



2025:UHC:123

HIGH COURT OF UTTARAKHAND AT NAINITAL

Civil Revision No. 129 of 2024

03 January, 2025

Virendra Singh Chauhan

... Revisionist

Versus

Navneet Kumar Jain & Anr.

... Respondents

Presence:-

Mr. Piyush Garg, Advocate for the revisionist

Hon'ble Vivek Bharti Sharma, J.

Present Civil Revision is filed by the revisionist/defendant no.1 against the order dated 03.12.2024 passed by learned 1st Additional Civil Judge Senior Division, Dehradun in O.S. No.72 of 2017, whereby the application filed by the revisionist/defendant no.1 for issuance of Commission for ascertaining the factual position on spot of the property in question, was dismissed.

2. Brief facts of the case are that respondent no. 1/plaintiff instituted a suit being OS no. 72 of 2017 in the court of learned Civil Judge (Senior Division) Dehradun against the revisionist/defendant no.1 for grant of a decree of specific performance stating that the revisionist/defendant no.1 is the absolute owner in possession of the suit property and had proposed to sell the same to the respondent no. 1/plaintiff and respondent no.2/defendant no.2 for sale consideration of ₹ 12,00,000/-; that, a registered agreement to sell was executed between the parties on 15.03.2013 and a sum of



₹ 10,00,000 was paid in advance but despite that the revisionist/defendant no.1 did not appear to execute the sale deed in favour of the respondent no.1/plaintiff.

3. The revisionist/defendant no.1 appeared before the Trial Court and filed his written statement. In the written statement, it was contended that no agreement to sell with intention or knowledge of agreeing to sell the said land or any other land has ever been executed between the parties; that, the aforesaid agreement to sell had only been executed by the revisionist/defendant no.1 as security for the loan of ₹ 10,00,000 taken out by the revisionist/defendant no.1 from the respondent no.1/plaintiff with the express disclosure of the fact that the land in question is not sale-able; that, the land described in the agreement to sell and the schedule of plaint is in fact a land being used as a passage/approach road for Doon Ghati Institute of Professional Education.

4. Learned counsel for the revisionist/defendant no.1 would submit that as it is was the specific plea of the revisionist/defendant no.1 that the nature of the land is such which could not have been agreed to be purchased by the respondent no.1/plaintiff and could not have been agreed to be sold by the revisionist/defendant no.1 and that it is being used as an approach road for the Doon Ghati Institute of Professional Education, therefore, the nature of the land in question and its use is the most crucial fact required for effective adjudication of the case in hand. Hence, the revisionist/defendant no.1 filed the application paper no.60C2 for issuance of Commission to determine the nature of the land but the learned Trial Court has dismissed the said application by the impugned



order, hence, this revision.

5. Learned counsel would further submit that the controversy between the parties hinges around the nature of land, therefore, it is imperative to issue a Commission to ascertain the nature of land, which cannot be determined by way of any other evidence. He would further submit that the Trial Court erred in law in dismissing the application of the revisionist/defendant holding that the Court cannot assist a party for collection of evidence. In support of his case, he would place reliance upon a judgment of Hon'ble Supreme Court in re ***Haryana Waqf Board v. Shanti Sarup and Ors. (2008) 8 SCC 671.***

6. Heard learned counsel for the revisionist and perused the entire material available on file as well as gone through the case-law.

7. The Trial Court has dismissed the application paper no.60C2 holding that the revisionist/defendant no.1 has accepted the sale contract dated 15.03.2013 and as far as the dispute as to for what purpose the said contract was executed is concerned, it is a matter of evidence. It was also observed that the Court cannot assist a party for collection of evidence, thus, the basis for issuing the Commission in the present case does not seem sufficient. In the opinion of this Court, the Trial Court is justified in rejecting the application moved by the revisionist/defendant no.1 under Order 26 Rule 9 CPC. It is trite that the Trial Court is not to assist the either party for collection of the evidence. The fact whether the suit property lies on the common path or not can be established by way of evidence and it is for the respondent



8. Insofar as case of **Haryana Waqf Board** (*supra*) referred by counsel for the petitioner/plaintiff is concerned, it is distinguishable on facts and is therefore of no help to the revisionist/defendant no.1. In this case, the Commission was to be issued for the purpose of the demarcation of the suit land whereas in the present case the main dispute between the parties is with regard to the intention of the parties behind the execution of agreement to sell.

9. Moreso, this Court, in exercise of revisional jurisdiction under Section 115 of CPC, can only exercise its jurisdiction, if it comes to the conclusion that the subordinate courts exercised a jurisdiction not vested in it by law; or has failed to exercise a jurisdiction so vested; or has acted in exercise of its jurisdiction illegally or with material irregularity. In the absence of any of the three contingencies mentioned above, the revisional court should not interfere in the order passed by the court below. In the case at hand, as already stated above, impugned order does not suffer from any illegality or material irregularity. No interference is, therefore, called for.

10. Accordingly, the civil revision is dismissed *in limine*.

(Vivek Bharti Sharma, J.)
03.01.2025

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