2026:AHC:208399

HIGH COURT OF JUDICATURE AT ALLAHABAD

SECOND APPEAL No. - 756 of 2026

Phool Chandra

.....Appellant(s)

Versus

Harish Chandra And 2 Others

.....Respondent(s)

Counsel for Appellant(s)	:	Sheo Kinkar Singh, Shivam Pandey, Suryaprakash Sharma, Vipin Kumar Tripathi
Counsel for Respondent(s)	:	

Court No. - 53

HON'BLE VIKAS BUDHWAR, J.

1. Impugned in the present appeal under Section 100 of the C.P.C. are the judgments and the decree dated 12.04.2019 passed by the Additional Civil Judge (Senior Division), Sant Kabir Nagar in O.S. No. 505 of 2010 (Phoolchand Vs. Harishchand and Others) as well as the judgment dated 21.07.2026 and the decree dated 29.08.2026 passed by District Judge, Sant Kabir Nagar in Regular Civil Appeal No. 6 of 2025 (Phoolchand Vs. Harishchand and Others), whereby the original suit as well as the appeal came to be rejected.

2. The facts of the case as worded in the appeal are that the plaintiff-appellant claims to be in possession of a piece of land over which constructions have been raised being Arazi No. 256 situated at Mohalla Moti Nagar Near Tubewell Colony, Tappa Dakhin Haveli, Paragna Maghar, Khalilabad. As per the plaintiff-appellant, the plaintiff-appellant is in occupation of the said land while constructing a dwelling house after demolishing the Madahi and there happens to be electricity bill and assessment in his favour. However, since constant obstructions and hindrances were being caused and created, so the plaintiff-appellant instituted Original Suit No. 505 of 2010 before the Court of Civil Judge (Senior Division), Sant Kabir Nagar seeking permanent injunction restraining the defendant-respondents from interfering in the peaceful possession and occupation of the plaintiff-appellant over the said suit property. In this said suit, as many as seven issues were framed which are as under:-

(A) Whether the plaintiff-appellant is the owner of the demised land earmarked as ABCD in the map?

(B) Whether there is any misjoinder or non-joinder of the defendants in the suit?

(C) Whether the suit is time-barred?

(D) Whether the proper court fee has been paid?

(E) Whether the suit is barred by Section 326 of Nagar Palika Act?

(F) Whether the suit is maintainable or not?

(G) Whether the plaintiff-appellant is entitled to any relief?

3. The Trial Court/Additional Civil Judge (Senior Division), Sant Kabir Nagar came to dismiss the said suit being Original Suit No. 505 of 2010, against which Civil Appeal No. 6 of 2025 (Phoolchand Vs. Harishchand and Others) came to be preferred before the District Judge, Sant Kabir Nagar which met the same fate.

4. Assailing the judgment and decree of the Trial Court as well as the Appellate Court, the present second appeal has been preferred.

5. Learned counsel for the plaintiff-appellant has submitted that both the Court below have committed patent error of law apparent on the face of record in failing to appreciate the crucial aspect that the plaintiff-appellant is in possession of the land over which constructions have been raised for the past thirty years. Submission is that the plaintiff-appellant possesses not only electricity bills but also the document showing the assessment done in his favour and he had been paying the assessment fee, house tax in that regard.

6. Contention is that even otherwise the plaintiff-appellant happens to be belonging to reserved class being Scheduled Caste, thus, he is entitled to the benefits and the protection as envisaged under Section 123 of the U.P. Zamindari Abolition and Land Reforms Act, 1950. Further contention is that the defendant No. 1 in the suit who happens to be defendant-respondent No. 1 in the second appeal created obstacles and hindrances and intended to dislodge the plaintiff-appellant in connivance with the defendant-respondent Nos. 2 and 3 who happens to be Nagar Palika Adhyaksha and Adhishashi Adhikari. Thus, the plaintiff-appellant had no option but to institute the suit.

7. Further submission is that once the plaintiff-appellant happens to be belonging to Scheduled Caste category, then before dislodging him, it was incumbent upon the defendant-respondents to have accorded rehabilitation to him. Reliance has also been placed upon a decision of this Court dated 20.12.2021 passed in Writ-C No. 27255 of 2021.

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

9. Plainly and simply, the plaintiff-appellant stakes his claim and asserts his legal right based upon the fact that he is in possession of the demised piece of land and he has also constructed a dwelling house and he is also paying electricity bill and house tax to the Nagar Palika. The Trial Court as well as the Lower Appellate Court while framing the issues as referred to above had come to the conclusion that the land in question is a Khalihan not being a land used for agriculture or abadi. There happens to be recital in the judgment and the order of the court below that one Subhash Chandra, P.W.-2 was entered into the witness box and according to him, he came up with a stand that he was not knowing as to how and by which process the plaintiff-appellant had entered into the possession of the said land. There is no document available on record to show any allotment made in favour of the plaintiff-appellant, however, the entire case so structured by the plaintiff-appellant is based upon the documents showing the assessment of the land, house tax as well as electricity bills. Pertinently, it is the stand of the defendant that the land in question is Khaliyan, then without change of the user of the land, the same could not have been allotted to the plaintiff-appellant. Contradictory stand has been taken by the plaintiff-appellant, on one hand, the benefits under U.P. Zamindari Abolition and Land Reforms Act, 1950 is being claimed but on the other hand, strength has been driven from the assessment made by the Nagar Palika Parishad which cannot go together in that regard. Merely, possessing electricity bills or house tax assessment in any manner whatsoever does not confer any right or title as right and title can only be claimed on the basis of title documents which in a given case can be Sale Deed, Gift Deed or Allotment Letters allotting a particular land in that regard. In absence of the said documents, it cannot be said that legally the plaintiff-appellant has any legal right to claim ownership over the land in question.Even otherwise, the Court finds that the substantial question of law so framed cannot be termed to be substantial question of law, particularly when they are general in nature and further no plea of

adverse possession can be pleaded in this regard.

10. Accordingly, in absence of any substantial question of law being attracted in the present appeal, the appeal fails and is **dismissed**. However, it is left open for the plaintiff-appellant to stake his claim for rehabilitation while relying upon the judgment in Writ - C No. 27255 of 2021 decided on 20.12.2021.

October 6, 2026
Rajesh

(Vikas Budhwar,J.)

Digitally signed by :-
RAJESH KUMAR
High Court of Judicature at Allahabad