

HIGH COURT OF UTTARAKHAND AT NAINITAL

Second Appeal No.124 of 2011

Nagar Palika Parishad Roorkee through its Executive Officer
and another

.....Defendants/Appellants

Versus

Smt. Kanta Sachdeva and Another ..Plaintiffs/Respondents

Present:-

Mr. Lalit Miglani, Advocate for the appellants.
Mr. D.S. Mehta, Advocate for respondent no.1.
Mr. I.P. Kohli, Advocate for respondent no.2.

Hon'ble Siddhartha Sah, J.(Oral)

This Second Appeal has been preferred against the judgment and decree dated 26.11.2011 passed by the Additional District Judge, Roorkee, District Haridwar, in Civil Appeal No. 20 of 2008, Smt. Kanta Sachdeva vs. Nagar Palika Parishad, Roorkee and Another, whereby the said appeal has been allowed and the judgment and decree dated 29.08.2008 passed by the Civil Judge (Senior Division), Roorkee, District Haridwar, in Original Suit No. 51 of 2003 has been set-aside and thereby the appellate court has decreed the suit for permanent injunction.

2. Brief facts of the case are that the plaintiff/respondent No. 1 herein instituted a suit for permanent injunction against defendant Nos. 1 and 2 in the Court of Civil Judge (Senior Division), Roorkee, with the pleadings that the plaintiff had purchased land situated within Khasra Nos. 490 and 497, Village Ganeshpur,

Roorkee, from the previous Bhumidhar with transferable rights, who was the owner in possession, namely Kunwar Rajendra Singh, through sale deeds dated 17.08.2000 and 16.01.2003. Further, in respect of Khasra No. 490, the plaintiff also purchased land from Sri Narendra Verma and Sri Yogesh Mathur through a registered sale deed dated 30.01.2003 and came into possession as Bhumidhar with transferable rights pursuant to the said sale deeds. The purchased property is situated at Dehradun Bypass road.

3. It is further pleaded that the property purchased by the plaintiff is recorded as *Abadi* in the revenue records since the past and it does not fall within the definition of “land” as defined under Section 3(14) of U.P. Act No. 1 of 1951. The plaintiff leased out the said property to defendant No. 3 for 30 years on the basis of an NOC issued by the District Magistrate, Haridwar, for operating a retail outlet of petrol/diesel, in which the containers of defendant No. 3 are installed, wherein approximately 1200 litres of petrol is stored. On the property, a big pit was dug. A container having a capacity of more than 2,000 litres has been installed and thereafter filled with petrol. On the property, actual possession is of the lessee/tenant, defendant No. 3, and the possession of the lessee/tenant is treated as the possession of the landlord/owner.

4. In addition to this, a large area of land in the vicinity was also demarcated, which took several days, but

the defendants never raised any objection to it. In the plaint, there is a reference to a previous suit which was decided in favour of the vendor of the plaintiff. There is also a pleading with respect to an earlier survey and demarcation of Khasra No. 490 on the orders of the Hon'ble High Court. There is also a reference that after measurement on the spot of Khasra Nos. 490 and 495, the parties to Suit No. 130/96 arrived at a compromise and the case was decided. It is further pleaded that during the pendency of Suit No. 130/96, the plaintiff purchased the property by virtue of a registered sale deed dated 16.01.2003 and obtained possession on the spot and was impleaded as a party in the case, thereby acquiring all rights which were vested in the vendor Rajendra Singh Jain, whose name was recorded in the revenue records as Bhumidhar with transferable rights.

5. That it was further pleaded in the plaint that defendant Nos. 1 and 2 have no concern with the property in question, but are unauthorizedly and without any basis interfering and attempting to forcibly take possession of the property in question and also extending threats. On 04.09.2003, officials of defendant No. 1 came to the land and attempted to interfere in the possession of the tenant (lessee) of the plaintiff but failed in their wrongful intentions, and while leaving, extended threats regarding taking possession of the plaintiff's property. Since defendant Nos. 1 and 2 were not paying heed, the necessity arose to institute the suit.

