2026:UHC:8275

HIGH COURT OF UTTARAKHAND AT NAINITAL

HON'BLE JUSTICE SRI MANOJ KUMAR TIWARI

Writ Petition No. 1219 of 2026 (MS)

Rajvinder Singh and others --Petitioners

Versus

Jagdish Chandra and others --Respondents

Advocates:-

Mr. B.D. Pandey, Mr. Sanjay Bhatt, Mr. Mayank Bhatt, Advocates for the petitioners.

Mr. Sudhir Kumar Nailwal, Standing Counsel for the State of Uttarakhand

Mr. M.C. Kandpal, Senior Advocate assisted by Mr. Devesh Kandpal, Advocate for the respondent.

Mr. T.A. Khan, Senior Advocate assisted by Mohd. Shaify, Advocate for the caveator.

Ms. Anjali Bhargava, Advocate for Gram Sabha

Reserved on: 18.08.2026
Delivered on: 15.09.2026

JUDGMENT

Respondent Nos. 1 & 2 were declared as bhumidhar with transferable right based on photocopy of unregistered Contract for Sale, alleged to have been executed by predecessors-in-interest of the petitioners, even though there was no pleading regarding such Contract for Sale in the plaint. Learned Assistant Collector held that possession based on contract for sale is adverse since very beginning. Thus feeling aggrieved, petitioners have challenged the judgments rendered by learned Assistant Collector-I class, Commissioner, Kumaon and Board of Revenue.

2. The suit was filed by respondent Nos. 1 and 2 under Section 229-B of Uttarakhand Zamindari Abolition And Land Reforms Act, 1950 (In short "Z.A. Act"), contending that their predecessors-in-interest purchased 1.335 hectares of land comprised in khata Nos. 7, 1.582

hectares of land comprised in Khata No. 8, situate in Village Bachinagar, and 0.414 hectare of land comprised in Khata No. 47, situate in village Bailpokhara from predecessors-in-interest of defendant No. 3, some 20-22 years ago; however, name of predecessors-in-interest of defendant No. 3 is still reflected in revenue records as category ‘2’ (bhumidhar with non transferable rights). However, the date and nature of document through which land was allegedly purchased, was not mentioned in the plaint of the suit.

3. In para 4 of the plaint, it was contended that revenue authorities have not entered name of the plaintiffs in revenue record as Bhumidhar, even though they have perfected their title by adverse possession. Plaintiffs sought a declaration that they have acquired transferable bhumidhari rights by adverse possession over the land in question and they be recorded as such in the revenue records.

4. Defendant No. 3 (Mahendra Singh and Rajvinder Singh), in their written statement, stated that they are recorded as bhumidhar with non-transferable right in revenue records and they are in cultivatory possession over the land in question; as per Government Orders they are entitled to be declared as bhumidhar with transferable rights for which separate proceedings have been initiated.

5. Defendant No. 3 in their written statement denied that the land in question was sold, as alleged in the plaint, to the predecessors-in-interest of the plaintiffs

and stated that plaintiffs have not filed conveyance deed or contract for sale with the plaint in support of that allegation. It was further stated that defendants are cultivating the land through bataidar (sharecropper).

6. Based on pleadings, following 07 issues were framed by learned Assistant Collector, First Class, English translation whereof is given below:

(i) Whether plaintiffs and defendant No. 4 are in cultivatory possession over the land in dispute, from the date of its purchase in 1990 till today and are paying the irrigation fee, tax, etc?

(ii) Whether plaintiffs and defendant No. 4 have acquired bhumidhari rights by adverse possession as per provisions of Z.A. & L.R. Act?

(iii) Whether plaintiffs gave legal notice to State Government and Gram Sabha before filing the suit?

(iv) Whether plaintiffs are entitled to the reliefs claimed?

(v) Whether defendant No. 3, who is recorded as bhumidhar with non-transferable right in revenue records is entitled to be recorded in category 1A as bhumidhar with transferable rights. If yes, then its effect.

(vi) Whether defendants have filed a separate suit for declaration of their rights in respect of land in dispute. If yes, then its effect.

