

**IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL**

Second Appeal No. 75/2006.

Seeshpal S/o Bhagwan Dass,
R/o Kali Niwas Dadu Bagh,
Kankhal, Pargana Jwalapur,
Tehsil and District Haridwar Appellant.

Vs
Kailash Charan S/o Beni Charan
And 9 others Respondents.

Shri Amish Tiwari, learned counsel for the appellant.
Sri Alok Singh, learned Senior Advocate assisted by
Ms. Mamta Joshi, learned counsel for the respondents.

Hon'ble B.C. Kandpal, J.

This is Second Appeal, U/S 100 C.P.C., by the defendant against the judgment and decree dated 2-9-2006 passed by the District Judge, Haridwar, in Civil Appeal No. 39/2006 dismissing the appeal and confirming the judgment and decree dated 29-5-2006, passed by Civil Judge (J.D.) Haridwar in O.S. No. 6 of 1987, Kailash Charan and others Vs. Virendra Kumar and others, decreeing the suit and rejecting the counter claim of the defendant.

2- Perusal of the record reveals that the plaintiffs/respondents filed suit against the defendant/appellant for permanent injunction on the ground that the disputed land was purchased by Kalicharan, the grand father of the plaintiffs and constructed house thereon. Kalilcharan had no children and after his death, his widow sold some of the property and on the remaining property the

plaintiffs became owner, as legal heirs of Kalicharan. The defendants were looking after the property in dispute on the authorization of the plaintiffs. The defendants wanted to grab the disputed property and for this purpose they filed case No. 86/85 in which plaintiffs were not made party and the suit was got decreed in absence of the plaintiffs. Hence the suit was filed.

3- The defendants contested the suit and filed their written statements. The defendants alleged that they are owner in possession of the property in dispute and the plaintiffs have no concern with the disputed property and the suit for permanent injunction is not maintainable.

4- The learned trial Judge framed relevant issues in the case. Thereafter parties led their evidence. The trial court after hearing learned counsel for the parties and perusing the record decreed the suit of the plaintiffs/respondents for permanent injunction. The counter claim of the defendant/appellant was dismissed.

5- Feeling aggrieved the plaintiff filed appeal before the District Judge, Haridwar. The appeal was dismissed by the lower appellate court vide impugned judgment and decree dated 2-9-2006.

6- Thereafter, the plaintiff has preferred this Second appeal before this court.

7- Heard learned counsel for the parties and perused the record

8- Having considered the arguments advanced by the learned counsel for the appellant and after perusal of the evidence on record, I am of the view that this second appeal is concluded by concurrent finding of facts. Therefore, I do not find any ground to interfere in the impugned judgments and orders passed by the courts below. Both the courts below have recorded concurrent finding of facts, which cannot be interfered at the state of second appeal. I also do not find any substantial question of law involved in this case.

9- The appeal is dismissed limine.

(B.C. Kandpal, J.)

Dated: October 31, 2006
ISB