



IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL

First Appeal No. 185 of 2018

Chandra Mohan Singh Panwar Appellant

Versus

Kedar Singh Danu Respondent

Presence:-

Mr. M. S. Bhandari, learned counsel for the appellant.

Mr. B. S. Negi, learned counsel for the respondent.

Hon'ble Siddhartha Sah, J. (oral)

The present First Appeal has been preferred by the appellant/plaintiff against the judgment and decree dated 21.08.2018 passed by the Civil Judge (Senior Division), Pauri Garhwal in Original Suit No. 06/2016 (Chandra Mohan Singh Panwar Vs. Kedar Singh Danu), whereby, while deciding preliminary issue no. 4 the trial court has held that the court lacks jurisdiction to hear the suit.

2. In brief, the suit for perpetual injunction and possession was instituted before the Court of Civil Judge (Senior Division), Pauri Garhwal by the plaintiff with the pleadings that he is the bhumidhar of Khet Nos. 677 and 678, Khata No. 82, measuring 300 square meters, situated at Village Ganganali, Patti Katalasyu, Tehsil Srinagar. It was pleaded that the plaintiff had purchased the said land vide registered sale deed dated 15th July,



2004 from one Durga Prasad, which was duly registered in the office of Sub-Registrar, Srinagar on the same date. It was further pleaded that the defendant had purchased an area of 400 square metres within Khet Nos. 677 and 678 of Khata No. 82 vide a registered sale deed dated 15th July, 2004 from the same vendor, namely Durga Prasad, which was also registered in the office of Sub-Registrar, Srinagar. It was next averred in the plaint that taking advantage of the plaintiff's absence, the defendant, a resident of Srikot Ganganali, illegally took possession of the plaintiff's land on 4th June, 2015, raised the height of the boundary wall, and put up a lock on the gate thereof. The said fact came to the knowledge of the plaintiff on 1st July, 2015, when he came to Srinagar to look after his land. Despite objections raised by the plaintiff and repeated requests made by him, the defendant neither vacated the disputed land nor removed his unauthorized possession. It was also pleaded that the defendant had no right to interfere with the plaintiff's peaceful possession over the suit property. Accordingly, the suit was instituted seeking reliefs of permanent injunction and possession over the land in question.

3. The aforesaid suit was registered as Original Suit No. 6 of 2016, *Chandramohan Singh Panwar vs. Kedar Singh Danu*. The defendant/respondent contested the suit by filing his written statement, wherein the averments made in the plaint were denied. In the written statement, particularly in paragraph no.18 of the additional pleas, it was pleaded that the suit property is agricultural land recorded in Khata No. 14 and Khata No. 82 of Village Srikot Ganganali. It was further contended that the said land falls within the definition of "land"



under Section 3(14) of the U.P. Zamindari Abolition and Land Reforms Act, as applicable to Uttarakhand. It was specifically pleaded that the principal relief sought in the suit is restoration of possession of agricultural land and, therefore, the suit ought to have been instituted before the competent revenue court. Consequently, it was contended that the civil court lacked jurisdiction to entertain the suit.

4. In view of the rival pleadings, the trial court, vide order dated 13.06.2018, framed as many as five issues and issue nos. 3 & 4 were to be heard as preliminary issues first. Issue No. 4 was framed as follows:

“Whether the Court has jurisdiction to entertain and decide the present suit?”

5. Before proceeding further, it is pertinent to mention that on 8th August, 2018, the trial court heard the parties on Issue No. 4 pertaining to the jurisdiction of the Court.

6. The trial court considered the submission made on behalf of the defendant that the disputed land is recorded as agricultural land in the revenue records and falls within the definition of “land” under Section 3(14) of the U.P. Zamindari Abolition and Land Reforms Act (in short “UPZA & LR Act”). It was, contended that since the plaintiff had also sought the relief of possession, the civil court lacked jurisdiction to entertain the suit.

7. The trial court also considered the submission advanced on behalf of the plaintiff that the disputed land does not fall within the ambit of Section 3(14) of the U.P.



Zamindari Abolition and Land Reforms Act, as the same is not being used for agricultural purposes or for any purpose connected with agriculture. It was further submitted on behalf of the plaintiff that in view of Section 331-A of the UPZA & LR Act, an inquiry on the said issue was necessary.

8. Considering the rival submissions advanced on behalf of the parties, the trial court deemed it proper to frame an issue with regard to Section 3(14) of the U.P. Zamindari Abolition and Land Reforms Act and to refer the matter to the Assistant Collector for determination as to whether the disputed land is agricultural land within the meaning of Section 3(14) of the UPZA & LR Act and whether the same is being used for agricultural purposes. Accordingly, the following issue was framed:

“Whether the disputed land is agricultural land under Section 3(14) of the U.P. Zamindari Abolition and Land Reforms Act, and whether the same is being used for agricultural purposes?”