(vii) Whether plaintiffs were engaged as *Bataidar* (Sharecropper) and whether they are attempting to forcibly dispossess defendant No. 3 from the land in dispute.

7. Learned Assistant Collector decided issue no. 1, 2

and 7 together and returned findings that plaintiffs came into possession over the land in dispute based on two unregistered contract for sale, executed by predecessors-in-interest of defendant No. 3, on 13.07.1989 and 23.05.1990; since contract for sale is not a valid document for transfer of immovable property, therefore possession of plaintiffs over the land in question is adverse to defendant No. 3 since very inception; defendant No. 3 never filed suit for possession under Section 209 of Z.A. Act within limitation period, therefore plaintiffs perfected their title by adverse possession and are entitled to be declared as bhumidhar in place of defendant No. 3.

8. Issue No. 3 was decided in favour of plaintiffs by holding that legal notice was served upon the State Government as well as Gram Sabha before filing the suit.

9. Issue No. 4 was decided in favour of plaintiffs and it was held that plaintiffs are entitled to the reliefs claimed.

10. As regards issue No. 5, it was held that since defendant No. 3 declared as bhumidhar with transferable right during pendency of the suit as per Government Orders, therefore, said issue is disposed of accordingly.

11. As regards issue no. 6, it was held that burden was upon defendant No. 3 to prove that he has filed separate suit for declaring him as bhumidhar with non-transferable right; however, defendant No. 3 has been recorded as bhumidhar with transferable right in

revenue record, therefore the issue is decided accordingly.

12. Mahendra Singh and Rajvinder Singh (defendant No. 3 in the suit), filed First Appeal challenging the judgment rendered by learned Assistant Collector, which was numbered as Z.A Appeal No. 79/2013-14. Learned Commissioner, Kumaon Division cursorily dismissed the appeal vide judgment dated 29.06.2015.

13. Mahendra Singh and Rajvinder Singh, thereafter filed Second Appeal, which was numbered as SA No. 97 of 2015-16, which was dismissed by learned Board of Revenue, Uttarakhand Circuit Court, Nainital vide judgment dated 10.02.2026.

14. Learned counsel for the petitioners submits that learned Assistant Collector committed manifest error of law in decreeing the suit based on alleged unregistered Contract for Sale, even though there was no reference to such document in the plaint and the contract for sale was not even exhibited; plaintiff No. 1 in cross-examination stated that he had original copy of the Contract for Sale at the time of filing of the suit, but he did not consider it necessary to place it on record and Contract for Sale is not available with him now as he lost the same 2-3 months ago.

15. It is further contended on behalf of petitioners that since there was no pleading regarding Contract for Sale in the plaint, therefore, no issue was framed regarding existence and significance of that document and learned Assistant Collector erred in decreeing the suit by holding

that possession based on Contract for Sale is adverse since very inception. It is thus contended that learned Assistant Collector erred in law in declaring plaintiffs to be Bhumidhar on a ground, which was not even pleaded by the plaintiffs.

16. Learned counsel for the petitioners further submits that unlike a sale, Contract for Sale/Agreement to Sell in respect of immovable property of the value of Rs. 100 or more does not create any interest in favour of proposed purchaser, hence it cannot be regarded as transfer of property. He relies upon a judgment rendered by Hon'ble Supreme Court in the case of Correspondence, RBANMS Educational Institution Vs. Gunashekar and Another, reported as 2025 SCC OnLine SC 793. Relevant extract of para 15.1 of the said judgment is reproduced below:

> "15.1. Undoubtedly, a sale deed, which amounts to conveyance, has to be a registered document, as mandated under Section 17 of the Registration Act, 1908. On the other hand, an agreement for sale, which also requires to be registered, does not amount to a conveyance as it is merely a contractual document, by which one party, namely the vendor, agrees or assures or promises to convey the property described in the schedule of such agreement to the other party, namely the purchaser, upon the latter performing his part of the obligation under the agreement fully and in time. Section 54 of the Transfer of Property Act, 1882 explicitly lays down that a contract for sale will not confer any right or interest."
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> (Emphasis supplied)

