court by concealing the fact that appellants/plaintiffs have been held encroachers in respect of the suit property in Original Suit No. 19 of 2002 filed by themselves.

11. He would further submit that the contention of the appellants in respect of non-



consideration of the judgment passed by the Division Bench of this Court in Writ Petition (PIL) No. 1197 of 2005 dated 25.11.2008 is also misplaced.

12. Learned counsel for the respondent no.1/defendant no.7 would further submit that in the trial court, the appellants could not produce any Lease Deed in the trial court as stated by them in paragraph nos. 1 & 2 of their plaint, therefore, the trial court was legally correct in law and fact in not granting the relief of permanent injunction.

13. Considered and perused the record in the light of the submissions made by learned counsel for the respective parties.

14. There is no force in the submission of learned Senior Counsel for the appellants/plaintiffs that no decree of possession of the land comprised in the Lease Deed executed in favour of the respondent no.1/defendant no.7 by the Government other than the land which had been restricted by the Division Bench of this Court in its judgment dated 25.11.2008 in Writ Petition (PIL) No. 1197 of 2005 can be granted.

By its impugned judgment, the trial court after detailed discussions on the facts and evidence on record has categorically stated that the judgment of the Division Bench in above Writ Petition (PIL) (*supra*) is considered and lease grant in favour of the respondent no.1/defendant no.7 can be given effect to in respect of the land other than the land



restricted by the Division Bench of this Court in its judgment dated 25.11.2008.

The learned trial court in its impugned judgment categorically reproduced the relevant part of the judgment of Division Bench in paragraph no. 34 of its impugned judgment and further observed in paragraph no. 46 that,

“46. जहां तक प्रतिवादीगण संख्या-7 को प्राप्त होने वाले अनुतोष का प्रश्न है, तो वाद बिन्दु संख्या-7, 9 के निस्तारण के आलोक में, यह स्पष्ट है कि प्रतिवादी संख्या-7 को प्रश्नगत भूमि शिक्षण संस्थान चलाने हेतु लीज पर आबंटित की गयी है तथा माननीय उच्च न्यायालय नैनीताल द्वारा Writ Petition No.1197/05, एवम Writ Petition No.1125/07 में पारित निर्णय दिनांक 25.11.2008 में कथित लीज प्रश्नगत भूमि खसरा संख्या-363ख के रकबा 0.016 है0, खसरा संख्या-364 के रकबा 0.387 है0 कुल रकबा 0.403 है0 ग्राम अमृतपुर, तहसील जसपुर, तक ही सीमित (Restrict) रखने के आदेश पारित किये हैं। अतः प्रतिवादी संख्या-7 को मात्र प्रश्नगत भूमि के उपरोक्त वर्णित हिस्से पर से, वादीगण को बेदखल करने का अधिकार प्राप्त है। तदनुसार प्रतिवादी संख्या-7 का Counter Claim आंशिक रूप से स्वीकार किये जाने योग्य है।”

*(in respect of the relief in issue nos. 7 & 9, it is clear that the respondent no. 1/defendant no.7 was granted the lease of the land in question for running an educational institution and the Hon'ble High Court vide judgment dated 25.11.2008 in Writ Petition (PIL) No. 1197 of 2005 along with Writ Petition (M/S) No. 1125 of 2007 has observed that lease is restricted to total area of land 0.403 hectare comprised in Khasra No. 363Kha and 364 situated at Village Amritpur, Tehsil Jaspur, **therefore, the respondent no.1/defendant no.7 has right to get possession of this much land, consequently, the counter claim can be decreed in part.)***

15. Learned Senior Counsel for the



appellants/plaintiffs would fairly concede the fact that the Lease Deeds, which the appellants/plaintiffs have alleged to have been executed in their favour in the year 1996, were not produced and proved before the trial court. As these Lease Deeds were the main anchor for their relief for decree of permanent injunction, therefore, the same was correctly decreed to the appellants.

16. Last but not least, the counsel for the appellants/plaintiffs did not contest the submission of the respondent no.1/defendant no.7 that in Original Suit No. 19 of 2002 filed by the appellants/plaintiffs for identical relief of permanent injunction, appellants/plaintiffs were held encroachers on the suit property consequently, that suit was dismissed.

17. In view of above discussion, this Court is of considered view that the learned Senior Counsel for the appellants/plaintiffs could not make out any case that any substantial question of law arises because of some patent incorrectness in impugned judgments or non-application of mind by the trial court and the First Appellate Court, hence there is no ground in the present appeals.

18. In such view of the matter, the trial court rightly dismissed the suit filed by the appellants/plaintiffs and decreed the counter-claim of respondent no.1/defendant no.7. More so, the First Appellate Court being fully convinced with the findings of the trial court, too rightly dismissed the



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appeal.

As such, there is correct concurrent finding of fact and law against the appellants/plaintiffs, therefore, this Court is of the opinion that no substantial question of law arises in these two Second Appeals.

19. Resultantly, the Second Appeals are hereby dismissed *in limine*.

20. No order as to costs.

(Vivek Bharti Sharma, J.)
03.01.2025

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