
(2021) 08 UK CK 0332

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 635 Of 2021

Pratap Yadav

APPELLANT

Vs

Mathura Prasad & Others

RESPONDENT

Date of Decision : 23-08-2021

Acts Referred:

Uttar Pradesh Zamindari Abolition And Land Reforms Act, 1950 — Section 331
Code Of Civil Procedure, 1908 — Order 7 Rule 11

Citation : (2021) 08 UK CK 0332

Hon'ble Judges : Manoj Kumar Tiwari, J

Bench : Single Bench

Advocate : Ramji Srivastava, Neeraj Garg, Siddhartha Sah

Final Decision : Disposed Of

Judgement

Manoj Kumar Tiwari, J

1. Petitioner has filed a suit for permanent injunction, which was registered as Original Suit No. 17 of 2019 before Civil Judge (Junior Division),

Doiwala, Dehradun. Respondent no. 1, in his written statement, raised a contention that since he is a recorded Bhumidhar of the land in question;

while, plaintiff is not a recorded tenure holder of the land, therefore, the suit is barred by Section 331 of U.P.Z.A. & L.R. Act. Subsequently,

respondent no. 1 also filed an application under Order 7 Rule 11 C.P.C. on the ground that, in view of provision contained in Section 331 of U.P.Z.A.

& L.R. Act., the suit can be tried only before a Revenue Court and not before the Civil Court, therefore, the plaint deserves to be rejected. The said

application filed by respondent no. 1 was rejected by the trial Court vide order dated 17.10.2019 by holding that, having regard to the relief sought by

the plaintiff, the Civil Court has jurisdiction in the matter. Respondent no. 1

challenged the trial Court's order by filing Civil Revision No. 148 of 2019, which has been allowed by Vth Additional District Judge, Dehradun vide judgment dated 26.02.2021. Feeling aggrieved by the said judgment passed by Revisional Court, petitioner, who is plaintiff in the suit, has approached this Court.

2. Heard learned counsel for the parties and perused the record. Learned Revisional Court has considered the matter in great detail and, after setting aside the order dated 17.10.2019, has remanded the matter to the trial Court for re-considering the application under Order 7 Rule 11 C.P.C. filed by respondent no. 1, in accordance with law.

3. This Court does not find any reason to interfere with the remand order dated 26.02.2021 passed by learned Revisional Court. In paragraph no. 14 of the impugned judgment, learned Revisional Court has observed that the suit filed by the petitioner is not maintainable before the Civil Court. This observation is uncalled for as, while remanding the matter to the trial Court, any observation touching the merits of the case is bound to affect the final order to be passed in the matter.

4. Learned counsel for respondent no. 1 fairly submits that the said observation of the Revisional Court is unwarranted.

5. Therefore, with the consent of parties, the observation made by Revisional Court regarding maintainability of suit before Civil Court is scored off and the matter is remanded back to the trial Court to decide the application made by respondent no. 1/defendant no. 1 under Order 7 Rule 11 C.P.C., on merits, without being influenced by any observation made by this Court or by the Revisional Court.

6. The writ petition is, accordingly, disposed of.

7. Interim order, if any, stands vacated.