17. Learned counsel for the petitioners also placed reliance upon the judgment rendered by Hon'ble Supreme Court in the case of Rambhau Namdeo Gajre Vs. Narayan Bapuji Dhotra (Dead) through LRs, reported as (2004) 8 SCC 614 regarding the status of a person claiming protection of Section 53-A of Transfer of Property Act. Para 10 of the said judgment is reproduced below:

> "10. Protection provided under Section 53-A of the Act to the proposed transferee is a shield only against the transferor. It disentitles the transferor from disturbing the possession of the proposed transferee who is put in possession in pursuance of such an agreement. It has nothing to do with the ownership of the proposed transferor who remains full owner of the property till it is legally conveyed by executing a registered sale deed in favour of the transferee."
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> (Emphasis supplied)

18. Learned counsel for the petitioners submits that even if it is assumed that plaintiffs were put in possession over the land in question in part performance of Contract for Sale, then also their possession will be permissive and in the absence of any pleading (i) regarding the date on which their possession became adverse and (ii) events which changed the nature of their possession, suit based on plea of adverse possession could not have been decreed.

19. Learned counsel for the petitioners further submits that though plaintiffs alleged that they purchased the land in question with structure standing thereupon from predecessors-in-interest of defendant No. 3; however, the nature of document and date of its execution is not mentioned in the plaint. It is contended that bald statement regarding adverse possession without anything else, is not sufficient to decree the suit

20. It is further submitted that Contract for Sale was introduced by plaintiffs during evidence, but Contract for Sale in original was never produced before Assistant Collector and plaintiff No. 1 during cross-examination stated that original Contract for Sale was available with him at the time of filing of the suit but it has been lost thereafter. Thus it is contended that learned Assistant Collector erred in relying upon inadmissible document

for decreeing the suit. It is pointed out that as per deposition of plaintiff witness-Jodha Ram, price of the land was allegedly settled at more than Rs. 1.00 lakh.

21. Learned counsel for the petitioners further submits that in State of Uttar Pradesh and Uttarakhand, Contract for Sale in respect of immovable property is compulsorily registerable after amendment of Section 17 of Registration Act, by U.P. Act No. 57 of 1976, effective from 01.01.1977.

22. Learned counsel for petitioners further submitted that learned Assistant Collector erroneously over-ruled the objection raised by petitioners (defendant No. 3) regarding admissibility of photocopy of Contract for Sale in evidence by observing that defendant No. 3 could not cite any provision of law for contending that notarised photocopy of Contract for Sale is not admissible in evidence.

23. It is thus contended that a document, which is in-admissible cannot be read into evidence, merely because the other party is not able to substantiate his objection against admissibility of such document. It is thus contended by learned counsel for the petitioners that learned Assistant Collector committed manifest error of law in decreeing the suit by ignoring the unequivocal stand taken by defendants that plaintiffs were engaged as bataidar (sharecropper) and possession of sharecropper or agent is never adverse possession against the owner of the property.

24. Learned counsel for petitioners further submitted

that there is no entry regarding possession of plaintiffs in PA-10 maintained by revenue authorities. Courts below completely overlooked this aspect while deciding the proceedings.

25. Per contra, learned counsel for the respondents contended that Contract for Sale was executed by predecessors-in-interest of defendant No. 3 in favour of predecessors-in-interest of plaintiffs on 13.07.1989 and after paying sale consideration, sale deed was also executed, therefore plaintiffs' possession will be treated as adverse from the very inception. Reliance is placed upon para 16 and 17 of the judgment rendered by Hon'ble Supreme Court in the case of State of West Bengal Vs. Dalhousie Institute Society, reported as (1970) 3 SCC 802, which are reproduced below:

> "16. .....The possession of the respondent must have been on the basis of the grant made by the Government, which, no doubt, is invalid in law. As to what exactly is the legal effect of such possession has been Considered by this Court in Collector of Bombay v. Municipal Corporation of the City of Bombay, 1951 SCC 987 : 1952 SCR 43 : AIR 1951 SC 469 as follows:
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> > "…. the position of the respondent Corporation and its prodecessor-in-title was that of a person having no legal title but nevertheless holding possession of the land under colour of an invalid grant of the land in perpetuity and free from rent for the purpose of a market. Such possession not being referable to any legal title it was prima facie adverse to the legal title of the Government as owner of the land from the very moment the predecessor-in-title of the respondent Corporation took possession of the land under the invalid grant. This possession has continued openly, as of right, and uninterruptedly for over 70 years and the respondent Corporation has acquired the limited title to it and its predecessor-in-title had been prescribing for during all this period, that is to say, the right to hold in perpetuity free from rent but only for the purposes of a market in terms of the Government Resolution of 1865…."
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> 17. The above extract establishes that a person in such possession clearly acquires title by adverse possession. In the case before us there are concurrent findings recorded by the High Court and the Special Land Acquisition Judge in favour of the respondent on this point and we agree with those findings."

26. Learned counsel for the respondents further contends that possession of the plaintiffs was proved by independent witnesses and loan taken by predecessors-in-interest of defendant No. 3 against the land in question, was repaid by the plaintiffs, therefore learned Assistant Collector rightly decreed the suit.

27. Learned counsel for the respondents also relied upon the judgment rendered by Hon'ble Supreme Court in the case of Ravinder Kaur Grewal and others Vs. Manjit Kaur and others, reported as (2019) 8 SCC 729. Reliance is placed on following extract of para 62 of said judgment, which is reproduced below:

> "62.....In our opinion, consequence is that once the right, title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession."

28. It is further contended that since defendant No. 3 did not file any suit for ejectment against plaintiffs under Section 209 of Uttarakhand Z.A. & L.R. Act within limitation period therefore by virtue of provision contained in Section 210 of said Act, plaintiffs became bhumidhar with non transferable rights upon expiry of limitation period. It is further contended that since defendant No. 3 were given transferable right during pendency of the suit, therefore learned Assistant Collector rightly declared plaintiffs as bhumidhar with transferable rights qua the land in question.

29. Learned counsel for respondents further submitted that defendant No. 3, although took the stand that

plaintiffs were inducted as bataidar (sharecropper); but they were not able to prove that plaintiffs possession was as bataidar (sharecropper).

30. The contentions raised on behalf of respondents cannot be accepted. There is no pleading in the plaint regarding sale deed executed by predecessors-in-interest of defendant No. 3 in favour of the plaintiffs. It is also silent regarding contract for sale. Mere statement that the land in question was purchased by plaintiffs some 20-22 years ago, without disclosing nature and date of document is not sufficient for decreeing the suit. No issue was framed regarding contract for sale or sale deed by Assistant Collector, therefore the suit could not be decided based on contract for sale. The finding that plaintiffs perfected title by adverse possession because a Contract for Sale was executed in their favour is unsustainable. The contention that land in question was purchased by plaintiffs by a written document is not referable to pleading made in the plaint. Thus the view expressed in the case of State of West Bengal Vs. Dalhousie Institute Society (supra) is not attracted to the facts of the present case.

31. Even otherwise also, learned Assistant Collector has not referred to alleged sale deed and the suit was decreed by relying only on Contract for Sale. In fact, judgments rendered by all the Courts below are silent regarding sale deed and are based on contract for sale.

32. A contract for sale of immovable property is a contract that sale of such property shall take place in

future on terms settled between the parties. It does not of itself, create any interest in or charge on such property. A Contract for Sale is merely a document creating a right to obtain another document of sale on fulfilment of terms and conditions specified therein. On execution of contract for sale, a buyer does not become the owner of the property and ownership remains with the seller which is transferred to the buyer on execution of sale deed. The buyer obtains only a right to get the sale deed executed in his favour.

33. The witnesses examined by plaintiffs stated that they had seen plaintiffs cultivating the land. None of them stated that plaintiffs' possession was adverse to the true owner. Repayment of loan by plaintiffs, in itself is not sufficient to declare them as bhumidhar. Learned counsel for the petitioners denied the contention that loan was ever repaid by the plaintiffs.

34. Reliance by respondents on judgment rendered by Hon'ble Supreme Court in the case of Ravinder Kaur Grewal (supra) is misplaced. What is held in that judgment is that a person in adverse possession cannot be evicted even by owner of the property, once 12 years' period of adverse possession is over. The fact remains that burden is upon the person who is claiming adverse possession, to prove that his possession was adverse to the knowledge of the true owner.

