



2026:AHC:211202

HIGH COURT OF JUDICATURE AT ALLAHABAD

SECOND APPEAL No. - 698 of 2026

Maharani @ Sushila Devi And Another

.....Appellant(s)

Versus

Thakurdas

.....Respondent(s)

Counsel for Appellant(s)	:	Rajesh Pandey, Surya Mani Pandey
Counsel for Respondent(s)	:	Arpit Agarwal

Court No. - 53

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri Surya Mani Pandey, learned counsel for the defendant-appellants and Sri Arpit Agarwal, counsel for the plaintiff-respondent.

2. Impugned in the present proceedings under Section 100 of the Code of Civil Procedure (in short, 'CPC') is the judgment and the order dated 29.03.2025 passed by Civil Judge, Senior Division, Pilibhit in O.S. No. 99 of 2012 (Thakur Das v. Maharani and others) whereby the suit so instituted by the plaintiff- respondent seeking the cancellation of the sale deed dated 01.12.2012 was decreed and also the judgment and the decree dated 08.07.2026 in Civil Appeal No. 19 of 2025 instituted by the defendant-appellants, Somwati v. Thakur Das, which came to be dismissed by the Court of Additional District Judge (FTC) New Court, Pilibhit.

3. Brief facts of the case sans unnecessary details are that the plaintiff-respondent instituted Original Suit No. 99 of 2012 before the Court of Civil Judge (Senior Division) Pilibhit, impleading the defendant- appellants seeking a relief of cancellation of the sale deed dated 01.02.2012 executed by the defendant- appellant No. 1 in favour of the defendant- appellant No. 2, verified on 08.05.2012. In the plaint, it was pleaded that the plaintiff-respondent is the husband of defendant- appellant No. 1, however, matrimonial disputes stood triggered wherein the plaintiff- respondent was thrown out from his dwelling house and the further allegation is that the defendant- appellant No. 1 developed intimacy with the relative of the defendant- appellant No. 2 and thereafter without there being any right or title, a sale deed came to be executed by the defendant- appellant No. 1 in favour of the defendant- appellant No. 2. The plaintiff-respondent in the suit

claimed that the land in question which was subject matter of transfer by the defendant- appellant No. 1 in favour of defendant- appellant No. 2 is the ancestral property of the plaintiff- respondent. On notices being issued, the defendant- appellants had put in their appearance and filed a written statement coming up with a stand that the said land was a self-acquired land of the defendant- appellant No. 1 which came to be purchased from one Pooran Lal son of Tikaram. A counter claim also came to be preferred by the defendant- appellant No. 1 seeking a declaration that the defendant- appellant No. 1 was the owner of the property in question / land and she had a right to execute sale deed on 01.02.2012 and injunction was also sought by the defendant- appellant No. 1 against the plaintiff- respondent. The trial court framed the following issues:

- (a) whether the sale deed dated 01.02.2012 executed by the defendant- appellant No. 1 in favour of the defendant- appellant No. 2 is liable to be cancelled?
- (b) whether the defendant- appellants are the owners of the land in pursuance of the sale deed dated 01.02.2012 and they are in possession thereof?
- (c) whether the proper valuation and stamp duty has been paid?
- (d) whether the counter claim is undervalued and deficit stamp duty has been paid?
- (e) whether any cause of action stood accrued in favour of the plaintiff- respondent to institute the suit?
- (f) whether the suit is barred by Sections 34, 38 and 41 of the Specific Relief Act?
- (g) whether the defendant- appellants are entitled to be accorded special cost from the plaintiff?
- (h) what relief can be claimed and granted to the plaintiff- respondent?
- (i) what relief, the defendant- appellants are entitled to?

4. In order to put forward the case, oral statements were recorded and the P.W. 1 entered into the witness box along with P.W. 2 Prem Shankar. On behalf of defendant- appellants, one Shyam Bihari, D.W. 1 entered into the witness box followed by one Santosh Kumar, D.W. 2. Paper No. 74-Ga, the

sale deed dated 01.02.2012, sale deed dated 14.08.2015 and the power of attorney came to be produced as documentary evidence. The Court of Civil Judge (Senior Division), Pilibhit decreed the suit in favour of the plaintiff-respondent in O.S. No. 99 of 2012 while rejecting the counter claim so filed by the defendant- appellants. Thereafter the same led to filing of Civil Appeal No. 19 of 2025 by the defendant- appellant No. 1 against the plaintiff before the Additional District and Sessions Judge / Fast Track Court (New)/ POCSO Court No. 2, District Pilibhit wherein the judgment and the decree dated 29.03.2025 in O.S. No. 99 of 2012 came to be questioned. The lower appellate court by virtue of the judgment and the decree dated 08.07.2026 dismissed the Civil Appeal preferred by the defendant- appellant No. 1.

