

HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal From Order No. 6 of 2026

Shri Karn Fartyal

.....Appellant

Versus

Smt. Devki Devi and others

.....Respondents

Present:-

Mr. Deepak Bhatt, Advocate for the appellant.

Mr. Narendra Bali, Advocate for the respondent nos. 1 and 2.

Mr. Subhash Joshi, Advocate for the respondent no.3.

Hon'ble Ravindra Maithani, J. (Oral)

Instant appeal is preferred against the order dated 29.11.2025, passed in Civil Suit No. 41 of 2024, Smt. Devki Devi and another Vs. Nandan Singh and another, by the court of 1st Additional Civil Judge (Senior Division), Rudrapur, District Udham Singh Nagar ("the suit"). By it, a temporary injunction application under Order 39 Rule 1 & 2 of the Code of Civil Procedure, 1908 ("the Code") filed by the respondents has been allowed and the appellant has been restrained from interfering into the possession of the respondents in the land-in-dispute.

2. Heard learned counsel for the parties and perused the record.

3. The suit was filed by the respondent nos. 1 and 2 on the ground that the respondent no.1 is legally wedded wife of the respondent no.3. The respondent no.3 was co-sharer of some agricultural land. He without divorcing the respondent no.1, started staying with another woman and from that wedlock, the appellant was born. There was some dispute, therefore, an agreement was

entered between the parties on 15.01.2012, when the respondent no.3 agreed to transfer 4 acres of land in favour of the respondent no.1, but in violation of the term of settlement dated 15.01.2012, the respondent no.3 transferred 4 acres land in favour of the appellant which was duly registered on 20.06.2023. The respondent nos. 1 and 2 did file a suit for cancellation of the gift deed registered on 20.06.2023 as well as for permanent injunction. In that suit, an application for temporary injunction was filed. The appellant did file objection to the temporary injunction application. According to him, post settlement of 15.01.2012, on 16.03.2013, the agricultural land was transferred by the respondent no.3 in favour of the respondent no.1 by way of a gift deed. The suit has been filed so as to grab the land of the appellant, who is in possession of the land-in-dispute. He is co-sharer of the land-in-dispute.

4. Learned counsel for the appellant submits that appellant is in possession of the land-in-dispute. He got the land by gift deed from his father, respondent no.3 which was registered in June, 2023. He submits that the court below while deciding the temporary injunction application did not advert to the factum of possession. The appellant is owner in possession of the land-in-dispute. He submits that post 15.01.2012, when allegedly an agreement was entered into between the respondent no.3 and the respondent no.1 in the year 2013, 2 acres land was transferred by way of gift deed by the respondent no.3 in favour of respondent no.1 on which she is in possession. He submits that the appellant is aggrieved by the direction that he may not interfere into the possession of the land-in-dispute. Whereas, according to learned counsel for the appellant, the respondent nos. 1 and 2 did not

plead in their plaint that they are in possession of the land and no finding of possession has been given, as such.

5. Learned counsel for the respondent nos. 1 and 2 submits that in the year 2012, an agreement was entered into between the parties, by which the respondent no.3 agreed to transfer 4 acres of land to the respondent no.1. He submits that in the year 2013, the respondent no.3 gifted 2 acres of land to the respondent no.1 on which she is in possession.

6. The Court wanted to know from the respondent nos. 1 and 2 as to where is it pleaded by them in their plaint that they are in possession of the land-in-dispute and by which document did they get possession? Because the settlement which was entered into on 15.01.2012, which is part of the appeal, it was promised that 4 acres land shall be handed over to the respondent no.1. It does not record that possession of 4 acres land was given to the respondent no.1 on that date. Subsequently, in the year 2013, 2 acres of land was gifted by the respondent no.3 to the respondent no.1. That 2 acres land, it is admitted at Bar is different than the land-in-dispute. The question is how did the respondent nos. 1 and 2 get the possession of the land-in-dispute?

7. Learned counsel for the respondent nos. 1 and 2 submits that as such, it is not pleaded by the respondent nos. 1 and 2 in their plaint that they are in possession of the land-in-dispute. He submits that in case, temporary injunction application is rejected, the appellant would transfer the land to the detriment of the rights of the respondent nos. 1 and 2.

8. While deciding the temporary injunction application, the Court has to look into the three aspects of the matter that are *prima facie* case, balance of convenience and irreparable loss.

9. Though it is pleaded by the respondent nos. 1 and 2 that they entered into the agreement with the respondent no.3, in the year 2012 and the respondent no.3 agreed to transfer 4 acres of land sometimes in future in favour of the respondent no.1, but the respondent nos. 1 and 2 did not file any document to reveal that, in fact, 4 acres of land was handed over to respondent no.1 at any time thereafter.

10. Admittedly, in the year 2013, a gift deed of 2 acres of land was executed by the respondent no.3 in favour of the respondent no.1 on which, the respondent no.1 is in possession. As such, categorically in the plaint, the respondent nos. 1 and 2 has not stated that they are in the possession of the land-in-dispute. The appellant is recorded tenure holder. Therefore, this Court is of the view that, in fact, the respondent nos. 1 and 2 could not make out a *prima facie* case.

11. Insofar as, balance of inconvenience is concerned, it is also not in favour of the respondent nos. 1 and 2 because they could not even *prima facie* suggest their possession on the land-in-dispute.

12. Insofar as, irreparable loss is concerned, it has not been even suggested as to what irreparable loss would be caused to the respondent nos. 1 and 2. On this, learned counsel for the respondent nos. 1 and 2 submits that, in case, the land is transferred by the appellant to some third person or third party

right is created, it may prejudice the interest of the respondent nos. 1 and 2. At it, learned counsel for the appellant submits that the appellant may be directed that he shall not create any third party interest in the land in dispute.

13. Having considered, this Court is of the view that instead of passing a restraint order with regard to the possession, the temporary injunction application could be decided by directing the appellant and the respondent no.3 not to create any third party interest on the land-in-dispute, till the suit is finally decided.

14. The appellant and the respondent no.3 shall not create any third party interest in the land-in-dispute till the disposal of the suit.

15. The impugned order dated 29.11.2025 is modified accordingly.

16. The appeal stands disposed of in terms thereof.

(Ravindra Maithani, J.)
15.05.2026

Jitendra