35. Law is well settled that mere possession for a long time in itself does not create a right in favour of the person, who claims to be in possession and the burden

is upon him to plead and prove by cogent and convincing evidence that he had hostile animus and possession adverse to the knowledge of real owner.

36. Hon'ble Supreme Court in the case of S.M. Karim alias Tamanna Sabeb Vs. MST BIBI Sakina, as reported in 1964 SCC Online SC 255, held as follows :

> "5. .....Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found. There is no evidence here when possession became adverse, if it at all did, and a mere suggestion in the relief clause that there was an uninterrupted possession for "several 12 years" or that the plaintiff had acquired "an absolute title" was not enough to raise such a plea. Long possession is not necessarily adverse possession and the prayer clause is not a substitute for a plea. The cited cases need hardly be considered, because each case must be determined upon the allegations in the plaint in that case. It is sufficient to point out that in Bishun Dayal v. Kesho Prasad the Judicial Committee did not accept an alternative case based on possession after purchase without a proper plea."
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> (Emphasis supplied)

37. Similarly, Hon'ble Supreme Court in the case of P.T. Munichikkanna Reddy and others Vs. Revamma and others, reported as (2007) 6 SCC 59, held as under:

> **"16.** In similar circumstances, in *Thakur Kishan Singh* v. *Arvind Kumar* [(1994) 6 SCC 591] this Court held: (SCC p. 594, para 5)
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> "*5.* As regards adverse possession, it was not disputed even by the trial court that the appellant entered into possession over the land in dispute under a licence from the respondent for purposes of brick-kiln. The possession thus initially being permissive, the burden was heavy on the appellant to establish that it became adverse. A possession of a co-owner or of a licensee or of an agent or a permissive possession to become adverse must be established by cogent and convincing evidence to show hostile animus and possession adverse to the knowledge of real owner. *Mere possession for howsoever length of time does not result in converting the permissive possession into adverse possession. Apart from it, the appellate court has gone into detail and after considering the evidence on record found it as a fact that the possession of the appellant was not adverse.*"

(emphasis supplied)

38. Hon'ble Supreme Court in the case of Narasamma and others Vs. A. Krishnappa (dead) through LRs, reported as (2020) 15 SCC 218, held that adverse possession has to be in public and to the knowledge of the true owner, as plea of adverse possession seeks to defeat the rights of the true owner. It was further held that adverse possession has to be specifically pleaded and proved as to when possession became adverse in order for the real owner to lose title after 12 years. Para 37 and 38 of the said judgment are extracted below:

> **"37.** The possession has to be in public and to the knowledge of the true owner as adverse, and this is necessary as a plea of adverse possession seeks to defeat the rights of the true owner. Thus, the law would not be readily accepting of such a case unless a clear and cogent basis has been made out [*M. Siddiq (Ram Janmabhumi Temple-5 J.)* v. *Suresh Das*, (2020) 1 SCC 1] .
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> **38.** We may also note another judicial pronouncement in *Ram Nagina Rai* v. *Deo Kumar Rai* [*Ram Nagina Rai* v. *Deo Kumar Rai*, (2019) 13 SCC 324 : (2018) 5 SCC (Civ) 722] dealing with a similar factual matrix i.e. where there is permissive possession given by the owner and the defendant claims that the same had become adverse. It was held that it has to be specifically pleaded and proved as to when possession becomes adverse in order for the real owner to lose title 12 years hence from that time."
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> (Emphasis supplied)

39. In the present case, the documents dated 13.07.1989 and 23.05.1990 were neither referred to in the plaint nor any issue was framed regarding those documents, therefore, learned Assistant Collector committed grave error of law in decreeing the suit by relying on said documents.

40. Non filing of ejectment suit under Section 209 of

Z.A. Act within limitation period by itself will not create any right in favour of plaintiffs, if their possession is permissive in nature. Thus there was heavy burden upon plaintiffs to prove that their possession became adverse from a particular date. Plaintiffs have to stand on their feet by making necessary pleadings. The plaint however falls short of what is required to be pleaded for claiming adverse possession.

