UKHC010139592026

2026:UHC:7205

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal against Order No. 297 of 2026

Sunita Singhal ..... Appellant

Vs.

Gurubaksh ..... Respondent

Present:
Mr. Akshay Padhan, Advocate for the appellant.
Mr. S.K. Mandal, and Mr. Deepak Singh Bisht, Advocate for the respondent.

JUDGMENT

Hon'ble Ravindra Maithani, J. (Oral)

The challenge in this appeal is made to the judgment and decree dated 13.05.2026, passed in Civil Appeal No.03 of 2026, Gurubaksh v. Sunita Singhal ("the appeal"), by the court of Additional District Judge, Laksar, District Haridwar. By it, an order dated 04.12.2025, passed in Original Suit No.82 of 2020, Gurubaksh v. Sunita Singhal ("the suit"), by the court of Civil Judge (Senior Division), Laksar, District Haridwar, has been set aside, and it was directed that the suit be registered in its original number, and proceeded accordingly.

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

3. The respondent did file the suit for specific performance of an agreement dated 29.05.2013. It has been the case of the respondent that the appellant agreed to sell a piece of land to the respondent for Rs.14,50,000/-, and registered agreement to sale was executed on 29.05.2013; it was agreed between the parties that the sale deed shall be executed till

15.11.2013. Despite repeated requests, the appellant did not execute the sale deed. Hence, the suit.

4. The facts go beyond what is stated hereinbefore, and these are as below:-

(i) Before filing of the suit, the respondent had filed Original Suit No.166 of 2016, Gurubaksh v. Smt. Sunita Singhal, for specific performance of the agreement dated 29.05.2013, ("the former suit"). The former suit was filed on 15.11.2016. In the former suit, on 16.10.2019, on the question of pecuniary jurisdiction, the court held that, since that court had no pecuniary jurisdiction, the plaint be returned. Subsequent to it, the suit was filed by the appellant on 21.12.2020.

(ii) In the suit, an application under Order 7 Rule 11(d) of the Code of Civil Procedure, 1908 ("the CPC") and Section 151 of the CPC was moved by the appellant on the ground that since the agreement to sale is dated 29.05.2013, and the suit has been filed on 21.12.2020, in which the cause of action has been shown to have arisen on 09.12.2020, the suit is barred by limitation.

4. It has been the case of the appellant that under Article 54 of the Limitation Act, 1963 ("the Limitation Act"), the limitation for filing the suit of such nature is three years. This application, which was filed by the appellant, was objected to by the respondent on the ground that the question of limitation is a mixed question of law and fact. It is also submitted that the former suit was filed, which was returned on 16.10.2019. Thereafter, there was COVID-19 pandemic lockdown. Therefore, the suit is not barred by limitation. Issue relating to the applicability of Section 14 of the Limitation Act was also raised.

5. After hearing the parties, by the order dated 04.12.2025, passed in the suit, the court held that the suit is barred by limitation, and, accordingly, the plaint was rejected.

6. This order dated 04.12.2025, passed in the suit, was challenged in the appeal, which was allowed by the impugned judgment and order dated 13.05.2026, which is impugned.

7. Learned counsel for the appellant submits that after return of the former suit on 16.10.2019, the same plaint ought to have been presented in the court of competent jurisdiction, which was not done. Therefore, the suit is not in continuation of the former suit. He also raises the following points in his submission:-

(i) When the suit was again presented on 21.12.2020, it was filed with the fresh cause of action, which, according to Para 11 of the plaint in the suit had arisen lastly on 09.12.2020.

(ii) There is no ground to condone the delay from the return of the former suit on 16.10.2019 till the suit was filed on 21.12.2020.

Therefore, it is argued that the appellate court has committed an error in setting aside the order dated 04.12.2025, passed in the suit, and rejecting the application field by the appellant under Order 7 Rule 11 CPC and Section 151 CPC.

8. Learned counsel for the respondent submits that the present suit is continuance of the former suit; the question of limitation is mixed question of law and fact.