Thus, the suit was instituted for permanent injunction against defendant Nos. 1 and 2, restraining them from directly or indirectly interfering in the possession and use of the property in question of the plaintiff's lessee.

6. The aforesaid suit was registered as O.S. No. 51 of 2003, Smt. Kanta Sachdeva vs. Nagar Palika Parishad and Others. The defendant Nos. 1 and 2 contested the suit by filing their written statement denying the averments made in the plaint and pleading that the property in dispute is not part of Khasra Nos. 490 and 497, but is part of Khasra No. 495/2, in which appellant No. 1 is the owner in possession. The appellants further pleaded in the written statement that the plaintiff/respondent has admittedly executed a lease deed in favour of defendant/respondent No. 2 for 30 years; therefore, the plaintiff/respondent, who is not in actual and physical possession, has no locus standi to file the suit for permanent injunction.

7. It was further pleaded in the W.S. that the plaintiff is not in actual possession of the suit property and has no right to institute the suit; since the property in question falls within the U.P.Z.A. & L.R. Act, therefore, without resorting to Section 143 of the U.P. Zamindari Abolition & Land Reforms Act and by using land contrary to law, the plaintiff has lost her rights by virtue of Sections 165, 166, 167, and 181 of the U.P.Z.A. & L.R. Act; the suit is barred by Section 331 of the Z.A. Act; the suit property is not situated in Khasra Nos.

490/497, Village Ganeshpur, but in Khasra No. 495/2, the ownership of which vests in the Nagar Palika; Mr. Bhram Singh, Advocate has not conducted any measurement or survey or demarcation of Khasra Nos. 490/495; O.S. No. 130 of 1996 related to land in Khasra No. 490, and the southern portion of Khasra No. 490 lies between Khasra Nos. 495/1 and 495/2. In Khasra No. 495/1 there is a road, and Khasra No. 495/2 is barren land, the ownership of which vests in the Nagar Palika.

8. After the completion of pleadings, the Trial Court framed the following 8 issues:-

“(i) Whereas the plaintiff/respondent is in possession of disputed Khasra Nos.490 and 497?

(ii) Whether the disputed property is situated in Khasra Nos.495/2, as pleaded by defendant in its W.S.?

(iii) Whether disputed property is situated in Khasra Nos.490 and 497?

(iv) Whether the suit of the plaintiff is barred under Section 331 of the U.P. Act No.1 of 1951?

(v) Whether the plaintiff has given the disputed property to the defendant no.3 for the purpose of retail sale?

(vi) Whether the plaintiff is not entitled to institute the suit as pleaded in para 2 of the written statement of the defendant?

(vii) Which relief, if any, is the plaintiff entitled to?

(viii) Whether by giving the disputed property on lease the rights of the plaintiff over the disputed property have extinguished? If yes, its effect?”

9. In support of her case, the plaintiff brought on record a number of documentary evidence as also the defendant nos.1 & 2 filed a number of documents in support of their case. To prove her case, the plaintiff examined four witnesses whereas to prove its case, the defendant Nagar Palika, Roorkee examined one witness.

10. After hearing the learned counsel for the parties, the trial court/Civil Judge (S.D.), Roorkee dismissed the suit vide judgment and order dated 29.08.2008 mainly on the premise that since the plaintiff had granted a lease in favour of defendant no.3 vide a registered lease deed dated 26.08.2008 she has lost the actual physical possession and on the date of institution of the suit, she was not in possession of the same nor was she owner of the disputed property as per provisions of Section 189(aa) of the U.P.Z.A. and L.R. Act and having come to such a conclusion the suit of the plaintiff was dismissed.

11. On Issue Nos.1 and 3, the Trial Court gave a finding that since there is no similarity between the site plan/description of property and the property in question, therefore, the plaintiff failed to prove Issue Nos.1 and 3.

