



2025:UHC:8469

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (M/S) No. 573 of 2007

Smt. Hema Devi

... Petitioner

Versus

State of Uttaranchal & Others

... Respondents

Mr. B.D. Pande, Advocate, for the petitioner.

Mr. Yogesh Chandra Tiwari, Standing Counsel, for the State.

Mr. Jitendra Chaudhary, Advocate for the respondent no. 3 to 6.

J U D G M E N T

Hon'ble Manoj Kumar Tiwari, J.

This writ petition, filed under Article 227 of the Constitution, is directed against the judgment dated 28.6.1993, rendered by Assistant Collector, 1st Class, Haldwani in Suit No. 22/94 of 1986-87 (renumbered as Suit No. 22/27 of 1992-93); judgment dated 24.2.1994, passed by Commissioner, Kumaon Division, Nainital in Appeal No. 288 of 1992-93; and also the judgment and order dated 11.3.2004, passed by Additional Chief Revenue Commissioner, Uttarakhand in Second Appeal No. 94 of 1993-94.

2. It transpires that petitioner and her uncle's son, namely, Narayan Singh filed separate suits claiming bhumidhari right due to adverse possession, over the land belonging to one Mr. Bhawani Dutt. Both the suits were filed under Section 229-B of Zamindari Abolition and Land Reforms Act. The suit filed by petitioner was numbered as Suit No. 22/27 of 1992-93, while the suit filed by her cousin Narayan Singh was registered as Suit No. 22/55 of 1986-87.



In Suit No. 22/55, filed by Narayan Singh, petitioner was added as defendant no. 7; since Bhawani Dutt, original tenure holder, passed away before filing of suit by Narayan Singh, therefore, his legal representatives were added as defendants in the said suit. Petitioner filed counter-claim in the suit filed by Narayan Singh claiming bhumidhari right over the land belonging to Bhawani Dutt, by contending that it is she, and not Narayan Singh, who perfected title by adverse possession. Both suits were dismissed by learned Trial Court (Assistant Collector, 1st Class), vide common judgment dated 28.6.1993.

3. Counter-claim filed by petitioner in Narayan Singh's Suit No. 22/55 of 1986-87 was also dismissed by Trial Court by holding that neither Narayan Singh nor petitioner could substantiate their claim that they perfected their title by adverse possession. Learned Trial Court further held that the land in question is public utility land and bhumidhari right cannot be granted in respect of such land. Learned Trial Court further held that no evidence was led to show that the revenue entries made in favour of the original tenure holder were forged and fictitious. Regarding petitioner's counter-claim, Trial Court held that she could not produce any evidence in support of her claim regarding continuous possession over the land in question.

4. Petitioner filed one appeal against dismissal of her Suit No. 22/27 of 1992-93, however she did not challenge dismissal of her counter-claim by the Trial Court. Narayan Singh also filed first appeal



challenging dismissal of his Suit No. 22/55 of 1986-87. Both the appeals, one filed by petitioner and another by Narayan Singh, were dismissed by learned Commissioner, Kumaon Division by common judgment dated 24.2.1994. Learned First Appellate Court affirmed the finding returned by Trial Court on the plea of adverse possession, taken by petitioner as well as Narayan Singh.

5. Against the judgment rendered by learned Commissioner, petitioner filed second appeal before Additional Chief Revenue Commissioner, while Narayan Singh did not file any second appeal. Second Appeal No. 94 of 1993-94, filed by petitioner, was dismissed by learned Additional Chief Revenue Commissioner vide judgment dated 11.3.2004. Learned Second Appellate Court refused to interfere with the finding returned by the Trial Court, as affirmed by the First Appellate Court. Learned Additional Chief Revenue Commissioner held that part of the land comprised in Khata No. 20 and 39 is public utility land, over which bhumidhari right cannot be granted to anyone. The Second Appellate Court further observed that as legal representatives of Bhawani Dutt do not contest the matter after filing written statement and they also did not prefer any appeal, therefore, it seems that they are not in possession and appropriate steps be taken as regards the subject land, as per law.

