HIGH COURT OF JUDICATURE AT ALLAHABAD

SECOND APPEAL No. - 816 of 2026

Surjeet Gautam

.....Appellant(s)

Versus

Chhotelal

.....Respondent(s)

Counsel for Appellant(s) : Vijaya Shankar Shukla
Counsel for Respondent(s) :

Court No. - 53

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri V.S. Shukla, learned counsel for the plaintiff-appellant.

2. Impugned in the present proceedings under Section 100 of the Code of Civil Procedure (in short CPC) is the Judgment and order dated 12.07.2024 passed by the Civil Judge (Senior Division), Rampur, in O.S. No. 210 of 2018, *Surjit Gautam v. Chhotelal* whereby the suit for permanent injunction, based upon the relief for partition came to be dismissed as well as the judgment and the order dated 24.08.2026 passed by Additional District Judge/ Fast Track Court No.2, Rampur and so in Civil Appeal No. 81 of 2024 affirming the judgment and order of the trial court.

3. Broadly the facts are that the plaintiff-appellant instituted an Original Suit no. 210 of 2018 before the Court of Civil Judge (Senior Division), Rampur, coming up with a stand that he happens to be the son of the defendant-respondent. According to him, the subject Arazi being Arazi No. 19/0.991 and Gata No. 155, Rakba 1.530 hectare situated at Village Banke, Pargana Panwadiya, Tehsil Bilaspur District Rampur is an ancestral property. Thus, the defendant-respondent, who cannot be termed to be the owner being self-acquired property, has no authority to part with the said property with the sisters of the plaintiff-appellant. The suit proceeded ex parte and the same came to be dismissed on 12.07.2024 by the trial court against which, the plaintiff-appellant preferred Civil Appeal

bearing No. 81of 2024 before the lower Appellate Court which also met with the same fate.

4. Questioning the judgment, order and the decree 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. Learned counsel for the plaintiff-appellant has sought to argue that the subject Arazi is an ancestral property and it does not exclusively belong to the defendant-respondent. He submits that the plaintiff-appellant happens to be the son of the defendant-respondent and just in order to exclude the plaintiff-appellant, an exercise has been undertaken by the defendant-respondent being the father to part away the said property in favour of the sisters. He submits that once the burden stood discharged by the plaintiff-appellant that the property in question is a ancestral property then the burden shifts upon the defendant-respondent and it is for the defendant-respondent to prove its case to the contrary that the property is self acquired property. He further submits that as per the khatauni, the subject Arazi is in the name of the defendant-respondent and his three brothers Dharampal, Brajpal and Baljeet. Thus, it cannot be said that the said Arazi happens to be self-acquired in that regard. He submit that there was voluminous evidence available on record so as to hold that the plaintiff-appellant has a right being the property ancestral.

6. I have heard the submissions so made across the Bar and perused the record carefully.

7. Apparently in the present proceedings, this Court is confronted with concurrent findings recorded by both the courts below. Basically, the case set up by the plaintiff-appellant is to the extent that he happens to be the son of the defendant-respondent. According to him, as per the khatauni, the defendant-respondent is the owner to the extent of 1/4th share and rest of his three brothers hold 3/4th of the share.

8. The bone of contention is whether the said Arazi is ancestral or not. In order to bestow consideration upon the same, what would be relevant would be the evidence adduced during the course of the trial public proceedings.

9. Records reveal that barring the submission of the khataui, there is no evidence available on record. As per the khatauni, the defendant-respondent along with his three brothers are the co-owners of the Arazi in question. Merely because the property stands owned by and is recorded in the name of the four brothers including the defendant-respondent does not infer that the Arazi happens to be an ancestral property, as in case, the property happens to be an ancestral property, then of course, there has to be a specific pleading coupled with evidences adduced in that regard. In absence of any evidence being adduced by the plaintiff appellant, it cannot be said that the burden should be shifted upon the defendant-respondent. Apart from the same, here it is the specific stand of the defendant-respondent that the property is self acquired property and in order to dispel the same, what would be relevant is the evidence, which apparently is lacking in the present case, except bald allegations in that regard. Neither any documentary evidence nor any oral evidence by way of deposition has been produced before the court below.

10. Once concurrent finding has been recorded by both the courts below, then this Court in exercise of the jurisdiction under Section 100 of the CPC is not required to re-evaluate the evidences particularly when the jurisdiction is not akin to regular first appeal under Section 96 of the CPC. So much so, as many as substantial question of law have been framed, which are extracted herein:-

"*A. Whether the trial court/first appellate court has right to discard cogent evidence filed by the appellant in support of his claim?*

B. Whether first appellate court has right to dismiss the Suit on the ground of non partition of the property in question?

C. Whether the Suit filed by appellant is barred by the principle of non joinder of the parties?"

11. A perusal of the same would reveal that the same do not depict any substantial question of law so as to entertain and admit the appeal in this regard.

12. Accordingly no good ground is made to entertain the appeal and the

same is **dismissed**.

(Vikas Budhwar,J.)

October 28, 2026
N.S.Rathour

Digitally signed by :-
NIPENDRA SINGH RATHOUR
High Court of Judicature at Allahabad