

**(2019) 05 UK CK 0136**  
**In the Uttarakhand High Court**  
**Case No : Second Appeal No. 42 Of 2019**

Ram Rawal

APPELLANT

Vs

Thakur Ram Chandra Ji Maharaj And Shiv Ji Maharaj And  
Another

RESPONDENT

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**Date of Decision :** 10-05-2019

**Acts Referred:**

Evidence Act, 1872 — Section 103  
Small Cause Courts Act, 1887 — Section 15  
Code Of Civil Procedure, 1908 — Section 10, 151, Order 41 Rule 31

**Citation :** (2019) 05 UK CK 0136

**Hon'ble Judges :** Sharad Kumar Sharma, J

**Bench :** Single Bench

**Advocate :** Siddhartha Sah, Arvind Vashistha

**Final Decision :** Dismissed

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## Judgement

Sharad Kumar Sharma, J

1. This is a defendant's Second Appeal wherein the defendant has questioned the judgment dated 16.11.2013, passed by the Civil Judge (Jr.Div.), Kashipur, District Udham Singh Nagar in Civil Suit No. 203 of 1995, Thakur Ram Chandra Ji Maharaj Vs. Shri Ram Rawal and another. He further questions the propriety of the judgment dated 28.02.2019, as passed by the Second Additional District Judge, Kashipur, District Udham Singh Nagar in Civil Appeal No. 54 of 2013, Ram Rawal Vs. Thakur Ram Chandra Ji Maharaj and Shivaji Maharaj Virajman Mandir and another, whereby as a consequence of the judgment dated 28.02.2019, the suit preferred by the plaintiff-respondents for possession of the shop in dispute had been decreed concurrently by both the courts below and, consequently the shop which has been described in the plaint as to be a shop situated in the Main Bazar, Mohalla Ganj facing south which is bounded in the east by the shops of the plaintiff temple occupied by one Mr. Ramesh Chandra, in the west, another shop of the plaintiff temple occupied by Mr. Kewal Kumar and in the south there

was a road and in the north, the rest of property of the Trust.

2. The Trust-respondent No.1 herein, the present Second Appeal had instituted a proceeding for eviction of the defendant-appellant by instituting the suit on 25.09.1995 being Suit No.203 of 1995, praying for a decree of permanent mandatory injunction for following relief :-

"यह कि वादी न्यायालय से प्रार्थना करता है कि प्रतिवादी संख्या 1 या जो भी प्रतिवादीगण विवादित दुकान पर काबिज पाया जाये उन्हें बेदखल कर कब्जा वादी को दिलाया जाये तथा खाली होने तक का मुआवजा स्तेमाल भी वादी को दिलाया जाये। इसके अतिरिक्त खर्चा मुकदमा भी वादी को प्रतिवादीगण से दिलाया जाये तथा जो भी अन्य अनुतोष न्यायालय उचित समझे वादी के पक्ष में दिये जाने की कृपा की जाये"

3. As per the plaint averment, it is contended that at the time when the suit was instituted it was the then Chairman one Mr. Chandra Prakash who was given the authority to institute the suit later on after his death the trust passed a resolution on 05.08.1997 and conferred the authority to one Mr. Ashok Kumar Agarwal, to continue with the suit instituted by respondent No.1. He too died during the pendency of suit and ultimately by the resolution passed by the Trust, one Mr. Gopal Dass who was the then Chairman who was given the authority by the plaintiff to proceed with the suit against defendant/appellant.

4. As per the plaint's averments the plaintiff has come up with a case that plaintiff which is a private trust had after passing of the resolution had instituted the proceeding for eviction of defendant/appellant on the premise that the shop in dispute was given in possession of the father of defendant No.2, late Mr. Brij Kishore, who according to the defendant-appellant claimed to be one of the beneficiary of the private trust. It is the case of the plaintiff that after the death of Mr Brij Kishore, the shop continued to be occupied by defendant No.2, who succeeded him. As per the complainant plaintiff allegations in the plaint, it was contended that the defendant No.1 had been wrongfully inducted into the shop in question in 1984 and was not in a permissive possession or possession based upon creation of any right by the plaintiff No.1 and hence his status would be treated as that of an unauthorized occupant who was inducted in the shop as a partner by the predecessor of defendant No.2/respondent No.2 herein.

