

HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal Against Order No. 46 of 2026

Smt. Rita Sen Applicant

Vs.

Sri Tarun Kumar and others Respondents

Present: Mr. Priyanshu Gairola (through video conferencing) and Mr. Jai Krishna Pandey, Advocates for the appellant.
Mr. Sagar Kothari, Advocate for the respondents.

Hon'ble Ravindra Maithani, J. (Oral)

The challenge in this appeal is made to Order dated 02.02.2026, passed in Original Suit No.23 of 2026, Shri Tarun Kumar Vs. Shri Birju and others, by the court of Civil Judge (Sr. Div.), Vikasnagar, District Dehradun ("the Suit"). By the impugned order, passed under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908 ("the Code"). By it, the respondents in the suit including the appellant has been restrained not to interfere into the possession of the respondent no.1/the plaintiff in the suit property and also not to interfere in the construction that is being raised by the respondent no.1.

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

3. The suit has been instituted by the respondent no.1 seeking declaration for cancellation of multiple sale-deeds issued in favour the defendants in the suit, including the appellant. The husband of the defendant no.5 in the suit namely, Sanjeev Kumar Gupta executed the sale-deed dated 04.07.2005 and correction deed dated 15.10.2012 in favour of the appellant. Initially the sale-deed was with regard to

Khasra No.871-M admeasuring 0.121 Hectare, but by correction-deed dated 15.10.2012, the Khasra number was replaced from 871 to 872-M. In the suit, schedule of property has been given and the appellant has filed a copy of the sale-deed dated 04.07.2005 and correction-deed dated 15.10.2012. It is admitted to the learned counsel for the parties that the suit property and the schedule of the property included in the sale-deed dated 04.07.2005 in favour of the appellant are one and the same, the boundaries are the same.

4. It is claim of the respondent no.1/the plaintiff that his predecessor in interest had already been sold the property in suit much before it was sold to the husband of the defendant no.5 in the suit, who subsequently, sold the property to the appellant. It is argued that once the property had already been sold to the predecessor in interest of the respondent no.1, the same property could not have been sold to the husband of the defendant no.5 in suit. The rights of the predecessor in interest of the respondent no.1 had already been crystallized. The vendor had after selling the property to the predecessor in interest of the respondent no.1, had left no interest in the suit property. Therefore, the sale-deed and correction-deed in favour of the appellant have been sought to be cancelled.

5. Learned counsel for the appellant submits that the appellant had received the property on 04.07.2005 from the husband of the defendant no.5 in the suit and the correction was made on 15.10.2012 in the sale-deed. Accordingly, the property has been mutated in the name of the appellant, whereas the respondent

no.1 had purchased the property on 29.01.2026 and, immediately thereafter, he encroached upon the property of the appellant and started raising construction and had filed the suit on 02.01.2026. He filed an application for temporary injunction, in which the impugned order has been passed.

6. Learned counsel for the respondent no.1 submits that, in fact, the predecessor in interest of the respondent no.1 had already sold the property; the same property could not have been sold to the appellant. Therefore, the sale-deed executed in favour of the appellant by the husband of the defendant no.5 in the suit is null and void.

7. It is admitted that, in fact, the name of the predecessor in interest of the respondent no.1 had already been mutated with regard to the suit property, which means the appellant and the predecessor in interest of respondent no.1, both have been mutated with regard to the suit property. The boundaries in the sale-deed are one and the same. The respondent no.1 was to raise construction. Admittedly, he purchased the suit property on 29.01.2026 and immediately thereafter, he filed a suit on 02.02.2026, when the impugned order was passed.

8. In the impugned order, the court had not considered these facts. In fact, in the impugned order, the court records, as to whether the earlier vendor had any right to make any correction or not? There is no material on it. But, this fact was ignored that mutation had already been done. The rights of vendors and purchaser could have been *prima facie* examined by a scrutiny of

the respective sale-deeds. Therefore, this Court is of the view that the appellant and other defendants in the suit ought to have been permitted to file their objections before issuing any ad interim injunction. Accordingly, the impugned order deserves to be set aside.

9. The impugned order is set aside.

10. The appellant and other defendants in the suit shall file their objections to the injunction application and it shall be decided without entertaining any unnecessary adjournment. Since, both the parties claim their ownership and possession on the one and the same piece of land, based on the sale-deeds that have been executed long back, the interest of justice demands that the parties may be directed to maintain *status quo* till the application under Order 39 Rule 1 and 2 of the Code is decided.

10. The parties shall maintain *status quo* till the application under Order 39 Rule 1 and 2 of the Code, filed by the respondent no.1 is decided. The *status quo* means that parties shall not raise construction, whatsoever, on the suit property till the application for temporary injunction is decided.

11. The appeal is decided accordingly.

(Ravindra Maithani, J.)
20.02.2026

Sanjay

SANJAY
KANOJIA