2026:AHC:209446

HIGH COURT OF JUDICATURE AT ALLAHABAD

SECOND APPEAL No. - 767 of 2026

Arun Kumar And Another

.....Appellant(s)

Versus

Nagar Palika Tihar And Another

.....Respondent(s)

Counsel for Appellant(s) : Ramendra Asthana
Counsel for Respondent(s) :

Court No. - 53

HON'BLE VIKAS BUDHWAR, J.

1. Impugned in the present proceedings purported to be under Section 100 of the CPC is the judgement and the order dated 31.05.2022 passed by Additional Civil Judge, (Junior Division) / J.M., Tilhar, Shahjahanpur in O.S. No. 585 of 1982, Ramawati and Others Versus Nagar Palika, Tilhar, as well as the judgement and the order dated 15.07.2026 passed by Additional District Judge / Special Judge, POCSO Court, Court No. 42, Shahjahanpur in Civil Appeal No. 39 of 2022, whereby the original suit as well as the appeal came to be rejected.

2. Broadly the facts are that the plaintiff / appellant instituted Original Suit No. 585 of 1982 before the Court of Munsif, Shahjahanpur seeking a permanent injunction, restraining the defendant / respondents from interfering in the piece of the land as detailed in the map being earmarked as A, B, C, D. In the suit itself as many as 8 issues were framed on 09.10.1984 which reads as under:

> *"(a) whether the plaintiff is the owner of the disputed land and is in possession whereof?*
>
> *(b) whether the suit is defective on account of non-joinder of proper and necessary parties?*
>
> *(b) whether the disputed land is owned by the State of Uttar Pradesh or Nagar Palika and administered by the Nagar Palika Parishad?*
>
> *(e) whether the suit is not maintainable in view of non-compliance of the provisions contained under Section 326 of the Nagar Palika Act?*
>
> *(f) whether the Court has the jurisdiction to entertain and try the suit?*

(g) whether the disputed arazi/ khasra 23/15 decimal, is the part of the subject plan?

(h) whether the adequate / proper Court fees and the suit is undervalued or not?

(i) As to what relief, the plaintiff is entitled to?"

3. The suit proceeded to ex-parte and the Trial Court by virtue of the judgement and the order dated 31.05.2022 dismissed the suit, against which Civil Appeal No. 39 of 2022 came to be preferred by the plaintiff-appellant which also met with the same fate and was rejected by the Court of Additional District Judge / Special Judge (POCSO Court), Court No. 42, Shahjahanpur on 15.07.2026.

4. Questioning the order of the Trial Court as well as of the Lower Appellate Court, the present appeal under Section 100 of the CPC has been preferred.

5. In the memo of appeal, the following substantial questions of law have been framed which are extracted here-in-under:

"A. Whether, any suit can be dismissed even in those cases where the Defendant fails to discharge his burden of proof?
B. Whether, dispute regarding identity of property in suit can be decided without appointing Survey Commission?
C. Whether, the Plaintiff appellant is entitled to get a decree in his favour in the light of decree 27.08.1982 in O.S. No.457/1980?"

6. Learned counsel for the plaintiff-appellant has submitted that the courts below have committed patent error of law apparent on the face of the record while committing manifest illegality in non-suiting the plaintiff-appellant, particularly, when it is not a case wherein the plaintiff-appellant are strangers, however, they have purchased the demise land by virtue of a registered Sale Deed dated 17.05.1967 on a sale consideration of Rs. 6,000 from Sitaram, Shriram and Smt. Kutumba Pyari. Contention is that in the Sale Deed itself there was a description of the *Chabutra*, which is in the possession of the plaintiff-appellant, which is a appurtenant / adjacent to the dwelling house of the plaintiff-appellant to which Nagar Palika / defendant had no right at all, as they were never in the possession. Learned counsel for the plaintiff-appellant further submits that the plaintiff-appellant in order to substantiate his claim and to prove his case have produced PW1 Ramawati, PW2, Babu @ Ram Chandra, PW3, Ram Kumar and as per their

depositions, it became apparently clear that the plaintiff-appellant are the owners and in the possession of land, however, obstructions and hindrances were caused by the defendant. Further submission is that even if taken the case of the defendant on the face value that there happened to be certain discrepancy in non-mentioning of the arazi or giving accurate dimension then too in view of the provisions contained under Order 7 Rule 3, once a specific provision had been set out in the plaint then it was the duty of the Court to have given heavy reliance upon the registered sale deed so executed, in view of Section 58 of the Registration Act, 1908, as well as in appropriate cases, the Court was under obligation to have issued survey commissioners in that regard. Reliance has also been placed upon the judgment of the Hon'ble Apex Court in ***Shreepat v. Rajendra Prasad and Others, JT 2000 (7) 379***, ***Ishwar Das Jain Vs. Sohan Lal J.T. 1999(9) SC 305*** and the judgment of the Hon'ble Apex Court in ***Zarif Ahmad (Dead) through Legal Representatives and Another v. Mohd. Farooq, 2015 (13) SCC 673***.

