

(2005) 10 UK CK 0023
In the Uttarakhand High Court
Case No : Civil Revision No. 102 of 2005

Swami Bhumanand Dharmarth Netra Chikitsalaya Evam
Research Institute

APPELLANT

Vs

Sukhjeewan Singh and Others

RESPONDENT

Date of Decision : 06-10-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 331

Citation : (2005) 10 UK CK 0023

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : J.C. Gupta, sisted by Arvind Vashisth, for the Appellant; S.K. Agarwal, assisted by Jitendra Chaudhary, for the Respondent

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—Heard learned Counsel for the parties.

2. This revision is directed against the order dated 04-07-2005, passed in original suit No. 344 of 2004, whereby application 45-C/46-C, for rejection of the plaint under Order VII Rule 11, has been rejected by the learned Civil Judge (Junior Div.), Haridwar.

3. Brief facts of the case are that the Plaintiff/Respondent has sought cancellation of lease deed in favour of the revisionist (Defendant) and also injunction against it. The objection raised by the Defendant before the trial court is that in view of Section 331 of U.P. Zamindari Abolition and Land Reforms Act, 1950, the suit is not cognizable by the civil court as it involves declaration of rights of tenure holder which could have been sought only under aforesaid Act. It is a settled principle of law that for rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908, only plaint allegations are to be seen. Learned Counsel for the revisionist (Defendant) pointed out in one of its Sub-para-19 of the plaint, it has been stated that the State of U.P. has wrongly been

recorded in the revenue record. On its basis, it is argued that the plaint should have been rejected by the trial court under aforesaid Order VII Rule 11. In reply to this, learned Counsel for the Respondents pointed out contents of para-2 of the plaint, in which it has been pleaded that the predecessor in title of Plaintiff was the recorded tenure holder of the property in question. At this stage, it is debatable whether the suit involves question of declaration of rights of a tenure holder or not. But once the Defendant files the written statement on this point disputing the title of Plaintiff or that of his predecessor in title, it would certainly be a question, which shall be required to be decided by the trial court whether it has jurisdiction to try the suit or not, as such, it cannot be said if there is any illegality in the impugned order in rejection of the application 45-C/46-C, which requires interference by this Court under the revisional jurisdiction.

4. In the circumstances, the revision is dismissed in limine, with the observation that the trial court may decide the issue relating to the jurisdiction, once the plea is raised challenging the jurisdiction of the civil court by filing the written statement by the Defendant. The observation, made by the trial court that the civil court has jurisdiction in the impugned order shall not prejudice the rights of the parties at the time of the decision by trial court on said issue.