6. Mr. Jitendra Chaudhary, learned Counsel appearing for respondent no. 3 to 6, submits that as petitioner did not challenge dismissal of her counter-



claim by Trial Court in independent first appeal, therefore, she cannot challenge the dismissal of her suit in this writ petition. He further submits that the challenge thrown by petitioner to the judgment rendered by the First Appellate Court and Second Appellate Court is thus barred by res judicata. He further contends that petitioner claimed title over the land in question, by raising plea of adverse possession and her claim was negated by Trial Court and after accepting the finding returned by Trial Court on the question of adverse possession, she cannot now re-agitate the same issue again in a writ petition. In support of this contention, Mr. Jintendra Chaudhary relied upon the following judgments rendered by Hon'ble Supreme Court:

(i) Premier Tyres Limited v. Kerala State Road Transport Corporation, reported as 1993 Supp 2 SCC 146;

(ii) Harbans Singh & Others v. Sant Hari Singh & Others, reported as (2009) 2 SCC 526.

7. Per contra, Mr. B.D. Pande, learned Counsel appearing for the petitioner, submits that since counter-claim filed by the petitioner was not expressly rejected by the Trial Court, therefore, principle of res judicata will not apply. He further submits that name of predecessor of petitioner was recorded in revenue records during *fasli* year 1360, therefore petitioner's name could have been removed only after following the procedure laid down in Para A-80 of Land Records Manual.



8. In reply to the said submission, Mr. Jitendra Chaudhary submits that name of predecessor-in-interest of petitioner was recorded as occupancy tenant and not as bhumidhar and, as per the then prevailing law, if an occupancy tenant died issueless, then the land reverted back to the original tenure holder. He submits that since there was no brother of the petitioner, therefore, upon death of her mother, name of original tenure holder was recorded as bhumidhar. Mr. Chaudhary further submits that Para A-80 of Land Records Manual is applicable only to the land covered by Zamindari Abolition and Land Reforms Act and not to the land covered by U.P. Tenancy Act. Mr. Jitendra Chaudhary refers to the Heading of Chapter A-V, where it is mentioned that the said Chapter would apply to areas to which Zamindari Abolition and Land Reforms Act, 1950 applies. Mr. Jitendra Chaudhary further submits that predecessor-in-interest of the petitioner died in the year 1962, while U.P. Zamindari Abolition and Land Reforms Act was enforced in Tarai Bhabhar area of erstwhile District Nainital only w.e.f. 1.7.1969. Thus he submits that on the date of enforcement of the Act, name of predecessor-in-interest of the petitioner was not recorded as tenure holder.

9. This Court do not find any reason to interfere with the concurrent findings of fact recorded by all the three revenue courts below. Perusal of the judgment rendered by Trial Court, as affirmed by the First Appellate Court and Second Appellate Court, reveals that claim staked by the petitioner was based on adverse possession, however she miserably failed



to prove the said plea. There was heavy burden of proof upon the petitioner, but she was unable to discharge that burden, which resulted in dismissal of her suit.

10. Hon'ble Supreme Court, in the case of *Vasantha v. Rajalaxmi alias Rajam*, reported as (2024) 5 SCC 282, has considered the law on adverse possession. Relevant extract of the said judgment is reproduced below:

“40. *In Saroop Singh v. Banto [Saroop Singh v. Banto, (2005) 8 SCC 330] (two-Judge Bench), this Court observed that Article 65 states that the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendant's possession becomes adverse. Further relying on Karnataka Wakf Board v. Union of India [Karnataka Wakf Board v. Union of India, (2004) 10 SCC 779] (two-Judge Bench), it observed that the physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases related to adverse possession. Plea of adverse possession is not a pure question of law but a blend of fact and law. Therefore, a person who claims adverse possession should show:*

- (a) on what date he came into possession;*
- (b) what was the nature of his possession;*
- (c) whether the factum of possession was known to the other party;*
- (d) how long his possession has continued; and*
- (e) his possession was open and undisturbed.*

A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to prove his adverse possession.