5. Assailing the order of the trial court decreeing the suit as well as the dismissal of the appeal so preferred against the judgment and the order of the trial court, the defendant- appellants have preferred the present second appeal. The following substantial question of laws came to be framed by the defendant-appellants as under:

"1. Whether the disputed property was acquired by the respondent no.1 independently and she was owner and in possession of the said.

2. Whether respondent no.1 was legally entitled to execute the sale deed dated 01.02.2012 to respondent no.2.

3. Whether the respondent no.1 was in possession of the disputed house till the execution the sale deed to respondent no.2. of

4. Whether the plaintiff respondent has accrued any legal right of ownership or possession with regard to disputed house."

6. Learned counsel for the defendant- appellants has sought to argue that the judgment and the decree of the trial court as affirmed by the lower appellate court cannot be sustained in the eyes of law for the simple reason that the judgment and the orders of the courts below proceeds on hypothetical and illusory basis that too where heavy reliance has been placed upon the oral statements. Submission is that the suit came to be instituted by plaintiff-respondent for cancellation of the sale deed dated 01.02.2012 so executed between defendant- appellant No. 1 in favour of defendant- appellant No. 2, thus, the onus to prove that the plaintiff- respondent was the owner and title holder lied upon the plaintiff- respondent and the burden only stood shifted upon the defendant-appellants, once the burden stood discharged by the plaintiff- respondent. Submission is that the trial court as well as the lower appellate court got swayed with the fact that the land which was subject

matter of transfer by virtue of the sale deed dated 01.02.2012 was situated at a place where the forefathers of the plaintiff- respondent used to reside, thus, title is being sought to be shown upon it despite the fact that there was no document available on record so as to suggest that the land in question was actually owned and was in the name of the plaintiff- respondent. Further submission is that once it was the own case of the plaintiff- respondent that he was not in the possession of the land / property in question, then the position gets further clear beyond any shadow of doubt that the defendant- appellant No. 1 was the owner being the wife in that regard. It is also contended that something more was required from the trial court as well as the appellate court while decreeing the suit as findings are to be recorded in that regard so as to show that actually the plaintiff- appellant was owner in that regard. It is also contended that the land / property in question stood purchased by the defendant- appellants from one Pooran Lal son of Tikaram from her own resources and merely because no documentary evidence was produced or there was no evidence in that regard would not automatically confer any additional right upon the plaintiff- respondent as plaintiff has to stand on its own leg while asserting its right and claiming relief. He thus submits that the order and the decree of the trial court as well as the appellate court is liable to be set aside and the appeal is to be allowed *in toto*.

7. Countering the submissions so made by the learned counsel for the defendant- appellants, Shri Arpit Agarwal who appears for the plaintiff- respondent submits that concurrent findings have been recorded by both the courts below and this Court may not interfere at this stage, particularly, when no substantial question of law stands arising. Further submission is that there happens to be the deposition of the plaintiff witnesses which depict that the land / property in question belonged to the forefathers/ ancestors of the plaintiff- respondent and the same is also situated at a place where the forefathers and ancestors of the plaintiff- respondent were residing and further merely alleging that the land / property is self-acquired would not suffice as it is to be backed by title deed in that regard. He submits that in the depositions *vis-a-vis* the written statement contrary stands have been taken, as on one hand it is pleaded in the written statement that it is a self-acquired property, on the other hand it is claimed through deposition of the witnesses that the property is ancestral property. He also submits that though the suit was decreed in favour of the plaintiff- respondent and the counter claim preferred by the defendant- appellants was rejected but the appeal so

preferred before the lower appellate court was only confined to the judgment and the decree in so far as it decreed the suit of the plaintiff- respondent and not against the rejection of the counter claim. He seeks to rely upon the judgment of the Hon'ble Apex Court in **Premier Tyres Limited v. Kerala State Road Transport Corporation; 1993 AIR (SC) 1202**, and submits that the present appeal be dismissed.

8. In rejoinder, learned counsel for the defendant- appellants submits that a single appeal assailing the judgment and the decree as well as the order passed in counter claim is maintainable in that regard while relying upon the judgment of the Hon'ble Apex Court in **Basudev and others v. Sanjay Kumar and others, 2026 INSC 831**.

