

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 732 of 2009 (M/S)

Virakt Vaishnav Mandal Samiti through, President Shri Mahant Abhiram Das, Disciple Parmeshwar Das Ji, resident of Sant Sewa Ashram, “Ramanand Ashram” Mayakund, Rishikesh, District Dehradun, through General Attorney Swami Ram Sewak Dass Disciple Swami Lakshman Dass Tyagi, presently residing at Brahmamuri, Patti Dhamandsuya, Tehsil Narendra Nagar, District Tehri Garhwal.

..... Petitioner.

Versus

Swami Vishveshwarananda, Disciple of Swami Omkaranda, President Omkaranand Saraswati Charitable Trust, Omkaranand Saraswati Road, P.O. Shivanand Nagar, Muni-Ki-Reti, District Tehri Garhwal (Uttarakhand).

... Respondent.

*Sri M.C.Kandpal, Senior Advocate, with Sri S.S.Chaudhary, learned counsel for the petitioner.
Sri Arvind Vashist, Advocate, holding brief of Sri Pankaj Kaushik, learned counsel for the respondent.*

Date May 22, 2009.

Hon’ble B.S. Verma, J.

Heard learned counsel for the parties and perused the record.

This writ petition has been filed with a prayer to issue a writ, order or direction in the nature of certiorari quashing the proceeding of Case No. 14 of 2008 before the District Judge, New Tehri, Tehri Garhwal.

According to the petitioner, the petitioner filed a Civil Suit No. 72 of 2006 before the Civil Judge (Junior Division) Narendra Nagar, Tehri Garhwal for permanent injunction to restrain the respondent from interfering with the peaceful possession of the Pyao area situated in Khasra No. 268 Laxman Jhula, Tapovan, District Tehri Garhwal. The suit was dismissed on 18-10-2008. Aggrieved, the petitioner preferred a Writ Petition No. 2081 of 2008 (M/S) before this Court, which is still pending.

The respondent filed a Case No. 14 of 2008 by filing an application for restitution of order that the property may be restituted in favour of the plaintiff (respondent in the present petition) under Section 144 of the C.P.P.

Learned Senior Advocate Sri M.C. Kandpal appearing for the petitioner has vehemently contended that the application under Section 144 of the C.P.C. can only be moved before the court of first instance, i.e. the trial court and not before the appellate court. An objection was raised by the petitioner to that effect before the District Judge.

The learned counsel appearing on behalf of the respondent has raised an objection that the petitioner has not moved an application before the court concerned that the application under Section 144 of the C.P.C. filed by the respondent is not maintainable.

In the above facts and circumstances, the petitioner is given liberty to move a separate application before the court concerned that proceeding under Order 144 C.P.C. is not maintainable before the District Judge Tehri Garhwal and the respondent may file objection against it, if any.

In case the petitioner makes an application before the District Judge questioning the maintainability of petition under Section 144 C.P.C., the same shall be decided expeditiously preferably within a period of two weeks from the date of its presentation and shall also decide the petition (Case No. 14 of 2008) under Section 144 C.P.C. expeditiously, preferably within a period of three months. Both the parties shall co-operate in the expeditious disposal of the application and the said case.

With the aforesaid observation, the writ petition is disposed of finally.

(B.S. Verma, J.)

RCP