



2026:AHC:208581

HIGH COURT OF JUDICATURE AT ALLAHABAD

SECOND APPEAL No. - 728 of 2026

Saint A.H. School

.....Appellant(s)

Versus

Mahendra Pal And Another

.....Respondent(s)

Counsel for Appellant(s) : Shreesh Srivastava, Sushil Kumar
Tewari

Counsel for Respondent(s) :

Court No. - 53

HON'BLE VIKAS BUDHWAR, J.

1. Impugned in the present proceedings under Section 100 of the C.P.C. is the judgement and order dated 31.03.2023/decreed dated 13.04.2023 passed by Civil Judge (Junior Division), Hawali, Bareilly in O.S. No. 169 of 2017, whereby the suit came to be dismissed and also the judgement and decree dated 28.04.2026 passed by Additional District Judge, Court No. 9, Bareilly in Civil Appeal No. 61 of 2023 dismissing the appeal.

2. Broadly, the facts are that an original suit bearing No. 169 of 2017 came to be instituted before the Court of Civil Judge, Junior Division, Hawali, Bareilly seeking a permanent injunction restraining the defendants therein, their servants from interfering in any manner whatsoever or dispossessing or creating obstacles in raising constructions over the demised piece of land. As per the plaint, the plaintiff-appellant had purchased an agriculture land owned by Nathu Lal, Sevaram son of Lallu, Mahesh, Naresh son of late Chheda Lal and Smt. Kusuma Devi wife of Chheda Lal, resident of Mohalla Kaharan, Kasba Rithaura, Pargana, Tehsil & District Bareilly being Khata No. 01515, Gata No. 1454 rakba 0.0630 hectare out of which 0.05775 hectare through registered sale deed dated 11.07.2012. The said suit came to be dismissed ex-parte on 31.03.2023 by the Court of Civil Judge, Junior Division, Hawali, Bareilly, against which the plaintiff-appellant preferred a Civil Appeal No. 61 of 2023, which came to be rejected on 28.04.2026 by the Court of Additional District Judge, Court No. 9, Bareilly.

3. Questioning the judgment and order passed by the Trial Court as well as the Appellate Court, the present appeal has been preferred.

4. The plaintiff-appellant has sought to argue that both the Courts below have committed patent error of law as apparent on the face of record in non-suiting the claim of the plaintiff-appellant, particularly when the plaintiff-appellant had instituted suit for permanent injunction restraining the defendant-respondents from interfering over the land in question. Submission is that the demised land being Khata No. 01515, Gata No. 1454 admeasuring rakba 0.0630 hectare which was/is owned by Nathu Lal, Sevaram, Mahesh, Naresh and Smt. Kusuma Devi and the plaintiff-appellant had purchased through a registered sale deed dated 11.07.2012, a part of the said arazi being 0.05775 hectare. Contention is that the Courts below had erred in law in non-suiting the claim of the plaintiff-appellant on the ground that there was no recital in the suit in particular in the relief clause, with regard to the area and the dimension of the land for which injunction was sought against the defendant-respondents. Argument is that there happened to be specific recitals contained in the plaint and also description of the land for which injunction was sought, as according to the plaintiff-appellant, the injunction was sought with respect to the area being 0.05775 hectare and not for the entire Gata No. 1454 rakba 0.0630 hectare. It is also contended that the suit itself was maintainable and the Court below, in absence of any participation and joining of the defendant before the Trial Court, ought to have decreed the suit and not dismissing the same. Submission is to the extent that the Appellate Court has affirmed the judgement and order of the Trial Court without going into the merits of the matter. Attention has been drawn towards the following substantial questions of law which are quoted hereinunder.-

"Q.1. Whether the appellant is the owner of the property in question in light of sale deed dated 11/07/2012 between the appellant and Nathu Lal, Sewaram, S/o Lallu Mahesh, Naresh S/o Late Chedalal and Smt. Kusum Devi, W/o Late Chedalal?

Q.2. Whether the finding recorded by both the courts below amounts to judicial overreach in holding that the respondent no.1 had done sale deed of that part of land which does not belong to the appellant?

Q.3. Whether the courts below have committed a legal fallacy on the basis of sale deed dated 08/06/2016 between respondent no.1 and respondent no.2 of 0.525 hectare of land situated at Gata no. 1484 out of the total area of 0.630 hectares situated at Village Rithora, Tehsil, Pargana and District Bareilly?

