UKHC010176642026

2026:UHC:9775

HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition Misc. Single No. 3082 of 2026

28 October, 2026

Kalavati and others

--Petitioners

Versus

Chandravadan Joshi and others

--Respondents

Presence:-

Mr. Ajeet Kumar Yadav, Advocate for the petitioners.

Mr. Deepak Bhatt, Advocate for the respondents.

JUDGMENT

Hon'ble Ravindra Maithani, J. (Oral)

The challenge in this writ petition is made to the judgment and order dated 18.08.2026 passed in Civil Appeal No. 06 of 2026, Chandravadan and others v. Smt. Kalawati and others, by the court of Additional District Judge, Khatima, District Udham Singh Nagar ("the appeal"). By it, while reversing the order passed by the trial court, an application filed by the petitioners under Order 39 Rules 1 & 2 of the Civil Procedure Code, 1908 ("the Code") has been dismissed.

2. The petitioners filed a civil suit bearing Civil Suit No. 21 of 2026, Smt. Kalavati and others v. Chandravadan Joshi and others, in the court of Civil Judge (Jr. Division), Khatima, District Udham Singh Nagar for permanent injunction ("the suit"). It has been the case of the petitioners that the father of the petitioner no. 1 and the maternal grandfather of the petitioner nos. 2, 3 & 4, namely, late Ramlal was the recorded tenure holder of certain land, as detailed in para 2 of the plaint, within Village Bari Anjaniya, Pargana Bilheri, Tehsil Khatima, District Udham Singh Nagar (hereinafter referred to as "the disputed land"). During his life time, late Ramlal was in possession and ownership of the disputed land

and after his death the disputed land was succeeded by the petitioners. But, subsequently, the respondents, without any authority or entitlement, started interfering with the disputed land; hence the suit.

3. In the suit, an application under Order 39 Rules 1 & 2 of the Code was also filed seeking temporary injunction, which was allowed by the trial court on 29.05.2026, on the ground that the petitioners are recorded tenure holder of the disputed land.

4. The respondent did challenge the order dated 29.05.2026 passed in the suit, in the appeal. The appeal was allowed and the application filed under Order 39 Rules 1 & 2 of the Code filed by the petitioners was dismissed. In its order, the appellate court on 18.08.2026 observed that the petitioners did obtain the temporary injunction order by concealing the material facts.

5. Heard learned counsel for the parties and perused the record.

6. Learned counsel for the petitioners submits that the petitioners were not aware of any suit filed by late Ramlal, which was dismissed with regard to Plot Nos. 909 and 927. Therefore, he would submit that the petitioners may not be blamed for concealment of facts.

7. Learned counsel for the respondents submits that there were suits pending under Section 229-B of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (“the Act”), which was also not disclosed by the petitioners. On this aspect, learned counsel for the petitioners submits that non-disclosure of the title

suit pending in the revenue court also does not make any difference. He would submit that the trial court has rightly passed the temporary injunction order, which has been wrongly disturbed in the appeal.

8. Learned counsel for the respondents submits that Ramlal had absconded and after 30 years, the petitioners got somehow mutated their names in the revenue record, but that mutation order has been cancelled on 14.08.2026. In fact, he would submit that in appeal, when the matter was pending before the appellate court, that proceedings were recorded as *sub judice* though they had already been decided on 14.08.2026. He would submit that the respondents are in possession of the disputed land; the petitioners have nothing to do with the disputed land; Ramlal had lost a suit long back *qua* Plot Nos. 909 and 927 of the disputed land; this fact was also concealed. Learned counsel submits that pendency of the title suit under Section 229-B of the Act was also concealed by the petitioners, therefore, the learned appellate court has rightly dismissed the application filed by the petitioners under Order 39 Rules 1 & 2 of the Code.

9. Learned counsel for the petitioners fairly submits that today the petitioners are not in possession of the disputed land. He would submit that the respondents and some other persons have encroached over the disputed land and they are not allowing the petitioners to enter into the disputed land.

10. In so far as grant of temporary injunction is concerned, in fact, there are there parameters, which are to be looked into, namely, *prima facie* case, balance of convenience and irreparable loss.

11. Admittedly, presently the petitioners are not recorded tenure holders of the disputed land. It is recorded in the name of others. It is admitted at the Bar that the petitioners are not in possession of the disputed land. Therefore, there is no *prima facie* case in favour of the petitioner. Moreover, the petitioners did not disclose that earlier late Ramlal had lost a suit *qua* Plot Nos. 909 and 927 of the disputed land. On it, it has been argued that this fact was not in the knowledge of the petitioners. But, the fact remains that the pendency of the title suits under Section 229-B of the Act was also not disclosed by the petitioners in the plaint. They also did not disclose that the mutation order in their favour is under challenge. Can it be said that the petitioners tried to conceal the material facts? The Court leaves it at it.

12. The Court has already recorded a finding that there is no *prima facie* case in favour of the petitioners. In such a situation, the balance of convenience also does not lean in favour of the petitioners and it cannot be said that if the temporary injunction is not granted in favour of the petitioners, they would suffer irreparable loss. Therefore, this Court is of the view that the appellate court has rightly dismissed the application filed by the petitioners under Order 39 Rules 1 & 2 of the Code. There is no reason to make any interference in the impugned order passed by the appellate court. Accordingly, the writ petition deserves to be dismissed.

13. The writ petition is dismissed.

(Ravindra Maithani, J.)
28.10.2026

Avneet/