

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Second Appeal No. 3 of 2013

Harcharan Singh Kohli and Others ...Appellants
Vs.

Shri Keshav Dutt Guruani and Others ...Respondents

Mr. Arvind Kumar Sharma, Advocate for the appellants.
Mr. D.K. Joshi, Advocate for respondent no. 1.

With
Second Appeal No. 140 of 2012

Keshav Dutt Guruani ...Appellant
Vs.

Harcharan Singh Kohli and Others ...Respondents

Mr. D.K. Joshi, Advocate for the appellant.
Mr. Arvind Kumar Sharma, Advocate for the respondent

Hon'ble Sharad Kumar Sharma, J (Oral)

The matter is heard through video conferencing.

2. These are the two second appeals. **Second Appeal No. 3 of 2013 'Harcharan Singh Kohli and Others vs. Shri Keshav Dutt Guruani and Others'** had been preferred by the plaintiff/appellant, whereby, challenging the part of the impugned judgment of 18.10.2012; so far it related to the grant of relief 'b' by the Court of Additional District Judge; and the consequential decree, which was rendered on 25.10.2012 in Civil Appeal No. 1 of 2011 'Harcharan Singh Kohli vs. Keshav Dutt Guruani and Others', as well as the challenge, has also been given to the judgment and decree dated 18.12.2010, as was passed by the Civil Judge (J.D.), Nainital, in Original Suit No. 32 of 2008 'Harcharan Singh Kohli vs. Keshav Dutt Guruani and Others', and the consequential decree also of the same date. In fact, the suit in question, which was preferred by the plaintiff/appellant was in relation to the subject matter or the property, which was more particularly described in the body of the plaint and

the nature of decree as sought for was modulated in the following manner:

“16. That the plaintiff prays for the following reliefs:-

- (a) That a decree for mandatory injunction be passed in favour of the plaintiff and against the defendants no. 1 and 2 to the effect that the defendants no. 1 and 2 be directed to remove all the effects and constructions made by the defendants no. 1 and 2 over Plot “A” belonging to the plaintiff and situate at Melrose Compound, Mallital, Nainital.
- (b) That a decree for mandatory injunction be passed in favour of the plaintiff and against all the defendants to the effect that the defendants be directed to remove the staircase constructed by the defendants no. 1 and 2 over the south western portion of the Plot “B” which has obstructed the entry to and exit from Plot “A” of the plaintiff and restore the entry to and exit from Plot “A” to 8, as was earlier before the said illegal construction, in Melrose Compound, Mallital, Nainital.
- (c) That the cost of the suit be also awarded to the plaintiff from the defendants.
- (d) Any other relief which the Hon’ble Court deems fit and proper under the circumstances of the case, be also awarded to the plaintiff against the defendants.”

3. In the connected second appeal being **Second Appeal No. 140 of 2012 ‘Keshav Dutt Guruani vs. Haricharan Singh Kohli and Others’** the same has been preferred by one of the defendants to the said suit, whereby, challenging the same set of proceedings, which was arising out of the principal suit, the details of which has already been given above. The respective second appeals, i.e. Second Appeal No. 3 of 2013, was admitted by the Coordinate Bench of this Court by an order of 04.01.2013 formulating the following substantial question of law:

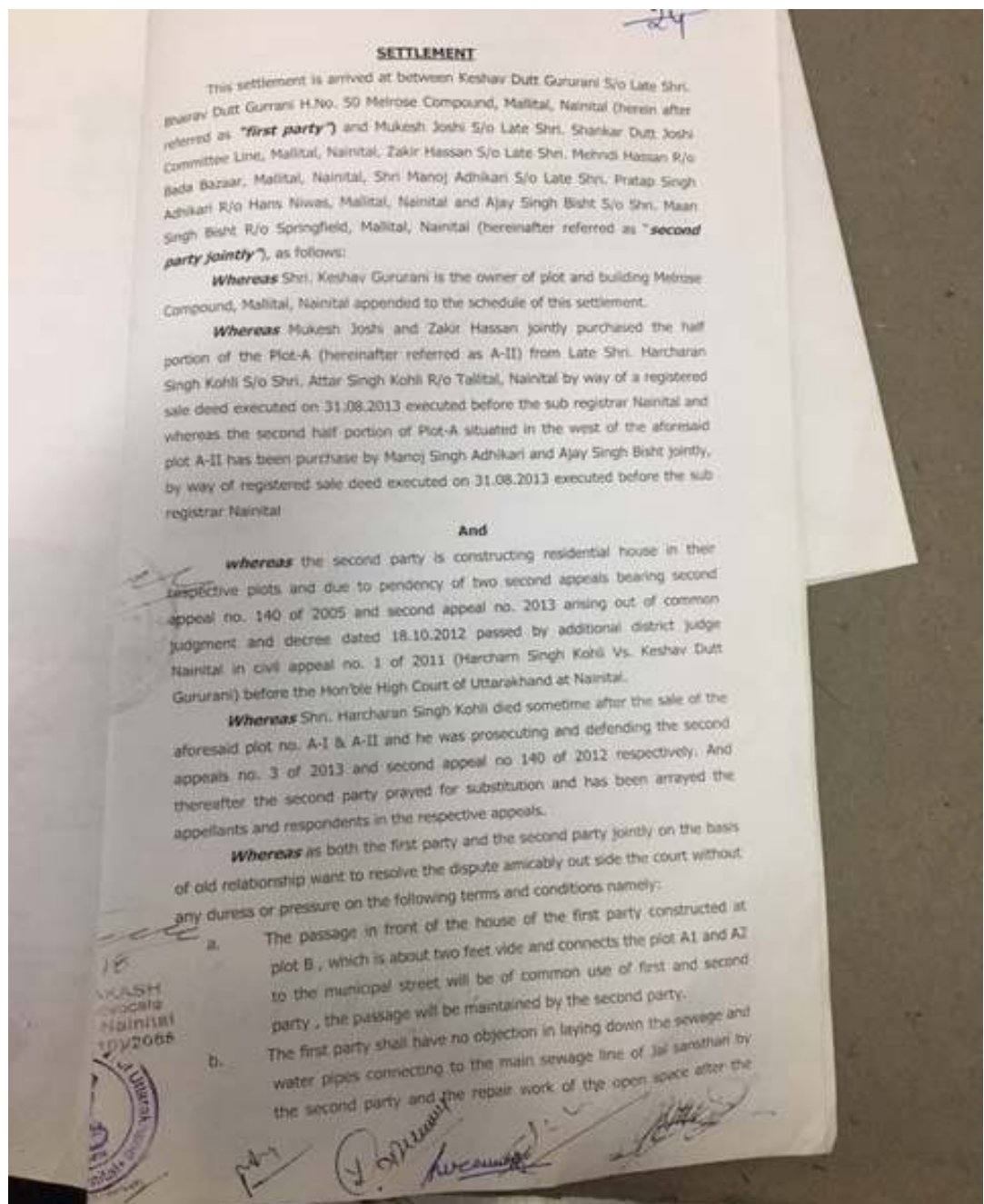
“Whether refusing relief (a) and only granting relief (b) to the plaintiff/appellant actually amounts granting no relief to the appellant?”

Whereas, the Second Appeal No. 140 of 2012, also stood admitted by the Coordinate Bench of this Court by an order of 17.12.2012 on the following substantial questions of law:

- “(i) Whether the first appellate court was justified in partly allowing the appeal by ignoring the fact that the original suit was not instituted for seeking easmentary rights.

- (ii) Whether the first appellate court has erred in ignoring the fact that defendant-appellant is absolute owner of the plot "B1" on which staircase has been constructed."

3. While the appeals were pending consideration, the parties to both the second appeals have entered into a compromise settling their scores outside the court and the said compromise was placed on record in the second appeals in question, by virtue of an application No. IA 12512 of 2020 dated 14.12.2020, which was duly endorsed and signed by all the parties to both the second appeals, as well as their respective counsels and the said compromise found place on record as Annexure-1 to the said application determining the following terms and conditions, which was fortified by all the parties by their joint signatures, which has appeared on the said settlement, which is referred to hereunder:



यह सख्तीनामा पूरा मान्य है

पक्षधारक - Pravara

30/12/20

Pravara
22/12/2020

Pravara
22/12/20

Pravara
22/12/20

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laying down the sewage and water pipes will be carried out by the second party to the satisfaction of the first party.

c. That the first party and the second party will render cooperation to each other in peaceful enjoyment of the passage.

On the basis of the aforesaid conditions both the appellants (appellant in the second appeal no. 140 of 2012 and appellant in the second appeal no. 3 of 2013 will file an appropriate application praying therein for disposal of the second appeals pending before Hon'ble High Court of Uttarakhand at Nainital mentioned hereinabove in terms of the settlement arrived at between both the parties herein and abide by the present settlement with utmost sincerity). The second party shall not proceed to execute the relief granted by the learned Additional District Judge Nainital dated 18.10.2012 in civil appeal no. 1 of 2011 between Harsham Singh Kohli Vs. Keshav Dutt Gururani.

Signed in presence of witnesses on this 10 day of October 2018 at Nainital:

• Schedules enclosed

First Party

Keshav Dutt Gururani
Gururani S/o Late Shri. Bhairav Dutt Gururani
H.No. 50 Melrose Compound, Mallital, Nainital.