Issue no.2 was decided by the trial court to the effect that the defendant Nos.1 and 2 failed to prove that entire property is situated in Khasra No.495/2. The Issue No.4 was decided against the defendant nos.1 and 2 and that the Court had jurisdiction to hear the suit. Issue No.5 was decided to the effect that there is no adverse evidence on record and it is admitted fact need not be proved. Issue Nos.6 and 8 were decided to the effect that in view of provisions of U.P. Act No.1 of 1951 and U.P. Act No.9 of 1957 and the case law the title of plaintiff has extinguished and from the date of registration of lease deed dated 26.08.2008, the plaintiff has no right or title on the property in question.

12. Aggrieved against the judgment/decreed of the trial court dated 29.08.2008, the plaintiff preferred an appeal before the District Judge, Haridwar which was registered as Civil Appeal No.20/2008, Smt. Kanta Sachdeva vs. Nagar Palika Parishad, Roorkee and others. The said appeal was finally heard and allowed by the first appellate court/ Additional District Judge, Roorkee vide judgment and order dated 26.11.2011, whereby the trial court's judgment/order dated 29.08.2008 was set aside and the original suit of the plaintiff was decreed against the defendant nos. 1 and 2 for permanent injunction. The cross objections of defendant nos.1 and 2 were dismissed.

13. In its detailed judgment, the first appellate court revisited the issues and after considering the survey commission report and other documents on record came to the conclusion that the western boundary of Khasra No.490, Village Ganeshpur is as per spot and likewise being the Sajra, the said fact was not stated to be wrong by the defendant from which it is clear that the disputed property is situated in Khasra No.490 whose no part is in Khasra No.495/2. Also Khasra No.490 and southern boundary of Khasra No.491 are in one line, therefore, the disputed property is a proved to be in Khasra No.490 as is clear from perusal of the report of survey commission. The first appellate court also came to the conclusion that the property sold is identified from its boundaries and by mentioning any other Khasra number a third party cannot derive any benefit. The first appellate court also held that inspite of grant of lease the lessor's constructive possession always remains and defendants do not deny plaintiff's ownership and on the basis of case law, returned the finding that the plaintiff is owner in possession of disputed property. On Issue Nos.6 and 8, the first appellate court considered that in para no.2A of the plaint the land is not being used for the agriculture or agricultural related work has been pleaded which has not been denied in W.S.. The first appellate court relied upon the judgment of the Hon'ble Supreme Court in the case of Commissioner of Income Tax, Madras vs. M/s.

Gemini Pictures Circuit Private Ltd. reported in AIR 1996 SC 1522 being applicable in the case that the disputed property would not be deemed to be agricultural land and by execution of lease deed, the rights of plaintiff would not be extinguished. The first appellate court held that the plaintiff had right to institute the suit against the defendant nos.1 and 2 and thus proceeded to allow the appeal of the plaintiff.

14. The said judgment and order dated 26.11.2011 has been challenged by the defendant nos.1 and 2 in this second appeal. The instant second appeal has been admitted vide order dated 10.01.2012 on the following substantial questions of law:-

“(i) Whether a decree of permanent injunction can be granted on a property which was leased out and over which the plaintiff has no actual or physical possession?

(ii) Whether the lower court has erred in appreciating the revenue records, which were placed before it in evidence?”

15. Heard the learned counsel for the parties at length and perused the record.

Substantial Question of Law No.(i)

16. While addressing the first substantial question of law, the learned counsel for the appellant Mr. Lalit Miglani, submitted that the permanent injunction could not have

been granted on a property which has been leased out by the plaintiff defendant no.3 and she was not in actual physical possession over the said property. The learned counsel for the appellant would submit that in the absence of actual physical possession, the first appellate court fell into error in upsetting the judgment of the trial court and by granting a decree of permanent injunction over the property in question.

