
(2021) 08 UK CK 0317

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 3598 Of 2019

Nazakat Hussain & Another

APPELLANT

Vs

State Of Uttarakhand

RESPONDENT

Date of Decision : 23-08-2021

Acts Referred:

Citation : (2021) 08 UK CK 0317

Hon'ble Judges : Manoj Kumar Tiwari, J

Bench : Single Bench

Advocate : Ahrar Baig, R.C. Arya

Final Decision : Dismissed

Judgement

Manoj Kumar Tiwari, J

1. Petitioners are challenging the order dated 04.11.2019 passed by Ist Additional District Judge, Nainital in Eviction Appeal No. 05 of 2016. By the

said order, petitionersâ?? application seeking leave to amend the memo of appeal was rejected on the ground that new grounds, which are sought to

be added, are already there in para no. GG of the memo of appeal. Learned appellate Court has referred to the order passed by Coordinate Bench of

this Court in Writ Petition (M/S) No. 919 of 2007.

2. The application seeking leave to amend is on record as Annexure-3 to the writ petition. By adding two new grounds in memo of appeal, petitioners

want to highlight that disputed question of title cannot be decided in summary proceedings before the Prescribed Authority or the Appellate Authority.

3. Perusal of memo of appeal reveals that similar contention has been raised by the petitioners in ground no. GG as well.

4. Even otherwise also, it is settled position in law that cases in which question of

title is involved, cannot be decided in summary proceedings under

U.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1972. However, for applicability of this principle, petitioners will have to assert their

title based on cogent evidence and if they are able to satisfy learned Court below that prima facie they have title over the land in question, only then,

the contention raised by them in ground no. GG of memo of appeal would be relevant.

5. In such view of the matter, this Court does not find any reason to interfere with the order passed by Ist Additional District Judge, Nainital, which is

impugned herein.

6. Accordingly, writ petition fails and is dismissed. No order as to costs.

7. Since the matter is pending since long, therefore, learned Ist Additional District Judge is directed to decide the appeal, as early as possible, but, not

later than nine months from the date of production of certified copy of this order.