Second Party

1. Mukesh Joshi
S/o Late Shri. Shankar Dutt Joshi
Committee Line, Mallital, Nainital.
2. Zakir Hassan
S/o Late Shri. Mehndi Hassan
R/o Bada Bazaar, Mallital, Nainital.
3. Manoj Adhikari
S/o Late Shri. Pratap Singh Adhikari
R/o Hans Niwas, Mallital, Nainital.
4. Pravara
S/o Shri. Maan Singh Bohrt
R/o Springfield, Mallital, Nainital.

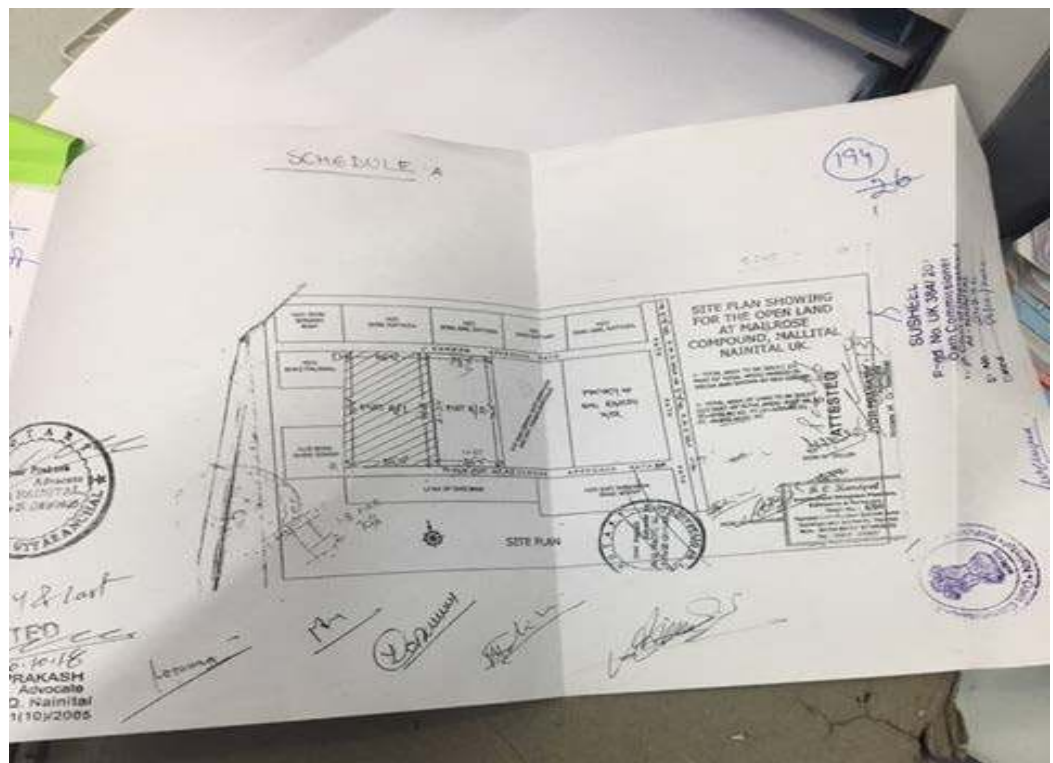
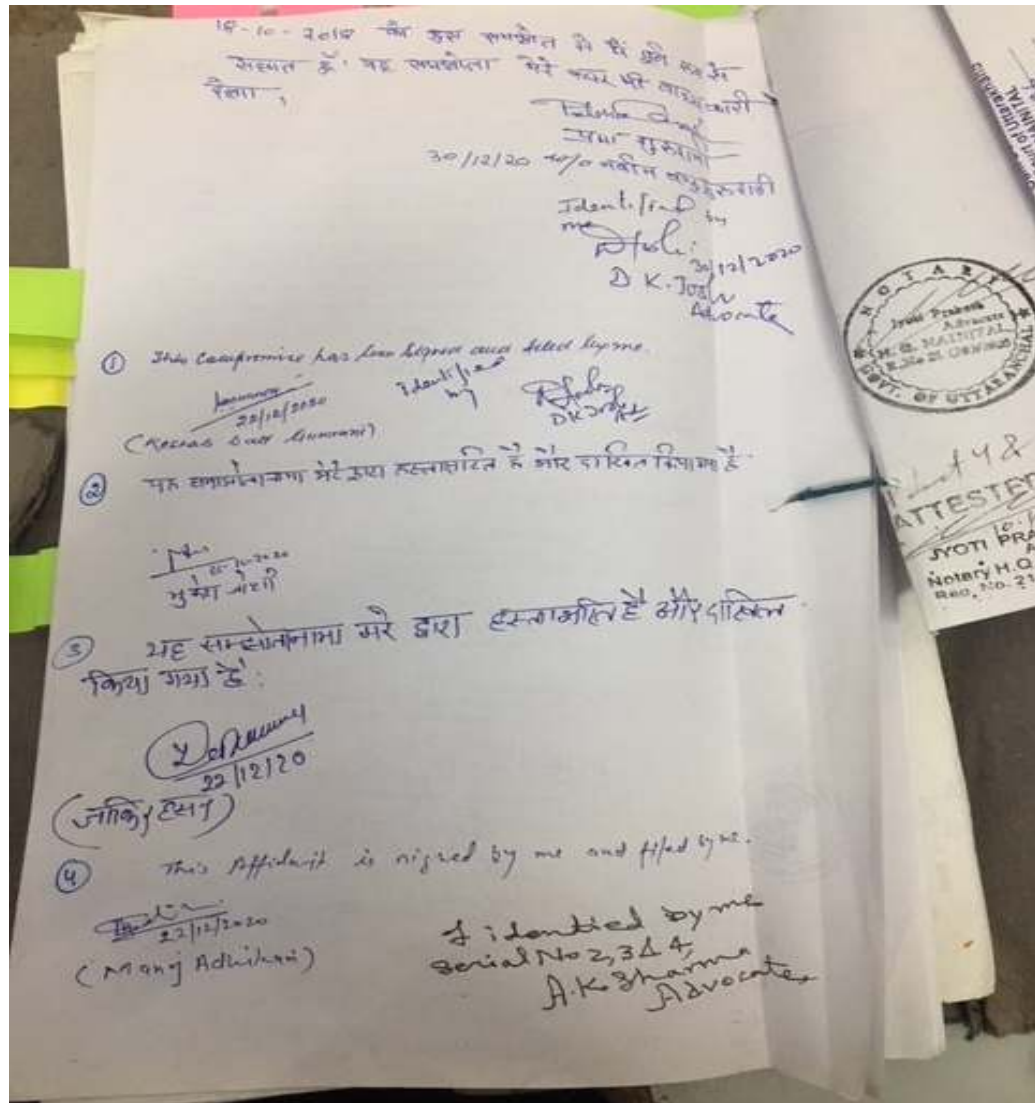
1. Pravara
Advocate
High Court Nainital