17. Learned counsel for the appellant would rely upon the judgment in the case of *Balkrishna Dattatraya Galande vs. Balkrishna Rambharose Gupta and Another*, (2020) 19 SCC 119, and drew the attention of the Court to para 8 of the aforesaid judgment which is extracted as under:-

“8. In a suit filed under Section 38 of the Specific Relief Act, permanent injunction can be granted only to a person who is in actual possession of the property. The burden of proof lies upon the first respondent-plaintiff to prove that he was in actual and physical possession of the property on the date of suit. The first appellate court drew inference of the possession of the first respondent-plaintiff from purshis, Ext. 41, and from the circumstances that he has obtained permission from the Corporation for carrying out the repairs. The Commissioner's report dated 2-11-1988 which was referred to in extenso in the order passed in the interlocutory application (Ext. 5) dated 17-10-2005 rejecting the first respondent's prayer for temporary injunction shows the poor condition of the suit premises prior to filing of the suit RCS No. 430 of 2004. The Commissioner's report indicates that even after replacing the roof by new tin sheet, the premises were not fit to carry on business.”

18. The learned counsel for the appellant would submit that the permanent injunction can be granted only to a person who is in actual possession of the property.

19. The aforesaid judgment of the Hon'ble Supreme Court would not be attracted in the factual matrix of the present case inasmuch as in the present case, the submission of the learned counsel for the appellant is that the possession of the lessee cannot be deemed to be the possession of the lessor. Thus the judgment is clearly distinguishable on facts.

20. On the other hand, learned counsel for the plaintiff/respondent no.1 would submit that a lessor remains in constructive possession even after leasing out the property to a lessee. He submits that the possession of the lessee would be deemed to be the possession of the lessor.

21. The learned counsel for the plaintiff/respondent relied upon the judgment of the Hon'ble Supreme Court in the case of Sadashiv Shyama Sawant and others vs. Anita Anant Sawant reported in (2010) 3 SCC 385, and particularly relied upon para nos.21, 22 and 23 thereof which are being extracted hereunder:-

"21. A landlord by letting out the property to a tenant does not lose possession as he continues to retain the legal possession although actual possession, user and control of that property is with the tenant. By retaining legal possession or in any case constructive possession, the landlord also retains all his legal remedies. As a matter of law, the dispossession of tenant by a third party is dispossession of the landlord. The word "dispossessed" in Section 6(1) must be read in this context and not in light of the actual possession alone. If a tenant is thrown out forcibly from the tenanted premises by a trespasser, the landlord has implied right of entry in order to recover possession (for himself and his tenant). Similarly, the expression "any person claiming through him" would bring within its fold the landlord as he continues in legal possession over the tenanted property through his tenant.

22. As a matter of fact, on plain reading of Section 6(1), it is clear that besides the person who has been dispossessed, any person claiming through him can also file a suit seeking recovery of possession. Obviously, a landlord who holds the possession through his tenant is competent to maintain suit under Section 6 and recover possession from a trespasser who has forcibly dispossessed his tenant. A landlord when he lets out his property to the tenant is not deprived of his possession in the property in law. What is altered is mode in which the landlord held his possession in the property inasmuch as the tenant comes into physical possession while the landlord retains possession through his tenant.

23. The view of the Calcutta High Court that where the tenant was forcibly ejected from the land by the third party, it may reasonably be held that landlord has also been dispossessed is the correct view. We find ourselves in agreement with the view of the Bombay, Patna, Pepsu and Rajasthan High Courts and hold, as it must be, that there is nothing in Section 6 of the Act to bar a landlord from suing a trespasser in possession even when, at the date of dispossession, the property is in actual occupation of a tenant entitled to possession. The views expressed by the Madras High Court in *Veeraswami Mudali* [AIR 1926 Mad 18] and *Ramamanemma* [AIR 1934 Mad 558] and by the Nagpur Judicial Commissioner in *Ramchandra* [AIR 1928 Nag 313] do not lay down the correct law.”