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

10. Apparently, the Court in the present proceedings under Section 100 of the CPC is confronted with the judgment and the decree of the trial Court decreeing the suit of the plaintiff- respondent and the order passed by the lower appellate Court dismissing the appeal confirming the order of the trial Court at the instance of the defendant- appellants. Concurrent finding of facts have been recorded by both the courts. The Court is mindful of the fact that only on the basis of substantial question of law, the appeal can be entertained and admitted and in view of the express provisions contained under Section 100 of the CPC, factual aspects are not to be made a ground to entertain and admit an appeal that too second appeal. Bearing in mind the aforesaid legal proposition, the present issue is to be addressed.

11. Plainly and simply, the plaintiff- respondent instituted the subject suit for cancellation of the sale deed dated 01.02.2012 so executed by the defendant- appellant no. 1 in favour of the defendant- appellant no. 2. The plaintiff- respondent and the defendant- appellant no. 1 happened to be the husband and wife. The plaintiff- respondent Claims that the land/ property in question is an ancestral parental property and in order to justify the said stand and to prove the same what is being pleaded and the findings so recorded depict that the land/ property is situate in under the Grama Sabha Dandiyara Rajhe. However, the stand of the defendant- respondent no. 1, wife is that the property is self-acquired. Now a question arises as to by which mode, the property can be said to be self-acquired and not ancestral. The only

document which could be of relevance, would be sale deed, transfer deed in that regard. However, neither before the trial Court or before the lower appellate court any such document was produced and proved.

12. Rather to the contrary even at the stage of the present proceedings, no document whatsoever has been produced so as to enable the Court to take it as an additional evidence under Order XLI Rule 27 and to remand the matter back to be decided in the light of the same. Only this much has been stated that the defendant- appellant no. 1 had purchased the said property from Pooran Lal son of Tikaram, however, there is no document either registered or unregistered in that regard. Further, in case the immovable property is more than Rs. 100, then obviously the same is compulsorily registrable, which is not the case herein. The trial court as well as the lower appellate court, while framing the issues, had specifically recorded a categorical finding based upon the documents available on record that the father/ parentage and the ancestors of the defendant- appellants are not the resident of the village where the property in question is situate. Besides the same, the plaintiff- respondent had produced PW1 as himself and PW2, one Prem Shankar, who have come up with a stand that the property in question is an ancestral property of the plaintiff- respondent.

13. So much so, there is no evidence available on record so as to suggest that the defendant- respondent no. 1 was the owner of the same. Another aspect which arises for consideration is whether the sale deed dated 01.02.2012 executed by the defendant- appellant no. 1 in favour of defendant- appellant no. 2 can be lightly considered, despite the fact that the same is registered document. A sale or a convenience deed executed by one party to the other party depends upon the right and the title of the party who is transferring the property in favour of the other person and, in case, the title of a person is under cloud then no advantages can be derived by the purchaser of the said property.

14. Interestingly, the plaintiff- respondent and defendant- appellant no. 1 happened to be husband and wife, though allegations have been levelled regarding the conduct of defendant- appellant, however, the same are not to be gone into the present proceedings but once it is proven from the record as per the depositions and the documents so submitted before the trial court as well as the appellate court regarding the fact that the ancestors of the plaintiff- respondent were stationed and were residing over the piece of the

land which was subject matter of sale then something more was required from the defendant- appellants to prove his case otherwise.

15. Pertinently, a counter claim also came to be preferred, seeking declaration that the sale deed dated 01.02.2012 is valid and also injunction against the plaintiff- respondent by the defendant- respondent no. 1. However, the trial court vide a composite judgment decreed the suit of the plaintiff- respondent and rejected the counter claim but from the order of the lower appellate Court, there is nothing on record to show that any challenge has been raised to the order rejecting the counter claim. Meaning thereby that the same would operate and bound the parties in that regard. There is no quarrel to the proposition of law that a single appeal would lie against the judgment deciding the counter claim as well as the suit itself, as held by the Hon'ble Apex Court in *Basudev (supra)* but the discrepancy gets crept in once the judgment and order rejecting the counter claim has not been questioned.

16. As regards, the substantial question of laws so framed by the defendant-appellants, this Court finds that none of the substantial questions of law are tenable so as to invoke the jurisdiction under Section 100 of the CPC while entertaining and admitting the appeal.

17. No good ground is made to interfere in the present proceedings, accordingly, the appeal being misconceived and is liable to be **dismissed**.

October 8, 2026

Ashu

(Vikas Budhwar,J.)