

HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No.836 (M/S) of 2023

Smt. Shabana

.....Petitioner

Versus

Mehboob Hasan and others

.....Respondents

Mr. Siddhartha Singh with Mr. D.S. Negi, Advocates for the petitioner.

Mr. Shubhang Dobhal, Advocate for respondent no.3

Mr. M.S. Tyagi, Sr. Advocate assisted by Mr. Sunil Chandra, Advocate for respondent no.4/2-Naseem.

Mr. Vijay Bhatt, Advocate for respondent nos.4 to 20.

Mr. Sagar Kothari, Advocate for respondent nos.40 and 41.

None for rest of the respondents.

Hon'ble Pankaj Purohit, J. (Oral)

By means of present writ petition, the petitioner/plaintiff has put to challenge the order dated 16.08.2021 passed by the Assistant Collector, 1st Class/S.D.O., Sadar, Dehradun in Original Suit No.42 of 2017-18, Meharban Ali and others vs. Alauddin and others, whereby the Amendment Application moved by the petitioner/plaintiff was rejected and at the same time, the suit was also dismissed. Petitioner has also challenged the subsequent orders passed by the First and Second Appellate Authorities dated 12.10.2022 and 13.01.2023.

2. The facts of the case are that the petitioner along with respondents Nos. 24 and 25 instituted Partition Case No. 42 of 2017–2018, Meharban Ali and others vs. Allaiddin and others, before the Assistant Collector, First Class, Sadar, Dehradun under Section 176 of the U.P.Z.A. & L.R. Act seeking partition of joint agricultural holdings. The case of the petitioners was that they collectively possessed a one-

fourth undivided share in the joint khatas, and that the defendant co-sharers had begun transferring portions of the joint land without effecting formal partition, thereby infringing their lawful rights. By order dated 21.03.2018, the Trial Court granted an ex parte temporary injunction in favour of the petitioners. Subsequently, however, on 09.02.2021, the Assistant Collector rejected the injunction application. A revision filed as Revision No. 146 of 2021 was dismissed on 08.03.2021 by the Board of Revenue. In the meantime, the defendants asserted that the petitioners had already sold their share of land. Acting on this objection, and relying upon prima facie observations recorded earlier in the temporary injunction proceedings, the Trial Court passed the impugned order dated 25.01.2021 dismissing the entire partition suit as infructuous. The Court simultaneously rejected the amendment application filed by the petitioners on the ground that it sought to introduce afterthought facts. The petitioners contend that at the relevant time, Plaintiff Nos. 1 and 2 were in judicial custody in a separate criminal matter from 30.07.2021 to 19.04.2022, and therefore Plaintiff No. 3 (the present petitioner), being the sister-in-law of Plaintiff No. 1, was compelled to file First Appeal No. 59 of 2021–2022. The Additional Commissioner, by judgment dated 12.10.2022, dismissed the appeal. Aggrieved, the petitioner filed Second Appeal No. 33 of 2022–2023. The Board of Revenue vide judgment dated 13.01.2023 dismissed the appeal holding concurrently that the suit was rightly dismissed as infructuous. The petitioner asserts that all three courts have failed to exercise jurisdiction vested in them, misconstrued the scope of amendment, misconceived the

effect of temporary injunction findings, and have erroneously presumed sale of entire shares without any evidence.

3. It is contended by the learned counsel for the petitioner/plaintiff that the aforesaid revenue suit was filed for partition. In the said suit, an Amendment Application was moved by the petitioner/plaintiff requiring certain amendments to be carried out in the plaint. The Amendment Application was rejected by the learned trial court on the premise that the petitioner/plaintiff has no share on the land i.e. suit property and therefore, the Amendment Application was rejected. At the same time, the suit has also been dismissed.

4. It is feeling aggrieved by the aforesaid rejection of the Amendment Application and consequent dismissal of the suit, the first appeal has been filed by the petitioner/plaintiff before the learned Additional Commissioner, Garhwal Mandal, Pauri, Dehradun which was registered as first appeal no.59 of 2021-22, Smt. Shabana v. Mehmood Hassan and others. Another appeal was filed by co-plaintiff which was registered as Appeal No.27 of 2022. Both the appeals were dismissed by the First Appellate Authority on 12.10.2022 affirming the order passed by the learned Trial Court on 25.01.2021.

5. Aggrieved by the dismissal of aforesaid judgment and order dated 12.10.2022, petitioner-plaintiff Smt. Shabana challenged the said order by filing Second Appeal No.33 of 2022-23, Smt. Shabana v. Mehmood Hasan and others before the Board of Revenue. The second appeal also met with the same fate of dismissal by judgment dated 13.01.2023 passed

by the Board of Revenue, Uttarakhand, Dehradun.

6. It is feeling aggrieved by all the aforesaid orders, petitioner-plaintiff is before this Court.

7. It is contended by learned counsel for the petitioner-plaintiff that the order passed by the learned Trial Court while rejecting the amendment application and dismissing the suit is completely against the law and judicial propriety. When the amendment application was being dealt with by the trial Court, it could only reject the amendment application but in the case in hand, in addition of rejecting the amendment application, the suit of the plaintiff was dismissed on the premise that the plaintiff-petitioner has got no share in the land which is the suit property. Therefore, he submits that all the orders emanating from the aforesaid courts are bad in law and deserve to be set aside.

