UKHC010208222026

2026:UHC:10805

HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 3592 of 2026 (M/S)

Shamshad .....Petitioner

Versus

Joseph D Kundan and Others .....Respondents

Present:-
Mr. Sagar Kothari, Advocate for the petitioner.
Mr. S.K. Mandal, Advocate for the Caveator.

JUDGMENT

Hon'ble Ravindra Maithani, J. (Oral)

The challenge in this petition is made to the order dated 13.11.2026, passed in Civil Appeal No. 12 of 2019, Joseph D. Kundan and Others v. Shamshad and Others, by the Additional District Judge, Vikasnagar, District Dehradun ("the appeal"). By it, an application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 ("the CPC"), filed by the petitioner has been rejected.

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

3. The petitioner did file Civil Suit No.57 of 2005, Shri Shamshad v. Joseph D. Kundan and Others ("the suit"), in the court of Civil Judge, (Senior Division) Dehradun for specific performance of the contract as well as for cancellation of various sale deeds. The suit was decreed, against which the appeal was filed by the respondents. In the appeal, an application for amendment was filed by the petitioner, who was plaintiff in the suit. By the amendment application, the petitioner wanted to include Para No.7(A) in the plaint to the effect that by virtue

of the amendment dated 24.09.2001, made in the Indian Registration Act, 1908 ("the Act"), the agreement pertaining to transfer of property prior to 24.09.2001, shall be admissible in evidence and binding on the respondents. This application was rejected on the ground that the amendment pertains to a legal ground. It is proposed to be included at a belated stage. In Para No.6 of the impugned order, it is recorded that, in fact, the petitioner, who is respondent in the appeal, is free to argue the point, which he proposes to take, by virtue of amendment application. Aggrieved by it, the instant petition has been filed.

4. Learned counsel for the petitioner submits that the appeal is in continuation of the suit; no prejudice would be caused to the respondent if the amendment application is allowed; and while considering the amendment application, liberal approach should be adopted by the parties.

5. The proposition of law, as submitted by learned counsel for the petitioner, is settled, but before an amendment application is allowed, one of the factors that has to be considered is as to whether the proposed amendment is necessary to be incorporated?

6. In the instant matter, what the petitioner is proposing to introduce by virtue of amendment application is that a document is admissible evidence by virtue of an amendment made in the Act on 24.09.2001.

7. This is a legal ground, which could very well be argued by the petitioner in the appeal, and rightly the court below has, while considering this aspect, rejected the amendment application. Therefore, having considered, this Court does not see any illegality in the order. Accordingly the writ petition deserves to be dismissed at the stage of admission itself.

8. The writ petition is dismissed *in limine*.

(Ravindra Maithani, J)
25.11.2026

Ravi Bisht