2026:AHC:209261

HIGH COURT OF JUDICATURE AT ALLAHABAD

SECOND APPEAL No. - 759 of 2026

Smt Sangeeta

.....Appellant(s)

Versus

Pawan Kumar

.....Respondent(s)

Counsel for Appellant(s) : Avinash Kumar Sharma
Counsel for Respondent(s) :

Court No. - 53

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri Rajesh Dutt Pandey (A/R0314/2012), Advocate holding brief of Sri Avinash Kumar Sharma, learned Counsel for plaintiff-appellant.

2. Challenge in this appeal under Section 100 of the Civil Procedure Code, 1908 is against the judgement and the order dated 21.8.2026 and decree dated 25.8.2026, passed by the Additional District Judge, Court No.1, Muzaffarnagar in Civil Appeal No. 43 of 2024 (Smt. Sangeeta versus Pawan Kumar) and the judgement and order dated 1.8.2024 and the decree dated 7.8.2024, passed by Civil Judge (Senior Division), Muzaffarnagar in Original Suit No.398 of 2022 (Smt. Sangeeta versus Pawan Kumar), whereby the original suit was instituted by the appellant-plaintiff came to be rejected and the appeal also resulted with the same fate.

3. Broadly the facts as set out by the plaintiff-appellant is that the plaintiff-appellant and the defendant-respondent are the family members. To be more precise, the plaintiff-appellant is the wife of Sanjeev and the defendant-respondent happens to be the son of Jagpal and as per family tree Jagpal happens to be the father-in-law of the plaintiff-appellant and the husband of the plaintiff-appellant name is Sanjeev and he has three brothers, namely Ombir, Sudhir and the defendant-respondent Pawan Kumar. The plaintiff-appellant is the widow of Sanjeev and her brother-in-law Sudhir died and he had no offspring.

4. As per the plaintiff /appellant, Khasra No. 619 area 2.974 hectare situated in Mouza Kinauni, Pargana Baghra, Tehsil Sadar, District Muzaffarnagar is co-owned by the plaintiff-appellant, defendant-respondent and the other co-

owners. It is alleged that the defendant-respondent out of his share 7435/29704 admeasuring 0.1859 hectare gifted the same to the plaintiff-appellant by virtue of a gift deed dated 25.02.2022 and the said land is being enjoyed alone by the plaintiff-appellant. It is also asserted that partition took place and the land being earmarked as ABCD comes within the share of the plaintiff-appellant and the wall has been constructed enclosing the same.

5. It is further alleged that the defendant-respondent is a quarrelsome, clever person who post death of his brother Sudhir on the basis of a fraudulent will got his name recorded in the revenue records and in the month of May, 2022 the defendant- respondent on the basis of muscle power attempted to encroach upon and dislodge the plaintiff-appellant which constrained plaintiff-appellant to institute Original Suit No.398 of 2022 before the court of Civil Judge (Senior Division), Muzaffarnagar being Smt. Sangeeta wife of Sanjeev Versus Pawan son of Jagpal. The said suit came to be proceeded ex-parte and resulted in dismissal on 01.08.2024. Against which a Civil Appeal No.43 of 2024 came to be filed by the plaintiff-appellant before the Court of Additional District Judge, Court No. 1, Muzaffarnagar which also resulted to the same fate on 21.08.2026.

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

7. Learned counsel for the appellant-plaintiff sought to argue that the consideration which weighed with the trial and the lower appellate court while non-suiting the plaintiff-appellant cannot be said to be legal or tenable in the eyes of law. Submission is that even in the revenue records there was a specific entry in the name of the plaintiff-appellant and there happens to be a partition also done between the parties and the plaintiff-appellant is already enjoying the land/public property which is earmarked post partition. Contention is that the defendant-respondent had manipulated a will while bequeathing the property of Sudhir, who happened to be the brother-in-law of the plaintiff-appellant and the brother of the defendant-respondent fraudulently. Further submission is that even a gift deed was also executed by the defendant respondent in favour of the plaintiff and the fact regarding partition of the agricultural land is further borne out from the recitals contained in the plaint according to which the land has been earmarked as ABCD. Further contention is that the trial court as well as the appellate court while recasting a new case being non-suited the appellant on the premise that the partition was not done when the power to conduct proceedings for

partition lies with the revenue court and not with the civil court in that regard further submission is that the court below also erred in law in taking a ground for that only defendant-respondent was arrayed as a party though the legal heirs of the deceased ought to have been arrayed as the parties who would have interest in that regard.

8. Reliance has also been placed upon page no.8, the following substantial questions of law;-

"A. Whether the plaintiff/appellant proved their possession and ownership over the land in dispute and the suit dismissed by the trial court and by the appellate court is against the provisions of law?

B. Whether the judgment and decree passed by the learned first appellate court and learned trial court is against the provisions of law?"

9. I have heard the submission so made across the bar and perused the record.

10. Apparently a suit came to be instituted by the plaintiff /appellant being Original Suit No.398 of 2022 seeking permanent injunction against the defendant-respondent restraining it from interfering in the peaceful possession of the land in question which were year marked as ABC and D. The said suit came to be decided ex-party by the trial court on 01.08.2024 taking the ground that there was no partition of metes and bound that there is no document available on record to show that partition has been done. The same led to appeal and the appeal also met with the same fate.

11. Before embarking an inquiry upon the tenability of the arguments so raised by the learned counsel for the plaintiff-appellant while relying and referring to the substantial question of law this court is to be mindful of the legal position that second appeal so preferred under section 100 of the Civil Procedure Code is to be entertained and admitted only on substantial question of laws what is substantial question of law depends upon the facts and the circumstances of each and every case and no universal formula can be resorted to in that record. Coming to the facts of the case, it is apparent that the plaintiff-respondent had instituted a suit for permanent injunction against the co-owner being the brother-in-law of defendant-respondent restraining him from interfering in the possession and the use of the land in question.

12. Records further reveal that the plaintiff-appellant and the defendant-respondent are relatives and they stake their claim that they are living jointly. However, according to the plaintiff-appellant partition was done and on a pointed query being raised to learned counsel for appellant as to which is the document which would show that partition has been done. Reliance in the reference has been made to the Khatauni which is at page 65 of the paper book being Khata No.00113. As a matter of fact it is a matter of common knowledge that whenever there is an agriculture land then partition can be done by the Revenue Court only. There is no document available on record to show that any partition has been done even in the entire plaint as well as the foot note showing the details of the land and there is nothing on record to show that the post partition and there was respective share of particular party of a particular piece of land. The trial court as well as the lower appellate court have recorded the concurrent finding that there is no document showing partition and however, in the map there is no earmarking of a land of a particular party. There is nothing on regard to show that which part of the land went to which party and what is the share in that record.

13. Further, in the plaint itself the defendant has been arrayed Pawan Kumar but Ombir has not been made a party. No heirs have been arrayed as defendant. There is no recital about the legal heirs who would be entitled to devolution of the property in that regard. What has been prayed is a permanent injunction. As a matter of fact permanent injunction clearly cannot be granted against the co-owners in that regard. As regards the substantial question of laws are concerned which have been shown to be from A to F, thus by no stretch of imagination can be said to be substantial question of law.

14. Since, concurrent findings have been recorded by the trial court and the lower appellate court hence, this court does not find any substantial question of law so as to entertain this appeal, thus, the appeal stands **dismissed.**

October 6, 2026
Neeraj

(Vikas Budhwar,J.)

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