9. The following factual narration is not disputed:-

(i) An agreement to sale was executed between the parties on 29.05.2013. The sale deed was to be executed till 15.11.2016.

(ii) The former suit was filed by the respondent on 15.11.2016.

(iii) Since pecuniary jurisdiction was exceeding, on 16.10.2019, the plaint in the former suit was returned.

(iv) The suit was again instituted on 21.12.2020, in which, the respondent, in Para No.11 of the plaint, has recorded that lastly the cause of action arose on 09.12.2020.

10. The question is as to whether the suit is within limitation?

11. What is being argued is that the plaint of the former suit, which was returned to the respondent on 16.10.2019, ought to have been represented before the court of competent jurisdiction. This is definitely one proposition. But, there may be multiple situations, where plaint, in the form, in which it is returned, may not be filed before the court of competent jurisdiction. For example, if the civil court returns the plaint on the ground of jurisdiction to be presented before the revenue court, perhaps, a new plaint is to be drafted or much amendment is to be made in the returned plaint. But that is a separate question. If plaint as such is not presented, and new plaint is filed, it may, perhaps, give rise to the question of maintainability, etc, but it may not affect the applicability of Section 14 of the Limitation Act, which reads as follows:-

> "**14. Exclusion of time of proceeding bona fide in court without jurisdiction**.—(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.
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> (2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court

> which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.
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> (3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.
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> *Explanation.*—For the purposes of this section,—
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> (a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;
>
> (b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;
>
> (c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction."

12. From 15.11.2016 to 16.10.2019, definitely, the respondent was litigating before a court, which had no pecuniary jurisdiction. The respondent was definitely pursuing in the former suit with his due diligence. The plaint in the former suit was returned on 16.10.2019. Therefore, the application of Section 14 of the Limitation Act would demand that while computing the period of limitation in the suit, the period from 15.11.2016 to 16.10.2019 has to be excluded.

13. The next question arises that the plaint was again filed on 21.12.2020 with a fresh cause of action having been arisen on 09.12.2020.

14. Cause of action is not a single act. Cause of action is bundle of facts, which culminates in the filing of the suit. In fact, in the instant case, it had arisen the day the agreement was executed between the parties on 29.05.2013, and on every moment when the sale deed was not executed. Merely because one more incident has been added in Para No.11 of the plaint by the respondent, as giving rise to another cause of action on 09.12.2020, it will have no effect while invoking the provisions of Section 14 of the Limitation Act.

15. In addition to it, in the appellate court judgment, reference has been made to the directions issued by the Hon'ble Supreme Court In Re:Cognizance for Extension of Limitation, (2022) 3 SCC 117, in which the Hon'ble Supreme Court has held that how the period of limitation has to be excluded, and in Para 5.3, the Hon'ble Supreme Court observed as follows:-

> "**5.3.** In cases where the limitation would have expired during the period between 15-3-2020 till 28-2-2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 1-3-2022. In the event the actual balance period of limitation remaining, with effect from 1-3-2022 is greater than 90 days, that longer period shall apply."

16. There is concession of limitation in view of the judgment in the case of In Re:Cognizance for Extension of Limitation (*supra*). In the instant case, the plaint in the former suit was returned on 16.10.2019, and, thereafter, the respondent did file the suit on 21.12.2020. This Court has already held that the period from 15.11.2016, when the former suit was filed, till 16.10.2019, when the plaint in the former suit was returned, shall be excluded for computing the period of limitation. Therefore, this Court is of the view that the appellate court has rightly interpreted the provisions of Section 14 of the Limitation Act, and has rightly concluded that the suit is within time. The appellate court has rightly set aside the order dated 04.12.2025, passed in the suit. Accordingly, this Court is of the view that there is no reason to make any interference in the impugned judgment and decree. Accordingly, the appeal deserves to be dismissed at the stage of admission itself.

13. The appeal is dismissed *in limine.*

(Ravindra Maithani, J.)
13.08.2026

Ravi Bisht