5. It is the case of the plaintiff that prior to the institution of the proceedings of the suit on 25.09.1995 the then Chairman Mr. Chandra Prakash had issued notices to the defendant-appellant to vacate the shop in question and handover the peaceful vacant possession but the present defendant No.1, appellant herein avoided to comply the notice and handover the possession and he came up with the case that he was inducted into the shop in dispute as a partner by the partnership which was created by the Late father of defendant No.2 and hence, being the partner of the firm, he had a right to continue to occupy the shop in question while on the other hand it is the case of the plaintiff that when despite of notices when the possession was not handed over, there had arisen the necessity to institute the present suit for eviction and claim for damages at the rate of Rs.2,000/- per month. The suit in question was contested by the

defendant by filing a written statement paper No.24-Ka and principally the sole ground of contest by defendant No.1 was that since he was inducted as a partner by late Mr. Brij Kishore, who was alleged to be one of the trustees and beneficiaries of the Trust, hence his occupancy over the disputed shop cannot be said to be an unauthorized occupancy vis-a-vis as against the property of plaintiff No.1. He further contested the proceeding on the ground that the Chairman of the Trust who had instituted the proceeding and later on it was continued by one Mr. Gopal Dass, who was the then so called Chairman inducted at the later stage by the resolution of plaintiff trust, in fact, had no authority to continue with the Trust and consequently the suit, because there was a proceeding going on by way of Suit No.19 of 2009 instituted by the Trust through Gopal Dass as against one Mr. Rakesh Kumar, who claimed his rights over the assets of a private trust.

6. Be that as it may ultimately the said suit being Suit No.19 of 2009 was decided by the court of Civil Judge (Sr. Div.), Kashipur, District Udham Singh Nagar by the judgment and decree dated 31.08.2018, and the suit wherein the Chairman Gopal Dass was claiming his rights as against one Mr. Rakesh Kumar, who too had filed the counter claim was decided against the plaintiff of the said suit. It is an admitted case of the defendant-appellant herein that being aggrieved against the said judgment rendered on 31.08.2018 that the plaintiff has preferred the First Appeal before this Court being First Appeal No. 164 of 2018, Thakur Ram Chandra Ji Maharaj and Shivaji Maharaj Virajman Mandir and another Vs. Rakesh Kumar, where the judgment dated 31.08.2018 rendered in Suit No. 19 of 2009 was put to challenge and this Court vide its order dated 08.08.2018, while admitting the appeal against the said judgment had stayed the effect and operation of the judgment dated 31.08.2018. This Court on 08.10.2018 had passed the following order :-

"In the meantime, till the next date of listing the effect and operation of the impugned judgment shall remain stayed. Parties to the present Appeal are restrained from alienating the property."

7. The learned counsel for the appellant submits that in the written statement it was contended that so far as the plaintiff No.1 is concerned who was represented at the relevant time by the then Chairman Mr. Gopal Dass, had no cause of action against him for the reason that he was not inducted into the shop by the Trust or the office bearer of the Trust, but rather he was inducted in the shop by the beneficiaries of the Trust, late Mr. Brij Kishore as a partner of the firm which was being managed by Late Brij Kishore and hence Mr. Chandra Prakash, the Chairman or any subsequent Chairmen who have been authorized to continue with the suit had no right to institute the proceedings or to continue the proceedings against the defendant-appellant.

8. This Court is of the view that the question which has been raised by the appellant before the trial court by formulation of issue No.12 pertaining to the competence of the Chairman Gopal Dass to continue with the suit that was decided against the defendant and the trial court has held that since Mr. Gopal

Dass was holding the office of the Chairman of plaintiff Trust, hence in pursuance to the resolution of the private Trust, he was authorized and bound to continue with the suit on behalf of plaintiff No.1. This binding on the competence decided by issue No.12 has been affirmed by appellate court too.