Q.4. Whether the courts below have committed a manifest illegality in overlooking the fact that without the respondents being present to represent themselves, without any evidence being presented on their behalf the court below had come to a fallacious conclusion that that the respondent had done sale deed of that part of land which does not belong to the appellant?

Q.5. Whether the courts below have passed the impugned orders in clear violation of Section 6 of the Specific Relief Act, 1963, which clearly provides that for any person dispossessed without his consent of immoveable property otherwise, than in due course of law, the dispossessed person is entitled to claim and sue for recovery of possession thereof, which the appellant was clearly deprived of when the respondent no. 1 vide a sale deed dated 08/06/2016, sold a part of the land of the appellant to respondent no.2 showing wrong boundaries?

Q.6. Whether both the courts below have committed a manifest illegality in passing the impugned judgement and award in overlooking the ownership of appellant over the property in question solely on the basis of no evidence being produced by the respondents?

Q.7. Whether the courts below have committed the illegality of overlooking the evidences and witnesses produced by the appellants at the trial stage, and passed a judgement bereft of solid legal standing?

Q.8. Whether both the courts below were justified in passing the impugned orders and judgements?"

5. I have heard the submissions made across the bar and perused the record.

6. Apparently, this Court while exercising jurisdiction under Section 100 of the C.P.C. is to entertain and admit a second appeal upon substantial questions of law. What would be the substantial question of law depends upon the facts and the circumstances of each individual case, no universal yardstick can be laid down in that regard. Coming back to the facts of the case, it is apparent that a suit came to be instituted by the plaintiff-appellant being O.S. No. 169 of 2017 seeking a permanent injunction against the defendant-respondents restraining them, their servants, their relative servants from interfering in the peaceful possession of the land possessed and owned by the plaintiff-appellant. The suit proceeded ex-parte in absence of joining of the defendant-respondent and the same came to be dismissed by the Court of Civil Judge, Junior Division, Hawali, Bareilly on 31.03.2023 against which, a Civil Appeal came to be preferred before Additional District Judge,

Court No. 9, Bareilly, which also resulted to the same fate on 28.04.2026. The premise on which the Courts below non-suited the plaintiff-appellant was that in the plaint and the case set up by the plaintiff-appellant before the Courts below, reference was made to Gata No. 1454 rakba 0.0630 hectare which was owned by Nathu Lal, Sevaram, Mahesh, Naresh and Smt. Kusuma Devi, a part whereof stood transferred in favour of the plaintiff-appellant through registered sale deed dated 11.07.2012. It has also come on record that on 08.02.2016, the defendant-respondent No. 1 executed a sale deed in favour of the defendant-respondent No. 2, Daya Ram being 0.00525 hectare resulting to the fact that the plaintiff-appellant only possesses 0.05775 hectare in that regard. Further, in the relief clause, there was no recital or description about the dimension of the land for which injunction was sought. As a matter of fact, in the suit itself, injunction was sought for the entire piece of land which stood encompassed in Gata No. 1454 rakba 0.0630 hectare.

7. Plainly and simply, injunction can be sought by a true owner or a party who is in possession against a stranger or a party who attempts to dispossess or to encroach who does not possess any right, but for that purpose, description of the land is to be indicated in the suit itself and a specific relief to the said extent is to be claimed.

8. Here, in the present case, the relief clause does not indicate the dimension/area of the demised land. Apart from the same, in the footnote what was mentioned was on the left side agriculture land of Shyamlal, right side agriculture land of Ashok Lala, north side agriculture land of Bhupram and south side agriculture land of Dayaram. The issue can also be seen from another point of angle that the defendant No. 2 is Dayaram and in absence of any description of the size of the land or any indication in that regard, once the name of Dayaram finds place showing it to be the agriculture land on the southern side, then the finding recorded by the Court below while non-suited the plaintiff-appellant cannot be said to be vitiated by any stretch of imagination.

9. In view of the fact that none of these substantial questions of law can be termed to be substantial questions of law and concurrent finding so recorded by the Courts below, this Court does not find any substantial question of law involved so as to entertain and admit the appeal.

10. Accordingly, the appeal being devoid of merit is **dismissed**.

October 6, 2026

Rajesh

(Vikas Budhwar,J.)