9. A copy of the said order along with the plaint and details of the disputed land was transmitted to the Assistant Collector for submitting his report on the aforesaid issue, namely, whether the disputed land was being used for agricultural purposes or not. The matter was fixed for 21st August, 2018.

10. In pursuance of the aforesaid order dated 8th August, 2018, the Assistant Collector, Srinagar conducted an inquiry through the Tehsildar, Srinagar and obtained a spot inspection report dated 18th August, 2018.



11. Vide report dated 18.08.2018, the Assistant Collector, Srinagar reported that as per the inquiry conducted by the Tehsildar, Srinagar, after due verification, the disputed land bearing Khasra Nos. 677 and 678 was found to be agricultural land. It was further reported that on the spot, the family of Shri Kedar Singh Danu had sown vegetables over the disputed land and that fruit-bearing trees such as banana and lemon were also standing thereon. Thus, the disputed land was found to be used for agricultural purposes.

12. On 21st August, 2018, when the matter was taken up, the aforesaid report of the Assistant Collector, Srinagar was found on record and was marked as Paper Nos. 61 Ga/1 and 61 Ga/2. Records bear that neither of the parties raised any objection to the said report and both parties submitted that Issue No. 4 may be decided on the basis of the said report.

13. While deciding Issue No. 4, the trial court took note of the rival submissions advanced by learned counsel for the parties.

14. On behalf of the defendant, it was submitted that since the disputed land is recorded as agricultural land in the revenue records and the plaintiff himself has pleaded in the plaint that the suit property is in possession of the defendant, coupled with the fact that the plaintiff has also sought the relief of possession, the suit is barred under Section 331 of the U.P. Zamindari Abolition and Land Reforms Act.

15. On behalf of the plaintiff, it was contended that apart from possession, a relief of injunction had also



been sought and, therefore, the suit was maintainable before the civil court.

16. After hearing learned counsel for the parties, the trial court considered that as per Section 9 of the Code of Civil Procedure civil court has the jurisdiction to entertain all suits of civil nature unless expressly or impliedly barred and Section 331 of the U.P. Zamindari Abolition and Land Reforms Act expressly bars the jurisdiction of the civil court in matters specifically triable by the revenue courts.

17. As per the said provision, in matters enumerated in Column 3 of Schedule II, only the court mentioned in Column 4 shall have jurisdiction. Thus, the jurisdiction of the civil court is barred in such matters. From a perusal of Schedule II, it is clear that at Serial No. 24, a suit for possession of agricultural land under Section 209 of the UPZA & LR Act can only be instituted before the Court of Assistant Collector, First Class.

18. The trial court thereafter considered whether the disputed land is agricultural land. It noted that the plaintiff, in the plaint itself, had averred that the disputed land is recorded in the name of the bhumidhar in Khatauni Khata No. 82, Khet Nos. 677 and 678. In addition thereto, a report was called for from the Assistant Collector, Srinagar as to whether the disputed land was agricultural land within the meaning of Section 3(14) of the U.P. Zamindari Abolition and Land Reforms Act and whether the same was being used for agricultural purposes.

19. Pursuant thereto, report marked as Paper Nos. 61 Ga/1 and 61 Ga/2 was submitted, wherein it was



reported that the disputed land situated in Khasra Nos. 677 and 678 is agricultural land, on which vegetables and fruit-bearing trees are standing, and the same is being used for agricultural purposes. On the basis of the said report, the trial court concluded that the disputed land is agricultural land and is being used for agricultural purposes. The trial court next proceeded to consider whether the relief sought by the plaintiff is triable by the revenue court. In the plaint, under Relief 'A', the plaintiff had sought permanent injunction, whereas under Relief 'B', he had sought possession.

20. Relying upon the Full Bench judgment of the Hon'ble Allahabad High Court in the case of Ram Awalamb and others, vs. Jata Shankar and others, reported in AIR 1969 Allahabad 526, the trial court observed that where the principal relief is triable by the revenue court, the suit falls within the jurisdiction of the revenue court and the civil court lacks jurisdiction. Conversely, where the principal relief is triable by the civil court, the civil court would have jurisdiction to entertain the suit. The trial court further held that in the present case, the plaintiff himself had averred that the defendant had taken possession of the disputed land. Therefore, the principal relief sought was restoration of possession, whereas the relief of permanent injunction was merely ancillary in nature.