41. In the case of Kishundeo Rout and others Vs. Govind Rao and others, reported as 2025 SCC OnLine SC 1665, Hon'ble Supreme Court reiterated that foundation for plea of adverse possession must be laid in the pleadings and an issue must also be framed and tried. Para 19 and 20 of the said judgment are extracted below:

> "19. It is a settled position of law that the foundation for the plea of adverse possession must be laid in the pleadings and then an issue must be framed and tried. A plea not properly raised in the pleadings or in issues at the stage of trial would not be permitted to be raised for the first time at the stage of First Appeal under Section 96 of the Code of Civil Procedure (CPC).
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> 20. The plea of adverse possession is not always a legal plea. Indeed, it is always based on facts which must be asserted and proved. A person who claims adverse possession must show on what date he came into possession, what was the nature of his possession, whether the factum of his possession was known to the legal claimants and how long his possession continued. He must also show whether his possession was open and undisturbed. These are all questions of fact and unless they are asserted and proved, a plea of adverse possession cannot be inferred from them. Therefore, in normal cases an appellate Court will not allow the plea of adverse possession to be raised before it. There is no doubt some cases in which the plea will be allowed because in some form the allegation upon which it can be raised was made at the time and the facts necessary to prove the plea were brought before the court and proved."
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> (Emphasis supplied)

42. In the case of State of Kerala and another Vs. Joseph and others, reported as (2023) 17 SCC 400, Hon'ble Supreme Court held that possession of an agent

or a permissive possession to become adverse must be established by cogent and convincing evidence to show hostile animus and possession adverse to the knowledge of real owner; mere possession for howsoever length of time does not result in converting permissive possession into adverse possession. Para 32 and 33 of the said judgment are reproduced below:

> **"32.** The person claiming adverse possession must show clear and cogent evidence to substantiate such claim. This Court in *Kishan Singh* v. *Arvind Kumar* [*Kishan Singh* v. *Arvind Kumar*, (1994) 6 SCC 591] (two-Judge Bench) held that : (SCC p. 594, para 5)
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> "*5*. … A possession of a co-owner or of a licensee or of an agent or a permissive possession to become adverse must be established *by cogent and convincing evidence* to show hostile animus and possession adverse to the knowledge of real owner. Mere possession for howsoever length of time does not result in converting the permissive possession into adverse possession."
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> (emphasis supplied)
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> Reference may also be made to *M. Siddiq* [*M. Siddiq (Ram Janmabhumi Temple-5 J.)* v. *Suresh Das*, (2020) 1 SCC 1] .
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> **33.** Mere possession over a property for a long period of time does not grant the right of adverse possession on its own. In *Gaya Parshad Dikshit* v. *Nirmal Chander* [*Gaya Parshad Dikshit* v. *Nirmal Chander*, (1984) 2 SCC 286] (two-Judge Bench), this Court observed : (SCC p. 287, para 1)
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> "*1*. … It is not merely unauthorised possession on termination of his licence that enables the licensee to claim title by adverse possession but there must be some overt act on the part of the licensee to show that he is claiming adverse title. It is possible that the licensor may not file an action for the purpose of recovering possession of the premises from the licensee after terminating his licence but that by itself cannot enable the licensee to claim title by adverse possession. *There must be some overt act on the part of the licensee indicating assertion of hostile title. Mere continuance of unauthorised possession even for a period of more than 12 years is not enough*."
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> (emphasis supplied)
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> Reference may also be made to *Arvind Kumar* [*Kishan Singh* v. *Arvind Kumar*, (1994) 6 SCC 591] ; *Mallikarjunaiah* v. *Nanjaiah* [*Mallikarjunaiah* v. *Nanjaiah*, (2019) 15 SCC 756 : (2020) 2 SCC (Civ) 424] (two-Judge

Bench); *Uttam Chand* [*Uttam Chand* v. *Nathu Ram*, (2020) 11 SCC 263 : (2021) 1 SCC (Civ) 520] .

43. Provisions of Code of Civil Procedure, 1908 are applicable to proceedings under Uttarakhand Zamindari Abolition and Land Reforms Act, 1950 as per Section 341 of that Act. While deciding declaratory suit filed under Section 229-B of Z.A. Act, learned Assistant Collector cannot travel beyond pleadings and the issues framed.