8. On the other hand, learned Senior Advocate appearing for respondent no.4/2 submitted that since the plaintiff-petitioner has no share left in the suit property, therefore, the learned Trial Court was within its rights to dismiss the suit while rejecting the amendment application. It is further contended by him that the learned Trial Court while rejecting the amendment application of the petitioner-plaintiff has given opportunity to the plaintiff-petitioner to file a suit seeking declaration of their rights.

9. It is submitted by the learned Senior Advocate that the amendment application filed by the petitioners before the Trial Court sought to introduce fundamentally new reliefs and pleadings that were inconsistent with the original cause

of action. Such an amendment, according to the respondents, would have the effect of transforming the entire character of the suit, which is impermissible in law. The learned Senior Advocate emphasises that the petitioners were fully aware of all facts at the time of filing the suit and, therefore, cannot be permitted to bring entirely fresh claims belatedly under the guise of amendment. It is further argued by the learned Senior Advocate for the respondents that the petitioners' suit itself had become infructuous owing to subsequent events, including the alleged transfer of the property in dispute, and thus no useful purpose would have been served in allowing the amendment or continuing the proceedings. The learned counsel submits that the petitioners had failed to produce any revenue records supporting the continued existence of their claimed rights, and that the allegations made in the amendment application cannot be adjudicated without reopening issues that were never part of the original pleadings.

10. Therefore, according to him, there is no illegality in the order passed above by the learned trial Court. The orders passed by the First and Second Appellate Authorities are also with in conformity of law, and thus, no interference is required. It is further contended by learned Senior Advocate that the plaintiff-petitioner in amendment application itself has stated that they have sold their entire share and therefore, the learned Trial Court was justified in dismissing the suit.

11. Learned Counsel for the petitioner –plaintiff has

relied upon the authority of the Apex Court in the case of ‘Rajesh Kumar Aggarwal and others v. K.K. Modi and others’ reported in (2006) 4 SCC 385, wherein it was held that *Courts should allow all amendments that may be necessary for determining the real question in controversy between the parties, provided it does not cause injustice or prejudice to the other side.*

12. On the strength of aforesaid judgment, it was submitted by learned Counsel for the petitioner that while dealing with the amendment application, the Court cannot go into the merit of the case.

13. On the other hand, learned Senior Advocate appearing for respondent no.4/2 has relied upon the judgment of Hon’ble Supreme Court in the case of ‘*Shipping Corporation of India v. Machado Brothers and others*’ reported in (2004) 11 SCC 168. In order to buttress his arguments, he submits on the strength of the aforesaid case law that if at any stage of the proceedings of the suit it has come to the notice of the learned Trial Court that the suit has rendered infructuous, the suit can be dismissed under Section 151 C.P.C.

14. This argument has been confronted by learned counsel for the petitioner on the ground that for dismissal of suit as infructuous, even the material is required to be placed on record.

15. Having heard learned Counsel for the parties and having perused all the judgments impugned in the present writ petition together with the entire facts of the case, this

Court is of the view that the manner in which the amendment application has been rejected and the suit has been dealt with, is against the law which cannot be permitted. In order to dismiss the suit, even if, there is no share of the petitioner-plaintiff available in the land which is the subject matter of the suit, the procedure should have been followed which includes framing of issues and collecting evidence. This court is of the view that the Trial Court, while rejecting the amendment application dated 16.08.2021, proceeded further to dismiss the entire suit as infructuous without framing issues, without recording evidence, and without deciding the matter on merits. This course of action is wholly impermissible. Even if, an amendment is held to be legally untenable, the consequence is confined to rejection of the amendment alone. Rejection of an amendment cannot lead to dismissal of the suit itself, particularly at a stage where no trial has commenced and disputed facts such as alleged sale of the plaintiffs' share have not been adjudicated through evidence.

16. The First Appellate Court mechanically affirmed the dismissal without complying with Order 41 Rule 31 CPC, and the Board of Revenue dismissed the second appeal despite the patent jurisdictional irregularity committed by the Trial Court. All three courts, therefore, acted contrary to the statutory scheme under Sections 331 and 341 of the U.P.Z.A. & L.R. Act read with the CPC. Since the dismissal of the suit followed solely from rejection of the amendment application, and not from any adjudication on merits, the impugned orders cannot be sustained. The defect goes to the root of

jurisdiction, warranting interference under Article 227 of the Constitution.

17. In such view of the matter, this Court is of the opinion that the impugned orders deserve to be set aside.

18. Accordingly, the writ petition is allowed. Impugned orders dated 16.08.2021 passed by the Assistant Collector, First Class/Sub Divisional Officer, Sadar, Dehradun in Partition Suit No.42 of 2017-2018, Meharban Ali and others v. Alauddin and others, judgment and order dated 12.10.2022 passed by the Additional Commissioner, Garhwal Division, Camp Dehradun in Appeal No.59 of 2021-2022, Smt. Shabana v. Mehmood Hasan and the judgment dated 13.01.2023 passed by the Board of Revenue, Uttarakhand, Dehradun in Second Appeal No.33 of 2022-2023, Smt. Shabana v. Mehmood Hasan and others, are hereby set aside.

19. As a result, the amendment application is allowed. The Trial Court is directed to proceed with the matter in accordance with law.

20. Pending application, if any, stands disposed of.

(Pankaj Purohit, J.)
18.12.2025

Ravi