9. Be that as it may the institution and continuance of the suit will not be affected irrespective of the person who holds the affairs of the Trust as Chairman that would not be material so far it relates to the continuance of the present proceedings of the suit because whosoever is at the helm of affairs of the trust property would be under Law entitled to institute the proceedings and continue with pending cases as against the tenant who occupy the shop which admittedly belongs to the Trust itself and owned by it.

10. Secondly, the arguments extended by the learned counsel for the defendant/appellant was from the view point that the continuation of proceedings at the behest of Mr. Gopal Dass would be untenable for the reason that his inter se dispute with regard to his continuance in the office of Chairman of the Trust in Suit No. 9 of 2018 as decided by the trial court on 31.08.2018 will have no bearing for the reason being that the said determination as against Mr. Gopal Dass, who had continued the present suit had been kept in abeyance by the interim order of this Court dated 08.10.2018. Hence, in such an eventuality the continuance of a suit at the behest of Mr. Gopal Dass in the capacity of Chairman of the private trust cannot be faulted with.

11. The case of the defendant was further from the view point that there have been a suit instituted as against Mr. Brij Kishore by the plaintiff Trust being a SCC Suit No. 46 of 1978 'Rama Mandir Shivji Maharaj Dwara Prabandhak Raj Kishore vs Brij Kishore', which was decided in favour of Mr. Brij Kishore, the predecessor of respondent No.2, and according to the arguments extended by the defendant-appellant, it was in the said judgment rendered on 03.09.1980, that it was held out that late Mr. Brij Kishore was rather be beneficiary of the Trust and not the tenant of the property in question. This stand taken by the defendant-appellant before the learned trial court and the first appellate court or even before this Court has not been substantiated by defendant-appellant by bringing on record the judgment dated 03.09.1980, determining the status of Brij Koshore as not to be the tenant of the shop in question which could have been scrutinized by the courts. Admittedly even otherwise also as per the culmination of the proceedings by the judgment dated 03.09.1980, if the defendant No.1, who was inducted as a partner at the behest of the beneficiary of the Trust then it obviously the burden of proof the same under Section 103 of the Indian Evidence Act was to be discharged by the defendant/appellant to show that the status of Mr. Brij Kishore was not that of a tenant and consequently the defendant No.2, too would not be treated as a tenant of the property in question. This contention apart from the fact that the defendant has failed to discharge his responsibility under Section 103 of the Indian Evidence Act but the arguments otherwise also cannot be taken into consideration by the second appellate court at this stage for the

reason being that the proceedings before the SCC Court instituted under Section 15 of the provisions of the Small Cause Court Act are the summary proceedings and any determination held thereof will not have any bearing in the regular proceeding of the suit.

12. There is another aspect of the matter on the basis of which the controversy can be looked into because even if for the sake of arguments the plea taken by the defendant-appellant is accepted with regard to the determination of the status of late Mr. Brij Kishore as not to be a tenant in pursuance to judgment dated 03.09.1980 as mandated in SCC Suit No. 46 of 1978, then too if at all any right to continue to occupy the shop as a beneficiary of the trustee was continued, it would only be confined to the defendant No.2 who succeeded him and not to defendant No.1, who admittedly claims himself to have been inducted as the partner in business by Late Mr. Brij Kishore.

13. On the perusal of the judgment impugned in the present Second Appeal and even after raising a consistent question from the defendant-appellant to establish his status as that of a partner of the firm which was claimed to have been created by the principal trustee- late Mr. Brij Kishore and the firm in which he was inducted as a partner of the said firm and manner of inducting as partner. Apart from the fact that there is no evidence to said effect on record before the courts below to show the legality of the existence of the partnership firm that it was validly created as per the prevalent law of partnership, and the defendant-appellant was a validly inducted partner of the said firm which was legally created under the Partnership Act of 1932. In such an eventuality as far as the status of the defendant-appellant is concerned in the absence of any proof to the contrary on record it would be deemed that he was unauthorizedly inducted into the shop and placed his possession by the defendant No.2 without any authority of law.

