



2026:AHC:210912

## HIGH COURT OF JUDICATURE AT ALLAHABAD

### SECOND APPEAL No. - 725 of 2026

Smt Shanti Devi Widow And 5 Others

.....Appellant(s)

Versus

Ashok Kumar And 3 Others

.....Respondent(s)

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|---------------------------|---|--------------------|
| Counsel for Appellant(s)  | : | Anil Pratap Singh  |
| Counsel for Respondent(s) | : | Adya Prasad Tewari |

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#### Court No. - 53

**HON'BLE VIKAS BUDHWAR, J.**

1. Heard Sri A.P. Singh, learned counsel for the plaintiff-appellants and Sri A.P. Tewari, counsel for the defendant- respondent 1st set.

2. In view of the order which is being proposed to be passed, the notices are not being issued to the defendant-respondent 2nd set.

3. Impugned in the present proceedings under Section 100 of the Code of Civil Procedure (in short 'CPC'), is the judgement and the order dated 02.04.2015 and the decree dated 13.04.2015 passed by Additional Civil Judge (Senior Division), Court No. 1, Gorakhpur in O.S. No. 05 of 2013 whereby the suit instituted by the plaintiff-appellant came to be dismissed as not maintainable while allowing the application under Order VII Rule 11 (d) of the CPC preferred by the defendant- respondent 1st set as well as the order dated 07.08.2026 and the decree dated 13.08.2026 passed by Additional District Judge, Court No. 5, Gorakhpur in Civil Appeal No. 51 of 2015 (Smt. Shanti Devi versus Ashok Kumar) whereby the appeal so preferred was dismissed upholding the order of the trial court.

4. The brief facts of the case has worded in the appeal is that the plaintiff-appellants instituted Original Suit No. 5 of 2013 before the Court of Additional Civil Judge (Senior Division), Gorakhpur seeking cancellation of the sale deed dated 29.08.2012 executed by the defendant-respondent 2nd set in favour of defendant- respondent 1st set. An application under Order VII Rule 11 (d) CPC came to be preferred by defendant- respondent 1st set taking a ground that there happened to be a restraint order, restraining the alienation/ sale of the land. The trial court by virtue of the judgment and the

order dated 02.04.2015 rejected the plaint while allowing the application under Order VII Rule 11 (d) coming up with the stand that the appropriate proceedings which can be initiated by the plaintiff-appellants is before the revenue court as the suit was barred under Section 331 of the U.P. Zamindari Abolition and Land Reforms Act, 1950.

5. Assailing the judgment and order dated 02.04.2015 passed by the trial court, a Civil Appeal bearing No. 51 of 2015 came to be preferred by the plaintiff-appellants which also resulted to the same fate on 07.08.2026 by the order of the Additional District Judge, Court No. 5, Gorakhpur.

6. Assailing both the orders, the present appeal has been preferred.

7. The following substantial question of laws have been formulated by the plaintiff appellants as under:

*"(i) Whether the Courts below are justified in rejecting the plaint u/0 7 Rule 11 C.P.C. holding the suit barred by u/s 331, UPZA and LR Act ?*

*(ii) Whether the judgment and decree passed by the Courts below are contrary to the judgment rendered by full bench of this Hon'ble Court in case of Tarpot Ojha Vs. Ram Ratan Kaur ILR (1993)15 ALL 385 (F.B.)?*

*(iii) Whether the Courts below are justified in rejecting the plaint on the ground of no jurisdiction to entertain the suit ?*

*(iv) Whether the judgment and decree passed by the Courts below suffer from manifest error of law apparent on the face of record?"*

8. The plaintiff-appellants have relied upon the (ii) substantial question of law so as to contend that the judgment and the decree of the trial court as well as of the lower appellate court is in teeth of the judgment of the full bench judgment of this Court in **Tarpot Ojha vs. Ram Ratan Kaur; I.L.R. (1893) 15 All. 387 (FB)** as well as the judgment in **First Appeal No. 531 of 2015 (Smt. Beena Shrivastav and 6 others versus Shri Rajan Kumar and 9 others)**, decided on 26.11.2015. Submission is that in case the suit itself was not maintainable then instead of rejecting the plaint, the same should have been returned giving an opportunity to the party to approach the Court having jurisdiction over the matter. Submission is that the observations / finding as well as the judgment and the decree to the said extent is in violation of the principles of law.