21. Accordingly, upon such analysis, the trial court held that since a suit for possession of agricultural land is triable by the Court of Assistant Collector, First Class, the jurisdiction of the civil court stands barred under Section 331 of the U.P. Zamindari Abolition and Land Reforms Act. Consequently, the trial court came to



the conclusion that it lacked jurisdiction to entertain the suit, and Issue No. 4 was decided against the plaintiff, the plaint was ordered to be returned to the plaintiff.

22. Aggrieved by the aforesaid judgment and order dated 21st August, 2018, the instant first appeal has been preferred by the plaintiff/appellant.

23. Assailing the impugned judgment and order dated 21st August, 2018, learned counsel for the appellant, Shri M.S. Bhandari, learned counsel for the appellant submitted that the impugned judgment and order passed by the Court of Civil Judge (Senior Division), Pauri Garhwal is wholly erroneous and contrary to the provisions of the Code of Civil Procedure as well as Section 331 of the U.P. Zamindari Abolition and Land Reforms Act, and therefore deserves to be set aside.

24. Learned counsel for the plaintiff/appellant, at the outset, drew the attention of the Court to paragraph 1 of the plaint and submitted that the plaintiff is a recorded tenure holder who had purchased the land in question by virtue of a registered sale deed. Referring to the reliefs sought in the plaint, he submitted that the first relief pertains to perpetual injunction, whereas the second relief pertains to possession.

25. Based on the aforesaid, learned counsel for the appellant submitted that since relief of injunction was also one of the reliefs sought in the plaint by the plaintiff/appellant, the impugned judgment and order dated 21st August, 2018 is wholly erroneous. In support of his submissions, he placed reliance upon a judgment of the Division Bench of this Court rendered in First



Appeal No. 60 of 2004, *Kulwant Kaur Sidhu Vs. Smt. Rahiman Bai Guddi*, decided on 10th April, 2006.

26. Learned counsel for the plaintiff/appellant drew the attention of this Court to paragraphs 6 and 7 of the said judgment, which read as under:-

“6.....
.....

There is no doubt that remedy of injunction is not available in the revenue court. The trial court has decided issue No.2 in favour of the plaintiff on the ground that the relief of injunction was not available before the revenue court. On behalf of the appellant, it is argued that under the color of the injunction, a remedy which was available before the revenue court, cannot be sought from the civil court. It is further contended on behalf of the appellant that the title of the plaintiff is disputed by the defendant, as such, the question of title which can be got declared from the revenue court, cannot be got so declared from the civil court by seeking relief of injunction. Had the plaintiff been not a recorded tenure holder in respect of the land for which she has sought relief of injunction, the contention of the learned counsel for the appellant could be accepted. But in Para-1 of the plaint itself, plaintiff has alleged that she is a recorded tenure holder and in possession of land of plot No. 25/3 and 46/11, shown with letters ‘Aa’ ‘Ba’ ‘Sa’ ‘Da’ in the plaint map. In support of said plea, the copies of the revenue papers- Khasra and



Khatauni, have been filed by the plaintiff apart from getting witnesses examined orally. As such, it cannot be said that the plaintiff has sought declaration of title under grab of injunction.

7. In **Ram Avalambh Vs. Jata Shankar & others 1968 Revenue Decisions 470 (Full Bench)**, it has been clarified by the Allahabad High Court that where the plaintiff is not a recorded tenure holder and seeks relief of injunction, it can be said that he is seeking declaration of title but where he is a recorded tenure holder, it cannot be said that the suit is not within the jurisdiction of civil court for granting relief of injunction in respect of agricultural land.”

27. Placing reliance upon paragraphs 6 and 7 of the aforesaid judgment, he submitted that in the present case, as averred in paragraph 7 of the plaint, the plaintiff/appellant is a recorded tenure holder and, therefore, the relief of injunction can only be granted by the civil court. He further submitted that since the plaintiff had also sought the relief of injunction, the finding recorded by the trial court that the suit ought to have been instituted before the competent revenue court is highly erroneous and, therefore, the impugned judgment and order deserves to be set aside. Referring further to paragraph 7 of the aforesaid judgment, he submitted that where the plaintiff is a recorded tenure holder, it cannot be said that the suit is not within the jurisdiction of the civil court for granting relief of injunction in respect of agricultural land.



