

HIGH COURT OF UTTARAKHAND AT NAINITAL

Second Appeal No. 55 of 2026

Chandra Shekhar Kargeti and another Appellants

Vs.

Rameshwar Prasad Respondent

Present : Mr. A.D. Tripathi, Advocate for the appellants.

JUDGMENT

Hon'ble Ravindra Maithani, J. (Oral)

The appellants propose to challenge the following judgments and orders in the instant second appeal:-

- (i) Judgment and Order dated 12.04.2022, passed in Civil Suit No.20 of 2016, Chandra Shekhar and another Vs. Rameshwar Prasad, by the court of Civil Judge (Jr. Div.)/Judicial Magistrate, Ramnagar, District Nainital ("the suit"); and
- (ii) Judgment and order 11.03.2026, passed in Civil Appeal No.22 of 2022, Chandra Shekhar Kargeti and another Vs. Rameshwar Prasad, by the court of District Judge, Nainital ("the appeal").

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

3. The suit was filed by the appellants for cancellation of registered gift deed dated 23.02.2016. It has been the case of the appellants that Khasra No.700, admeasuring 0.035, Khasra No.702, admeasuring 0.275, Khasra No.703, admeasuring 0.044, Total Area 0.354 Hectare ("the land") were recorded in the name of the appellants and the respondent. The respondent is uncle of the appellant no.1 and brother-in-law of appellant no.2.

4. It has been the case of the appellants that on 23.02.2016, the respondent called the appellants at Tehsil Ramnagar, so that, the land may be declared as non-agricultural. Believing the respondent, according to the appellants, they reached Tehsil Ramnagar on stipulated date, where trusting the respondent, the appellants signed and put their thumb impressions on various documents. On 14.03.2016, the appellants came to know that under the garb of declaring the land as non-agricultural land, the respondent had got gift deed executed in his favour of 0.118 Hectare land that belonged to the appellants.

5. It has been the case of the appellants that the gift deed was executed by playing fraud and by misrepresentation by the respondent. The appellants approached the authorities and the police was also directed to look into the matter. Based on these allegations, the suit has been filed for cancellation of the gift deed dated 23.02.2016.

6. The respondent did file his Written Statement in the suit. According to him, the land was purchased by him for running a school, which the respondent had been running in a rented accommodation. Since, the relations between the brothers of the respondent were cordial at that time; he got the land purchased in the name of his brothers as well. One of whom, is father of appellant no.1 and husband of respondent no.2. It has further been the case of the respondent that the appellants knew that the land belongs to the respondent, which he had purchased by the self acquired assets. Therefore, under a moral obligation the appellants as well as another brother of the respondent jointly

reached Tehsil Ramnagar in the Sub Registrar Office and executed gift deed dated 23.02.2016 in favour of the respondent, but it is the case of the respondent that subsequently, the appellants tried to put pressure on the respondent. The land has already been mutated in the name of the respondent. The appellant no.1 is post graduate, who also runs a school. The appellant no.2 is also an educated woman. They both, with their full knowledge, executed the gift deed dated 23.02.2016. Based on the pleadings of the parties on 13.01.2017, the following issues were framed in the suit:-

- (i) Whether the gift deed dated 23.02.2016 is liable to be declared null and void? If yes, its effect?
- (ii) Whether the plaintiff has any cause of action?
- (iii) Whether the plaintiffs have properly valued the suit?
- (iv) Whether the plaintiffs have paid the sufficient court's fee?
- (v) Any other relief?

7. The parties adduced evidences in the suit. On issue no.1, the trial court made extensive discussion of the evidence and held that the gift deed dated 23.02.2016 is not liable to be declared as null and void.

8. On issue no.2, the court held that the appellants have no cause of action to institute the suit.

9. On issue no.3, the court held that the suit has been properly valued.

10. Issue no.5 had already been decided on 09.02.2016. Accordingly, the relief clause was discussed and suit was dismissed. It was challenged in the appeal, which as stated, has already been dismissed.

11. Learned counsel for the appellants submits that the land was in the name of the father of the appellant no.1 and husband of the appellant no.2. The appellants were co-sharers of the land. In the garb of declaring the land as non-agricultural land under Section 143 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 ("the U.P.Z.A. & L.R. Act") the respondent called the appellants in Tehsil Ramnagar and by misrepresenting and playing fraud got their signatures and thumb impressions on certain documents on 23.02.2016. It is argued that the appellants did sign and put their thumb impressions under the impression that they are preparing documents for declaring their land as non-agricultural. But subsequently, it was revealed that under the garb of declaration under Section 143 of the U.P.Z.A. & L.R. Act the respondent has got a gift deed executed, which is null and void.

12. Learned counsel also argued that, in fact, the respondent in his evidence had admitted that he had contacted the appellants for seeking declaration under Section 143 of the U.P.Z.A. & L.R. Act. He has referred to the statement of DW1 Ram Prashad Kargeti particularly, page 2, top paragraph. Learned counsel would submit that the legal provisions have not been considered; the evidences have not been rightly appreciated. Merely, the courts below assumed that since the appellant no.1 is post graduate, he could not be cheated, which it is argued, is not a lawful

presumption. It is also argued that the respondent did not produce any sale deed to reveal that the land was purchased by the respondent.

13. Second appeal under the Code of Civil Procedure, 1908 (“the Code”) cannot be filed as a matter of right. Second appeal from decree can only be entertained if, the Court is satisfied that the case involved a substantial question of law.

14. In the case of Hero Vinoth (Minor) Vs. Seshammal, (2006)5 SCC 545, the Hon’ble Supreme Court summarized the principle made to Section 100 and observed as follows:-

“24. The principles relating to Section 100 CPC relevant for this case may be summarised thus:

- (i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.
- (ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.
- (iii) The general rule is that High Court will not interfere with the concurrent findings of the courts below. But it is not an absolute

rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to “decision based on no evidence”, it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.”

15. It is not disputed that the land was recorded in the name of the appellants, respondent and brother of the respondent Leela Dhar Kargeti. What has been stated by the respondent in his Written Statement was that he had purchased the land in his own name, in the names of his brothers as well. Sale deed of the land is not in question. Therefore, there was no need of production of the sale deed. It was not required at all. It was not related to any issue that was framed in the suit.

16. The only question was, as to whether the gift deed dated 23.02.2016, executed by the appellants in favour of the respondent is null and void or not? And related to it, the question was, whether in fact, the gift deed dated 23.02.2016 was executed in favour of the respondent by playing fraud with the appellants or by misrepresentation made by the respondent. That was a factual issue. The trial court has extensively dealt with the evidence. The attending circumstances while appreciating evidences the trial court has taken into consideration the status of the parties and took note of the fact that, in fact, appellant no.1 also runs a school, who is post graduate. The appellant no.2 is also an educated woman. There were stamps of Rs.56,000/- that were also purchased, on which, the gift deed was recorded. Taking into consideration all these relevant materials, the finding has been

recorded. It is not the case that the court below has ignored the material evidence or acted on no evidence. It is also not the case that the court has drawn wrong inferences from the proved facts by applying the law erroneously. It is a case of the concurrent finding of the fact by both the courts below. In fact, there is no substantial question of law involved in this case. Therefore, there is no reason to admit the appeal and it deserves to be dismissed at the admission stage itself.

17. The appeal is dismissed *in limine*.

(Ravindra Maithani, J.)
11.06.2026

Sanjay

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