

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

Writ Petition No. 191 of 2014 (M/S)

Shanker Dutt Uniyal and othersPetitioners

Versus

Shri Surendra Dutt and others
.....Respondents

Present:

Mr. Piyush Garg, Advocate for the petitioners.

Mr. Sanjay Raturi, Advocate for the respondents.

Hon'ble Alok Singh, J (Oral).

Plaintiffs/petitioners, herein, filed O.S. No. 227 of 2012 in the court of Civil Judge (Jr. Division), Vikas Nagar, Dehradun against the defendants/respondents, herein, saying Sri Tara Dutt Uniyal, the father of plaintiff no. 1 and father of defendant no. 1, wanted to purchase entire property Schedule-Ka and Schedule-Kha and authorized defendant no. 1 to purchase the property in the name of Sri Tara Dutt Uniyal, father of plaintiff no. 1 and defendant no. 1. However, defendant no. 1, with ulterior motive and with intention to play fraud, purchased the property in his own name and never shown sale deed either to plaintiff no. 1 or to the father late Sri Tara Dutt. It is further contended in the plaint that Tara Dutt, treating the property as joint property, partitioned the same between plaintiff no. 1 and defendant no. 1, and as per the mutual partition effected by the father Sri Tara Dutt, property mentioned in Schedule-ka was given in the lot of plaintiff no. 1 while property mentioned in Schedule-kha was given in the lot of defendant no. 1 and both the parties are in exclusive

possession of their respective lots and are residing therein.

In the plaint so filed, relief was sought that plaintiff be declared sole owner in possession of the property Schedule-ka and defendants be restrained in making interference by any means in the possession and usage of the property Schedule-Ka. Alongwith these reliefs, further relief was sought in the plaint that till matter is settled, defendants be restrained in making any interference and in changing the nature of the property Schedule-Ka and Schedule-Kha.

Learned Trial Court, vide order dated 11.3.2013, was pleased to dispose of the ad interim injunction application, paper no. 6C2, directing the parties to maintain status quo over the properties Schedule-Ka and Schedule-Kha. Feeling aggrieved, defendants preferred Misc. Civil Appeal No. 37 of 2013 before the Additional District Judge. Learned Appellate Court, vide judgment dated 12.12.2013, was pleased to modify the ad interim injunction granted by the learned Trial Court to the effect that parties shall maintain status quo only with regard to property Schedule-Ka and injunction pertaining to property Schedule-Kha would stand vacated. Feeling aggrieved, plaintiffs have approached this Court by invoking jurisdiction under Article 227 of the Constitution of India.

I have heard Mr. Piyush Garg, learned counsel for the plaintiff/petitioners, herein and Mr. Sanjay Raturi, learned counsel for the defendants/respondents, herein, and have carefully perused the record.

As per the plaint allegation, property Schedule-Ka was given in the lot and possession of the plaintiffs in a mutual settlement arrived at in the presence of the

father, as per wishes of the father. As per the further contents of the plaint, after the mutual partition was effected, plaintiff came into exclusive possession of the property Schedule-Ka while Defendant No. 1 came into the exclusive possession of the property Schedule-Kha. The main relief sought in the plaint is that plaintiff be declared sole owner in the possession of the property Schedule-Ka and defendants be restrained in making any interference by any means in the possession and usage of the property Schedule-Ka.

Therefore, in my considered opinion, the subject matter of the suit, for which main reliefs are sought, is property Schedule-Ka. As per the admitted case of the plaint, defendant no. 1 was put in exclusive possession of the property Schedule-Kha and is in possession of Schedule-Kha. No alternative relief of partition is sought in the event property is held to be a joint property. Therefore, property Schedule-Kha cannot be said to be subject matter of the suit.

Consequently, I do not find any justification or reason to interfere with the judgment passed by the learned Appellate Court. Consequently, petition fails and is hereby dismissed.

Learned Trial Court shall decide the suit without being prejudiced from any observation made in the impugned order as well as in the present order.

(Alok Singh, J.)

30.4.2014