28. Per contra, learned counsel for the defendant/respondent submitted that the principal relief sought in the plaint is restoration of possession and that admittedly the disputed property is agricultural land. It was further submitted that the judgment of the trial court is just and proper, and that the trial court has rightly come to the conclusion that the suit of the plaintiff is barred by the provisions of Section 331 of the U.P. Zamindari Abolition and Land Reforms Act, and that the proper remedy available to the plaintiff is before the revenue court. He further contended that the principal relief apparent from the relief clause is the relief of possession and, therefore, the impugned judgment and order are perfectly justified.

29. On consideration of the facts and circumstances of the case, as well as the impugned judgment/order dated 21st August, 2018, the only point for determination that arises in the instant first appeal is:

“Whether, in the facts and circumstances of the present case, the suit instituted by the plaintiff for injunction and possession was maintainable before the civil court?”

30. After hearing the rival submissions of learned counsel for the parties, this Court is called upon to determine whether the civil court, where the suit for injunction and possession was instituted, had jurisdiction to entertain the suit or not.

31. For deciding the aforesaid point for determination, it would be apt to examine the plaint, since the issue can only be adjudicated by reference to the averments made therein and the reliefs sought.



32. A perusal of the plaint reveals that, in paragraph 1, the plaintiff has pleaded that he is the owner of 300 square meters of land situated in Khet Nos. 677 and 678 of Khata No. 82, Village Ganganali, Tehsil Srinagar, which he had purchased by virtue of a registered sale deed dated 15th July, 2004.

33. In the plaint, the plaintiff has categorically averred that the defendant has taken possession of his land by raising a boundary wall and by locking the gate.

34. A perusal of the relief clause further reveals that the plaintiff has sought relief of permanent injunction as well as possession. So far as the written statement of the defendant/respondent is concerned, the relevant contention is contained in paragraph 18 thereof, wherein it has been categorically pleaded that the suit property is agricultural land recorded in Khata Khatauni No. 14 and Khata Khatauni No. 82 of Village Srikot Ganganali.

35. It has further been pleaded that under Section 3(14) of the U.P. Zamindari Abolition and Land Reforms Act, as applicable to Uttarakhand, agricultural land falls within the definition of “land”, and since the principal relief sought by the plaintiff is recovery of possession, the suit ought to have been instituted before the competent revenue court. It was, therefore, contended that the civil court lacked jurisdiction to entertain the suit and that the suit was not maintainable.

36. Thus, on the basis of the aforesaid categorical pleadings regarding lack of jurisdiction of the civil court, Issue No. 4 came to be framed by the trial court as follows:



“Whether the Court has jurisdiction to hear the present suit?”

37. It is also borne out from the record that in terms of Section 331-A of the U.P. Zamindari Abolition and Land Reforms Act, the trial court, after framing an issue as to whether the disputed land is agricultural land under Section 3(14) of the Act and whether the same is being used for agricultural purposes, called for a report from the Assistant Collector, Srinagar.

38. In pursuance thereof, an inquiry was conducted by the Assistant Collector, Srinagar through the Tehsildar, Srinagar, and upon submission of the report, it was found that the disputed land was, at present, being used for agricultural purposes.

39. After receipt of the aforesaid report of the Assistant Collector, Srinagar, the trial court considered Issue No. 4 and, after analyzing the provisions of Section 9 of the Code of Civil Procedure and Serial No. 24 of Schedule II of the U.P. Zamindari Abolition and Land Reforms Act, and also taking into consideration the report of the Assistant Collector, Srinagar as well as the judgment of the Allahabad High Court in the case Ram Awalamb and others Vs. Jata Shankar and others, came to the conclusion that the principal relief sought by the plaintiff in the plaint is the relief of possession.

40. The trial court further held that since relief of possession of agricultural land can only be sought before the competent revenue court, the civil court lacked jurisdiction to entertain the suit and the same was barred by Section 331 of the U.P. Zamindari Abolition and Land Reforms Act.



41. Learned counsel for the plaintiff/appellant has primarily relied upon the relief of injunction sought in the plaint and has further placed reliance upon the judgment of the Division Bench of this Court in First Appeal No. 60 of 2014, *Kulwant Kaur Sidhu vs. Smt. Rahiman Bai Guddi*. Learned counsel for the plaintiff/appellant has placed reliance upon paragraphs 6 and 7 of the aforesaid judgment.

42. A perusal of paragraphs 6 and 7 of the judgment rendered by the Division Bench of this Court would reveal that the ratio laid down therein is that a recorded tenure holder can maintain a suit for injunction. However, the said judgment is not applicable to the facts and circumstances of the present case, inasmuch as, in the present matter, two reliefs have been sought, namely, relief of permanent injunction as well as relief of possession.

