

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal from Order No.80 of 2016

Mrs. Sushma Devi & others

..... Appellants

Versus

Mrs. Sumetra Devi & others

..... Respondents

*Mr. Siddhartha Singh, Advocate for the appellants.
Mr. V.D. Bisen, Advocate for respondents.*

With

Civil Revision No.49 of 2016

Dinesh & others

..... Revisionists

Versus

Smt. Sumitra Devi & others

..... Respondents

Mr. Siddhartha Singh, Advocate for the revisionists.

Hon'ble Servesh Kumar Gupta, J.

Having heard the learned counsel of either party on the A.O. No.80 of 2016, it is abundantly clear that the matter involves the factual controversy existing at the spot, which cannot be decided by this Court at this stage without rendering the opportunity of hearing to both the parties by way of adducing the evidence and that is possible only in the Trial Court. So, this appeal has no force and it is hereby dismissed. (*Modification application CLMA 3541/2016 also stands rejected*)

CLR No.49 of 2016

Delay of 122 days in preferring this revision is condoned. Application (CLMA 3596/16), moved therefor, stands allowed accordingly.

So far as this revision is concerned, it is hereby allowed by quashing the order dated 16.9.2015 passed by the Court below. The Trial Judge is hereby directed to decide the issue under Order 7 Rule 11 C.P.C. afresh after adducing evidence by the parties.

It is further directed that both the parties shall remain restrained from creating any sort of encumbrance over the property, in question. Learned Trial Judge will make efforts to adjudicate the matter at the earliest and no party will seek unnecessary adjournment during the course of Trial and every such adjournment shall be discouraged.

(Serves Kumar Gupta, J.)
28.04.2016