2. Pravara
Advocate
High Court Nainital

TESTED

10-10-18

PRAKASH
Advocate
O Nainital
No. 34/10/2005



4. When the settlement was placed before this Court by virtue of the aforesaid application, the parties were directed to appear before the Registrar (Judicial) for the purposes of verification of their signatures, which was appearing in the settlement and in terms of the

provisions contained under Order 23 Rule 3 of the CPC. In compliance thereto, all the parties appeared before the Registrar (Judicial) excluding Mrs. Prabha Guruani and Mr. Ajay Singh Bisht. However, the Registrar (Judicial) verified the signatures of those, who had appeared before him on 22.10.2020 and had furnished his report on 22.12.2020, which was taken on record.

5. The remaining two persons, i.e. Mr. Ajay Singh Bisht and Mrs. Prabha Guruani, who had not appeared earlier on 22.12.2020, later on the Registrar (Judicial) has submitted yet another report of 30.12.2020, wherein, he has verified the signatures of Mrs. Prabha Guruani, vide his report of 30.12.2020, the same taken on record. But so far as Mr. Ajay Singh Bisht, is concerned, who was one of the signatories of the settlement of 10.10.2018, he could not appear because he was detected Corona Positive and was home-quarantined.

6. When the matter was taken up today, all the parties as well as their respective counsels appeared in the proceedings and Mr. Ajay Singh Bisht, who also happens to be a practicing member of the Bar of this High Court, was requested to appear in the video conferencing hearing in order to record his statement, whether he has endorsed this settlement and his signature of 10.10.2018 or not. Mr. Ajay Singh Bisht, who had participated in the proceedings, which was held today and in the presence of the learned counsel for the parties, he has candidly affirmed this settlement to the effect that he has voluntarily signed the settlement on 10.10.2018 and, hence, his signatories also stood verified in the aforesaid proceedings. Consequently, for the reasons aforesaid, these two second appeals would stand disposed of in terms of the settlement dated 10.10.2018, which will constitute to be the part of the decree and, accordingly, the decree under challenge in both the second appeals, would stand modified to that extent and would be substituted by the decree of 10.10.2018 in terms of the settlement, which has been voluntarily arrived at between the parties on 10.10.2018.

7. The Registry is directed to formulate the decree accordingly. Hence, these second appeals stand disposed of in terms of the settlement decree dated 10.10.2018.

(Sharad Kumar Sharma, J.)
31.12.2020

Pooja