9. Shri A.P. Tiwari who appears for the defendant-respondent 1st set on the other hand submits that the judgment and the decree of the trial court as

affirmed by the lower appellate court is perfectly valid in accordance with law, since the suit itself was not maintainable before the civil court and the remedy lies before the revenue court to the said extent, no interference is warranted, however, he submits that the proper course open for the trial court as well as the lower appellate court in affirming the judgment and the decree of the trial court, was to return the plaint so as to enable the plaintiff-appellants to seek remedy before the revenue court. He thus submits that the judgement and the decree of the trial court as well as lower appellate court be modified to that extent.

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

11. Apparently, the plaintiff-appellants instituted suit before the Court of Civil Judge (Senior Division), Gorakhpur seeking cancellation of the sale deed dated 29.08.2012 executed by the defendant-respondent IInd set in favour of defendant-respondent Ist set. Though various grounds were taken that the said sale deed was in breach and violation of the orders of the Court which forbid any alienation of the land / property in question. However, the trial court rejected the plaint while allowing the application so preferred by defendant-respondent 1st set under Order 7 Rule 11 (d) of the CPC. The said order was subject matter of challenge at the behest of plaintiff-appellants and the appeal was also dismissed.

12. In **Tarpat Ojha (supra)** as followed in **Smt. Beena Srivastava (supra)**, the following was observed as under:

*"14. Section 9 C.P.C. provides that suit of civil nature is maintainable before Civil Court, except its cognizance is expressly or impliedly barred. In this case, subject matter of dispute is agricultural land. Dispute relating to title of land has to be decided by Revenue Court and jurisdiction of Civil Court is expressly barred under Section 331 of U.P. Act No. 1 of 1951. Suit before Civil Court is not maintainable.*

*15. Where suit appears from statement in plaint to be barred by any law, then plaint can be rejected under Order VII Rule 11(d) C.P.C. In other words, if relief sought in suit is barred under any law, then plaint can be rejected under Order VII Rule 11 C.P.C. However, if jurisdiction to try suit is barred, then Presiding Officer is required to return plaint for presentation before appropriate Court under Order VII Rule 10 C.P.C. In this case, jurisdiction of Civil Court to try suit is barred under Section 331 of U.P. Act No. 1 of 1951, as such, plaint is liable to be returned for*

*presentation before appropriate Court under Order VII Rule 10 C.P.C. as held by Full Bench of This Court in Tarapat Ojha vs. Ram Ratan Kaur, I.L.R. (1893) 15 All. 385 (FB). However, Court below has illegally rejected plaint under Order VII Rule 11 C.P.C.*

*16. In the result, appeal succeeds and is partly allowed. Order passed by Civil Judge (Sr. Division), Gorakhpur dated 18.9.2015, passed in Civil Suit No. 971 of 2014 (Beena and others vs. Rajan), is modified. Civil Judge (Sr. Division), Gorakhpur is directed to return plaint to plaintiffs for presentation before appropriate Court, according to provisions of Order VII Rule 10(2) C.P.C. On return of plaint, plaintiffs shall file suit before appropriate Court within 90 days from the date of return of plaint."*

13. Though this Court was proceeding to admit the appeal in view of substantial question of law (ii) but according to Shri A.P. Tiwari who appears for the defendant-respondent Ist set, no useful purpose will be served in admitting the appeal as ultimately the law in this regard is well clear in view of the judgements as referred to above, thus, according to him, as per the instruction received from his client, the judgement and the decree of the trial court as well as the lower appellate court be modified to the extent that in place of rejection of the plaint, the plaint be returned to be presented before the court having jurisdiction over the matter.

14. To such a submission, Shri A.P. Singh, learned counsel for the plaintiff-appellants has no objection as according to him, this much is the only relief which at this juncture the plaintiff-appellants claims.

15. Bearing in mind the stand and the statements so made by the respective parties as per the instruction received by them and also the law on the said subject as discussed above, the instant second appeal is being partly allowed while modifying the judgment and the order dated 02.04.2015 and decree dated 13.04.2015 passed by Additional Civil Judge (Senior Division), Court No. 1, Gorakhpur in O.S. No. 5 of 2013 (Smt. Shanti Devi and others versus Ashok Kumar and others) and the judgment and the order dated 07.08.2026 and the decree dated 13.08.2026 passed by Additional District Judge, Court No. 5, Gorakhpur in Civil Appeal No. 51 of 2015 (Smt. Shanti Devi and others versus Ashok Kumar) to the extent that in place of rejection of the plaint under Order VII Rule 11 (d) of the C.P.C., the same would be returned with a liberty to the plaintiff-appellants to present the same before the competent court of law in accordance with law.

16. Accordingly, the second appeal is being partly **allowed**.

**October 8, 2026**

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**(Vikas Budhwar,J.)**