22. After considering the rival submissions of the learned counsel for the parties, it is clear that it is not the position of law as it is being tried to be argued by the learned counsel for the appellant. The correct legal position regarding the constructive possession of the landlord and the tenant has been clearly spelt out in the judgment of the Hon’ble Supreme Court in the case of *Sadashiv Shyama Sawant (supra)*. Thus even after the landlady/lessor in the present case had granted lease to the defendant no.3, she continues to be in legal possession over the lease property and could maintain a suit with respect to the leased out property in question.

23. In the aforesaid judgment of the Hon’ble Supreme Court, it has been clearly held that a landlord who holds the

possession through his tenant is competent to maintain suit under Section 6 and recover possession, if there is forcible dispossession of his tenant. The landlord when he lets out his property to the tenant is not deprived of his possession in the property in law. Thus this Court has no hesitation in answering the substantial question of law no.(i) in favour of the plaintiff and against the defendant nos.1 and 2 to the effect that the decree of permanent injunction can be granted on the property which has been leased out over which the plaintiff has no physical or actual possession and the first appellate court did not commit any error by granting injunction in favour of the plaintiff in the present case.

Substantial Question of Law No.(ii)

24. Learned counsel for the appellant would submit that the first appellate court has erred in appreciating the revenue records. The learned counsel has made two folds on arguments. Firstly, that the revenue records have not been appreciating in the correct perspective by the first appellate court and also the Survey Commission Report has been accepted by the first appellate court without considering the objections against it.

25. Learned counsel for the plaintiff/respondent no.1 would argue that the first appellate court has considered Sajra and the Khatauni entries in their correct prospective

and only after due deliberation came to the conclusion that the property in question is instituted in Khasra No.490.

26. It is also important to point out that the trial court and the first appellate court have concurrently held that the disputed property is not situated in Khasra No.495/2. On which, the learned counsel for the appellant would submit that what is material is whether the disputed property is situated in Khasra No.490 or not and not whether the property is not situated in Khasra No.495/2. He further submits that the Survey Commission Report states that the disputed property is wholly situated in Khasra No.490, whereas it has been the consistent case of the plaintiff that the disputed property is situated partly in Khasra Nos.490 and 497 and as such, the first appellate court's judgment cannot be sustained and he has further contended that without deciding the objections against the Survey Commission Report, the Survey Commission Report has been accepted.

27. The present substantial question of law pertains to whether the first appellate court has erred in appreciating the revenue records which were placed before it. In the present case, the first appellate court has after going through the record and after examining the Shajra (map) and the Khasra which are revenue records pertaining to the property in question has come to the conclusion that the

disputed property is situated in Khasra No.490. Moreover, once the contention of the defendant nos.1 and 2 about the disputed property being situated in Khasra Nos.495/2 has not been accepted and in fact and it has concurrently been held that the disputed property is not situated in Khasra No.495/2, hence the logical conclusion would be that the property in question is situated in Khasra No.490 and the revenue records have been properly appreciated.

28. In its detailed judgment, the first appellate court revisited the issues and after considering the survey commission report and other documents on record came to the conclusion that the western boundary of Khasra No.490, Village Ganeshpur is as per spot and likewise being the Sajra, the said fact was not stated to be wrong by the defendant from which it is clear that the disputed property is situated in Khasra No.490 whose no part is in Khasra No.495/2. Also Khasra No.490 and southern boundary of Khasra No.491 are in one line, therefore, the disputed property is a proved to be in Khasra No.490 as is clear from perusal of the report of survey commission.

29. In such view of the matter, the substantial question of law no.(ii) also deserves to be answered in favour of the plaintiff against the defendant nos.1 and 2 to the effect that the first appellate court has not erred in appreciating the revenue records placed before it.

30. Since the substantial questions of law have been answered against the appellant/defendant nos.1 and 2, hence the judgment of the first appellate court does not warrant any interference and the present second appeal deserves to be dismissed.

31. The second appeal is dismissed accordingly. The judgment of the first appellate court is affirmed.

32. Let original records be transmitted to the court concerned.

(Siddhartha Sah, J.)
21.05.2026

RS/BS