14. What would be another glaring example to be seen is that while considering the controversy in question is that whatsoever right was being claimed by the defendant No.1 to continue his occupancy in the shop in question which was flowing from the right which was created by the Principal Trustee late Mr. Brij Kishore and subsequently continued by the defendant No.2 his heir, a finding has been recorded by the court below in para 12 of the said judgment that the defendant No.2 had never put his appearance before the court below nor had appeared in the witness box to substantiate or support the case of defendant No.1 regarding his status as partner of his firm and consequently the suit proceeded ex-parte as against defendant No.2 by an order dated 24.10.2013, which continued to operate and was never recalled.

15. Even the learned trial court, while considering the effect of the decision being rendered in the SCC suit had dealt with the question by framing issue No.5 and 6 and has returned a finding to the effect that the induction of present defendant-appellant in the property of the Trust as created in 1984 it was on the whims of defendant No.2 and was not substantiated or proved by the defendant by

producing him before the courts below.

16. The learned counsel for the defendant-appellant has framed the following substantial questions of law :-

"Following substantial question of law arise for consideration by this Hon'ble Court in the present appeal:

A. Whether the learned Courts below have erred in law in not considering the effect of judgments in earlier suits merely on the ground that the appeals against them are pending and the operation thereof has been stayed?

B. Whether the learned Courts below have erred in law in not considering the effect of the judgment dated 3.9.1980 passed in SCC No.46 of 1978; Ram Mandir Shiv Ji Maharaj vs. Brij Kishore; by the Court of the Judge Small Cause Court, Kashipur, District Nainital (now Udham Singh Nagar)?

C. Whether the learned Courts below have erred in law in holding that the suit is not barred by time?

D. Whether the learned Courts below have erred in law in not considering that the filing of the appeal against the judgment or stay thereof does not set aside or wipe out the judgment and not staying the proceedings of the suit under Section 10 or 151 of the Code of Civil Procedure instead of passing a contradictory judgment to such earlier judgment?

17. In order to answer, the first question with regard to the effect of the judgment rendered in the earlier suit it will have no bearing because in the instant case the earlier suit prior to the institution of suit No.203 of 1995 was only the SCC Suit No.46 of 1978 and the consequences as argued by the learned counsel for the appellant has already been dealt with in the above paragraph that part form the fact that it was summary suit, and if any status is determined of tenancy would be having impact on defendant No.2, who has not appeared in the present suit to protect his case.

18. The second question of law pertaining to the impact of the judgment dated 03.09.1980, rendered in SCC Suit No. 46 of 1978 has also being answered in the above paragraphs that if at all there could be any beneficiary of the said judgment that would if at all could be extended it would only be extended to the defendant No.2 and not to an unauthorized occupant, defendant/appellant who has unable to prove his legal status to continue to occupy the premises as a partner and hence no benefit could be extended to him by judgment dated 03.09.1980, hence this issue has also been decided against him.

19. The question pertaining to the institution of the proceeding being time barred as framed by substantial question No. 'C' will not be attracted in the case at hand for the reason that once the defendant-appellant has been inducted unauthorizedly in 1984 by Late Mr. Brij Kishore and his occupancy had continued is that status as partner, then, each day of his continuance of unauthorized

occupancy will give a cause of action for the Trust to initiate the proceedings of eviction and since it is a continuous cause of action and there would be no right matured in favour of defendant No.1. Since he having failed to discharge to prove his right to continue to occupy the premises, the question of limitation in the institution of suit will not come into play even otherwise, also as this question will not be attracted because if at all the defendant No.1-appellant was claiming to have been inducted into the shop in 1984 as partner and he continues to occupy the same for a considerable long time it will not affect the proceeding in the absence of there being any infringement of his right either in the capacity of tenant or otherwise in institution of the suit. As being an unauthorized occupant cannot grant him immunity from institution of the proceedings for eviction and that by owner of the property i.e. the Plaintiff Trust.