43. Upon consideration of the facts and circumstances of the case, it is evident from the plaint that the principal relief sought in the plaint is the relief of possession, whereas the relief of injunction is merely ancillary in nature and can only be granted if the principal relief is granted.

44. Therefore, the judgment of the Division Bench of this Court relied upon by learned counsel for the appellant would not be applicable in the present case.

45. On behalf of the defendant/respondent, it has been argued that admittedly the land in question is agricultural land, which stands duly verified by the report of the Assistant Collector, and since the principal relief sought is possession, Issue No. 4 has rightly been



decided by the trial court and warrants no interference by this Court.

46. Reference in the instant case is also required to be made to the Full Bench judgment of the Allahabad High Court in the case Ram Awalamb and others Vs. Jata Shankar and others, reported in AIR 1969 Allahabad 526 (V 56 C 100) Full Bench, wherein paragraph 62 of the said judgment is particularly relevant which reads as under:-

“62. The case law in this Court on this point might be classified under the following two heads:-

(a) Where several reliefs closely connected with each other can be claimed on the basis of the cause of action set forth in the plaint it has to be examined which of them is the main relief and which others are ancillary reliefs. If upon a consideration of facts constituting the cause of action the main relief is such which can be granted by the civil court the suit will be cognizable in the civil court which will proceed to grant the ancillary reliefs also. On the other hand if the main relief is specifically cognizable by a revenue court only but ancillary reliefs may be such as could be granted by the civil court the matter was cognizable only by a revenue court.

(b) The pith and substance of the allegation made in the plaint constituting the cause of action must be scrutinized in order to determine whether or not if on the same cause of action any adequate or satisfactory alternative remedy could be available to the plaintiff in the revenue court. If the answer to the scrutiny be in the affirmative, then the suit brought in the civil court must fail regardless of the consideration that in respect of the



reliefs actually claimed the suit was on the face of it cognizable by a civil court.”

47. In the said judgment, it has been held that where the principal relief is specifically cognizable by the revenue court, merely because certain ancillary reliefs are also claimed, the suit would nonetheless remain cognizable by the revenue court alone.

48. In this regard, the judgment of the Hon’ble Supreme Court in the case of *Faqir (Dead) through Shyam Deo vs. Kishori @ Lolloo and Another*, reported in (1995) 4 SCC 533, is also very relevant.

49. In the said judgment, while analyzing Section 331 of the U.P. Zamindari Abolition and Land Reforms Act and Entry No. 24 of Schedule II thereto, the Hon’ble Supreme Court had occasion to consider the issue in detail. It was held in paragraph 14 of the said judgment as follows:

“14.....
.....

Schedule II at Serial No. 24 shows that a suit for ejectment of persons occupying land without title under Section 209 should be filed in the court of the Assistant Collector, First Class, which is described as the Court of Original Jurisdiction. In view of Section 331(1) quoted above it is evident that the suit made cognizable by a special court, i.e., the Court of the Assistant Collector, First Class, could not be filed in a civil court and the civil court was, therefore, inherently lacking in jurisdiction to entertain such a suit.

It is unfortunate that this position in law was not noticed in the several courts through which this litigation has passed, not even by the High Court which had specifically come to



the conclusion that the period of limitation was the one laid down by the rules under U.P. Act No. 1 of 1951. Since the civil court which entertained the suit suffered from an inherent lack of jurisdiction, the present appeal filed by the plaintiffs will have to be dismissed.”

50. Thus, upon an overall consideration of the facts and circumstances of the case, the provisions of the U.P. Zamindari Abolition and Land Reforms Act, the Full Bench judgment of the Allahabad High Court in *the case of Ram Awalamb and others (supra)*, as well as the judgment of the Hon’ble Supreme Court in the case of *Faqir (dead) through Shyam Deo (supra)*, it is evident that the principal relief sought by the plaintiff in the plaint is the relief of possession, whereas the relief of injunction is merely ancillary in nature.

51. Accordingly, the civil court/trial court did not have jurisdiction to entertain the said suit, and Issue No. 4 with regard to the jurisdiction of the civil court has rightly been decided by the trial court and warrants no interference.

52. Therefore, the point for determination is answered to the effect that since the principal relief sought in the plaint was possession, and relief of injunction was an ancillary relief, the suit would be cognizable only by the competent revenue court.

53. Consequently, the civil court lacks jurisdiction to entertain the suit, and Issue No. 4 has rightly been decided by the trial court.

54. Thus, the present first appeal lacks merit and deserves to be dismissed.

55. Accordingly, the first appeal is dismissed.



(Siddhartha Sah, J.)
30.04.2026

BALWANT SINGH