
(2011) 03 UK CK 0131
In the Uttarakhand High Court
Case No : Special Appeal No. 55 of 2010

Sohan Lal and Another

APPELLANT

Vs

Harimohan and Others

RESPONDENT

Date of Decision : 04-03-2011

Acts Referred:

Citation : (2011) 03 UK CK 0131

Hon'ble Judges : Barin Ghosh, C.J;Sudhanshu Dhulia, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Barin Ghosh, C.J.—The subject matter of challenge before the Writ Court was the order dated 14th November, 2008 issued by Tehsildar, Rishikesh, whereby and under, he issued a notice to the writ Petitioners as well as to the Appellants to the effect that on 19th November, 2008, at 10.30 A.M., he alongwith his officers will demarcate the boundary in between Khasra Nos. 276/49 and 276/6/37. In other words, at what place Khasra No. 276/6/37 ends and Khasra No. 276/49 starts and vice versa. This order was challenged by the writ Petitioners on the ground that there was a litigation between the writ Petitioners and the Appellants before the Civil Court, where the writ Petitioners succeeded and such success was confirmed by the High Court and the SLP filed, challenging the order of High Court, was rejected. By the judgment and order under appeal, as it appears to us, being influenced by the said state of affair, the learned Judge, while disposing of the writ petition, permitted demarcation of plot No. 276/49 but without disturbing the possession of writ Petitioners over plot No. 276/6/37 and plot No. 276/50.

2. Plot No. 276/50 was not mentioned in the notice dated 14th November, 2008, nor the said plot has or had anything to do with the past litigation between the parties.

3. The fact remains that Khasra No. 276/6/37 was purchased by the writ

Petitioners from the ancestors of the Appellants. The said purchase was not, at any point of time, disputed by the Appellants even in the said litigation inter se the parties. In the said litigation, it was contended by the Appellants that the writ Petitioners have stepped into or are attempting to step into a part of Khasra No. 276/49 without any authority. The said litigation was initiated for obtaining a permanent injunction restraining the writ Petitioners from stepping into any part of Khasra No. 276/49. The trial court found that the Appellants have not been able to prove existence of Khasra No. 276/49, nor they have been able to identify the place from where the said Khasra starts. In those circumstances, the suit was dismissed. For the selfsame reason, the appeal has been dismissed. The Hon"ble Supreme Court refused to entertain the Special Leave Petition.

4. In the body of the writ petition, it is not the contention of the Petitioners that there is no Khasra No. 276/49. In other words, it was not contended in the writ petition that there can not be a boundary between an existing Khasra and a non-existing Khasra. The learned Judge, who rendered the judgment under appeal, accepted existence of Khasra No. 276/49 by specifically directing demarcation thereof. The Appellants are seeking fixation of the boundary of Khasra No. 276/49 at the point it abates Khasra No. 276/6/37 and exactly that was the object of what the Tehsildar wanted to achieve, for which the said notice dated 14th November, 2008 was issued. By rendering the judgment and order under appeal, and thereby permitting demarcation of Khasra No. 276/49, but without disturbing the possession of Defendants over Khasra No. 276/6/37, the learned Judge has created a confusion and at the same time has prevented demarcation of Khasra No. 276/49. As such determination of the starting point of the said Khasra abating Khasra No. 276/6/37, has been impliedly prevented by the order under appeal.

5. We, accordingly, allow the appeal, set aside the judgment and order under appeal and make it absolutely clear that the purport and intent of notice dated 14th November, 2008 was only to demarcate the dividing line in between Khasra No. 276/49 and Khasra No. 276/6//37 and neither the Appellants nor the writ Petitioners can object to such demarcation. It shall be obligatory on the part of the Tehsildar to hear the Appellants and the writ Petitioners-Respondents and to look into all the documents that may be produced by them for the purpose of helping the Tehsildar in effecting such demarcation. Let a fresh notice be issued of the same nature as that of 14th November, 2008 as quickly as possible but not later than four weeks from the date of service of a copy of this order upon the Tehsildar, Rishikesh.