20. Lastly, the substantial question of law which has been sought to be pressed is by the defendant-appellant pertaining to the impact of Section 10 to be read with Section 151 of the Code of Civil procedure, if at all it would create a bar to the proceeding of institution subsequent suit which has been instituted in 2009 and not in relation to the suit for eviction which was filed by the plaintiff-respondent herein as back in the year 1995. Even otherwise also the two suits in question they were altogether based on independent issues and existing issues which were to be decided as in the suit in question i.e. suit No. 203 of 1995, it was a question of eviction of an unauthorized occupant being initiated by the private Trust i.e. the plaintiff. It is altogether a distinct cause of action which was enforced by institution of the suit in 1995 itself. Subsequently, if a suit was filed in 2009 as against the parties to the subsequent suit who were claiming the rights in relation to the office of the Chairman of the Trust, it will not effect the continuance of earlier suit which was based on different cause and different case. It is yet again altogether a distinct cause of action and has got no nexus with the institution of suit No. 203 of 1995, because irrespective of the cause of action in the two suits being distinct from one another the decision likely to be rendered in the First Appeal No.164 of 2018 by this Court will have no bearing in relation to the consequence of the present second appeal or the continuance of a suit filed by the Trust against the defendant No.2 for his eviction because as a consequence of a decision which may be arrived at by this Court in the First Appeal in question it would be only determining the individual right as to who would be entitled to manage the affairs of the private trust and it will not effect the present Second Appeal, which is being contested by Mr. Gopal Dass who was authorized to do so when the suit was itself pending before the learned trial court. The findings on the questions raised by the defendant-appellant herein have been elaborately dealt with by the learned trial court in its impugned judgment dated 16.11.2013 and on the challenge being given to it in Civil Appeal No.54 of 2013, Ram Rawal Vs. Thakur Ram Chandra Ji Maharaj and another, the learned first appellate court too while exercising its power under Order 41 Rule 31 of the Code of Civil Procedure has formulated its own points of determination which reads as under :

"12. इस अपील के अभिनिश्चय हेतु वाद बिन्दु वे ही है जो विद्वान अवर न्यायालय द्वारा तय किये गये हैं, जो निम्नवत हैं-

1. क्या वादी प्रतिवादी के विरुद्ध विवादित दुकान से बेदखली की डिक्री पाने का अधिकारी है ?
2. क्या वादी प्रतिवादीगण से मुब0 रुपये 2000/- की डिक्री मुआवजा इस्तेमाल में पाने का अधिकारी है ?
3. क्या दावा वादी अवमूल्यांकित है और पेश अदा कोर्ट फीस नाकाफी है ?
4. क्या वादी को कोई वाद कारण उत्पन्न नहीं हुआ है ?
5. क्या विवादित दुकान के श्री बृजकिशारे स्वामी थे और उनकी मृत्यु के बाद प्रतिवादी सं02 मालिक हुआ ?
6. क्या प्रतिवादी सं0 1 व 2 का विवादित दुकान में साझीदार का व्यापार है, यदि हां तो प्रभाव ?
7. क्या दावा वादी धारा 92 जा0दी0 से बाधित है ?
8. क्या इस न्यायालय को आर्थिक क्षेत्राधिकार के कारण दावा सुनने का अधिकार नहीं है ?
9. क्या दावा वादी मौन स्वीकृति एवं बिबन्धन के सिद्धान्त से बाधित है
10. क्या वादी का वाद पोषणीय नहीं है, जैसा कि प्रतिवादी सं01 के जवाबदावे के पैरा सं0 17ब में कहा गया है
11. क्या दावा वादी मियाद अधिनियम से बाधित है ?
12. क्या प्रार्थी गोपाल दास वर्तमान वाद को संचालित करने के अधिकारी नहीं है ?"

21. While rendering the judgment impugned had elaborately and independently dealt with each of the issues as framed by the trial court and has recorded the concurrent findings holding the status as that of the defendant No.1 as to be that of an unauthorized occupant and affirming the decree of the trial court, which has directed the defendant No.1 to vacate the premises within a period of thirty days, from the date of production of the certified copy of this judgment, the appellate court too had affirmed the findings of the trial court rendered by the judgment dated 16.11.2013.

22. Consequently, this Court does find that in view of concurrent findings of the fact recorded by both the courts below and for the reasons assigned above, this Second Appeal lacks merit and does not deserve to be admitted, and consequently the same is dismissed, and it does not involve the determination of any substantial question of law as frame in the Second Appeal.

23. Hence the present Second Appeal is dismissed, affirming the direction given by the trial court.

24. However, there would be no order as to cost.