7. In nutshell the submission of the learned counsel for the plaintiff / appellant is that the suit was for a permanent injunction and not a declaration, thus, the approach so adopted by the Trial Court as well as the Lower Appellate Court while disbelieving the registered Sale Deed, tantamount to miscarriage of justice and, thus, the appeal is liable to be allowed *in toto* while setting aside the order of the Trial Court as well as the Lower Appellate Court.

8. I have heard the submissions made by Shri Asthana, learned counsel for the plaintiff / appellant and perused the record carefully.

9. Apparently, the suit bearing no. 585 of 1982 came to be instituted before the Court of Munsif, Shahjahanpur seeking a permanent injunction restraining the defendants from interfering in the peaceful possession of the land which was detailed by way of Nazra Naksha being earmarked as A, B, C, D. The plaintiff / appellant stakes his claim while claiming ownership by virtue of a registered Sale Deed dated 17.05.1967 executed in its favour by Sitaram, Shri Ram, Smt. Kutumba Pyari Devi on a sale consideration of Rs. 6,000/-. Though the plaintiff / appellant claims ownership on the basis of the registered sale deed but what would be relevant, would be, what is the dimension as well as the number of the arazi which stood transferred by virtue of the registered sale deed. For the said purpose, the recitals contained

in the sale deed becomes relevant. As per the registered sale deed in question, a Nazra Naksha was prepared, according to which, in East, there was a road and Chungi and West house of Sadar and Bhola Marhoom which is now of Nannu. North is the Chungi and road and South is the house of Kali and Narayan Das. Further as per the Nazra Naksha (map) which stands mentioned in the plaint, the position so recited is that in North, it is the house of the plaintiff and Chabutra between the house and the road and in East, Chungi Khaprail which has been earmarked as E, F, G, H.

10. A conjoint reading of the position so set out in the registered sale deed dated 17.05.1967 and the Nazra Naksha as apparent in the plaint would reveal that the property which is claimed to have been purchased by the plaintiff from the sellers, there is no reference to *Chabutra*. What is more interesting is that in the deposition of PW-2, Pappu @ Ram Chandra, he in his cross-examination had come up with a stand that in the north side, there is a road and he has also accepted the fact that in the office/ Chungi east side and north side, there is no *Chabutra* and the land which is appurtenant to Chungi belongs to Nagar Palika and the land beyond the room of the Chungi is being used by the officials and the employees of Nagar Palika. He also admits that in his deposition that the room of the Nagar Palika has been constructed to which Ramawati had no connection and the place whereas at Chungi, it is not vacant. PW-3, Ram Kumar Rastogi in his cross-examination had deposed that he had no knowledge about the sale deed and the disputed land is on the north side and he has no knowledge regarding institution of the suit between Sita Ram and Ramavati.

11. A bare look of the findings recorded by the Trial Court as well as the Lower Appellate Court would reveal that the claim of the plaintiff / appellant has been non-suited on the ground that there is no recital either in the sale deed or in the plaint, so as to show or depict that the plaintiff is actually the owner. Though the sale deed talks about a particular land but the same is not identifiable, so as to confer benefit of ownership, particularly, when there happens to be a *Chabutra* which as per the deposition of the witnesses is not owned by the plaintiff. It is a matter of common knowledge that ownership can be claimed through registered sale deed, gift deed or by devolution and succession. However, mere execution of the said instruments would not suffice as there should be a clear recital of the land being arazi/ khasra number, dimension accompanied with *chabutra* so that the land be identifiable in nature. Further this Court is also mindful of the fact that the

suit is for injunction and no injunction can be granted against the rightful owner and, in case, the plaintiff seeks ownership then a declaratory suit is to be instituted in that regard.

12. Coming up to the another limb of the argument that once there was pleadings in the plaint itself with relation to Order VII Rule 3 of the CPC with regard to the land then a survey commissioner ought to have been appointed, there is no quarrel to the said legal proposition as canvassed by the plaintiff / appellant while relying upon the judgement in ***Shreepat (supra)***, however, what would be relevant, would be the nature of the pleadings and the evidence available on record. Here the Court finds that the sale deed as well as the plaint do not show ownership by way of conveyance deed of *Chabutra* in favour of the plaintiff / appellant. Same is the position with respect to ***Zarif Ahmad (Dead) through Legal Representatives and Another (supra)*** also, as the same would have been of no help. With regard to Section 58 of the Registration Act, 1908 is concerned, the same mandates a presumption and thus mere execution of sale deed sans details of the land would not suffice, thus the judgement in ***Ishwar Das Jain (supra)*** would also not be of any aid and assistance to the plaintiff / appellant.

13. As a matter of fact, the proceedings before the Court is under Section 100 of the CPC and in order to entertain and admit a Second Appeal, there has to be a substantial question of law, however, a bare look of the substantial questions of law so pleaded and casted as referred to above are concerned, they do not constitute any substantial question of law.

14. Apart from the same, the Court finds that there is concurrent findings recorded by the court below which has not been seriously assailed and dispelled, thus, no good ground is made to entertain the appeal, accordingly, it is **dismissed**.

October 7, 2026
Ashu

(Vikas Budhwar,J.)

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