41. *This Court in Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan [Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan,*



(2009) 16 SCC 517] (two-Judge Bench), reiterating the observations made in *P.T. Munichikkanna Reddy v. Revamma* [P.T. Munichikkanna Reddy v. Revamma, (2007) 6 SCC 59] (two-Judge Bench) in respect of the concept of adverse possession observed that efficacy of adverse possession law in most jurisdictions depends on strong limitation statutes by operation of which, right to access the court expires through efflux of time. As against the rights of the paper-owner, in the context of adverse possession, there evolves a set of competing rights in favour of the adverse possessor who has, for a long period of time, cared for the land, developed it, as against the owner of the property who has ignored the property. Modern statutes of limitation operate, as a rule, not only to cut off one's right to bring an action for the recovery of property that has been in the adverse possession of another for a specified time but also to vest the possessor with title. The intention of such statutes is not to punish one who neglects to assert rights but to protect those who have maintained the possession of property for the time specified by the statute under a claim of right or colour of title.

42. In *Bharat Barrel & Drum Mfg. Co. Ltd. v. ESI Corpn.* [*Bharat Barrel & Drum Mfg. Co. Ltd. v. ESI Corpn.*, (1971) 2 SCC 860] , (two-Judge Bench) while discussing the object of the Limitation Act, this Court opined that : (SCC pp. 865-66, para 7)

“7. ... The law of limitation appertains to remedies because the rule is that claims in respect of rights cannot be entertained if not commenced within the time prescribed by the statute in respect of that right. Apart from the legislative action prescribing the time, there is no period of limitation recognised under the general law and therefore any time fixed by the statute is necessarily to be arbitrary. A statute prescribing limitation however does not confer a right of action nor speaking generally does not confer on a person a right to relief which has been barred by efflux of time prescribed by the law. The necessity for enacting periods of limitation is to ensure that actions are commenced within a particular period, firstly to assure the availability of evidence documentary as well as oral to enable the defendant to contest the claim against him;



secondly to give effect to the principle that law does not assist a person who is inactive and sleeps over his rights by allowing them when challenged or disputed to remain dormant without asserting them in a court of law. The principle which forms the basis of this rule is expressed in the maximum vigilantibus, non dormientibus, jura subveniunt (the laws give help to those who are watchful and not to those who sleep). Therefore the object of the statutes of limitations is to compel a person to exercise his right of action within a reasonable time as also to discourage and suppress stale, fake or fraudulent claims while this is so there are two aspects of the statutes of limitation the one concerns the extinguishment of the right if a claim or action is not commenced within a particular time and the other merely bars the claim without affecting the right which either remains merely as a moral obligation or can be availed of to furnish the consideration for a fresh enforceable obligation. Where a statute, prescribing the limitation extinguishes the right, it affects substantive rights while that which purely pertains to the commencement of action without touching the right is said to be procedural.”
(emphasis supplied)

11. This Court while exercising supervisory jurisdiction under Article 227 of the Constitution does not act as the Court of First Appeal to re-appreciate, reweigh evidence or facts upon which determination under challenge is based. Hon'ble Supreme Court, in the case of *Garment Craft v. Prakash Chand Goel*, reported as (2022) 4 SCC 181, has held as under:

“15. Having heard the counsel for the parties, we are clearly of the view that the impugned order [*Prakash Chand Goel v. Garment Craft*, 2019 SCC OnLine Del 11943] is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon



which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. [Celina Coelho Pereira v. Ulhas Mahabaleshwar Kholkar, (2010) 1 SCC 217 : (2010) 1 SCC (Civ) 69] The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.

16. *Explaining the scope of jurisdiction under Article 227, this Court in Estralla Rubber v. Dass Estate (P) Ltd., (2001) 8 SCC 97, has observed : (SCC pp. 101-102, para 6)*

“6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this Article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an



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inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.””

12. Learned Trial Court has dealt all the issues in great details and has returned finding against petitioner as well as Naryan Singh. Reading of the Trial Court's judgment reveals that plaintiffs in both the suits had miserably failed to substantiate their plea of adverse possession. Learned Trial Court further held that part of the land, over which bhumidhari right was claimed by petitioner and Narayan Singh, is public utility land. Section 132 of Zamindari Abolition and Land Reforms Act, 1950 prohibits grant of bhumidhari right over public utility land.

13. Since the matter is concluded by concurrent findings of fact returned by all the three courts below and learned Counsel for the petitioner could not point out any jurisdictional or other manifest error, which may warrant interference under supervisory jurisdiction of this Court, therefore, this Court declines to interfere with the view taken by learned Trial Court, as affirmed by Appellate Courts. Writ petition thus fails and is dismissed.

(Manoj Kumar Tiwari, J.)
22.9.2025

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