44. Hon'ble Supreme Court in the case of *Ponnayal alias Lakshmi v. Karuppannan*, reported as *2019 (11) SCC 800* held as under:-

> **"11.** ……. As the said two documents were neither part of the pleadings in the Suit nor was an issue framed regarding the said documents, we are afraid that we cannot adjudicate on the issues pertaining to the said documents. Civil Suits are decided on the basis of pleadings and the issues framed and the parties to the Suit cannot be permitted to travel beyond the pleadings."
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> (Emphasis Supplied)

45. Similar view was expressed by Hon'ble Supreme Court in the case of **Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira, reported as 2012 (5) SCC 370. Relevant extract of the said judgment is reproduced below:**

> "74. If the pleadings do not give sufficient details, they will not raise an issue, and the court can reject the claim or pass a decree on admission. On vague pleadings, no issue arises. Only when he so establishes, does the question of framing an issue arise. Framing of issues is an extremely important stage in a civil trial. Judges are expected to carefully examine the pleadings and documents before framing of issues in a given case.
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> 75. In pleadings, whenever a person claims right to continue in possession of another property, it becomes necessary for him to plead with specificity about who was the owner, on what date did he enter into possession, in what capacity and in what manner did he conduct his

> relationship with the owner over the years till the date of suit. He must also give details on what basis he is claiming a right to continue in possession. Until the pleadings raise a sufficient case, they will not constitute sufficient claim of defence."
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> (Emphasis Supplied)

46. Plaintiffs in the suit (respondent Nos. 1 and 2 herein) asserted in para 1 of the plaint that their predecessor-in-interest purchased the land in question from predecessors-in-interest of defendant No. 3; however, in para 4 of the plaint, they took inconsistent plea of adverse possession.

47. In the case of **Karnataka Board of Wakf v. Govt. of India, reported as 2004 (10) SCC 779,** Hon'ble Supreme Court **held that the plea of title and adverse possession cannot co-exist, as the latter does not begin to operate until the former is renounced. Para 12 of the said judgment is reproduced below:**

> **"12.** A plaintiff filing a title suit should be very clear about the origin of title over the property. He must specifically plead it. (See *S.M. Karim* v. *Bibi Sakina* [AIR 1964 SC 1254] .) In *P. Periasami* v. *P. Periathambi* [(1995) 6 SCC 523] this Court ruled that:
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> "Whenever the plea of adverse possession is projected, inherent in the plea is that someone else was the owner of the property."
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> The pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. Dealing with *Mohan Lal* v. *Mirza Abdul Gaffar* [(1996) 1 SCC 639] that is similar to the case in hand, this Court held:
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> "*4.* As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years i.e. up to completing the period his title by prescription *nec vi*, *nec clam*, *nec precario*. Since the appellant's claim is founded on Section 53-A, it goes without saying that he admits by implication that he came into possession of land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant."

(Emphasis Supplied)

48. Similar view was expressed in the case of **Kesar Bai v. GendaLal and another, reported as 2022 (10) SCC 217. Relevant extract of para no. 7 of the said judgment is extracted below:-**

> "7. … The High Court has specifically observed and held that the plea of ownership based on sale deed and plea of adverse possession, both, are contrary to each other and the plaintiffs cannot be permitted to take both the pleas at the same time. Therefore, even as per the High Court, the claim of the plaintiffs on the basis of the adverse possession was not tenable."

49. Section 54 of Transfer of Property Act, 1882 which defines 'Sale' expressly provides that a contract for sale of immovable property does not, by itself, create any interest in or charge on such property. In other words, it does not convey title. The finding returned by learned Trial Court that possession of the plaintiffs based on Contract for Sale dated 13.07.1989 and 23.05.190 is adverse from day one, thus is unsustainable in the eyes of law.

50. Possession based on Contract for Sale is permissive. Hon'ble Supreme Court in the case of State Bank of Travancore v. Aravindan Kunju Panicker, reported as (1972) 4 SCC 274 held that permissive possession cannot be converted into adverse possession unless it is proved that person in possession asserted as adverse title to the property to the knowledge of true owner. Relevant extract of para 9 is extracted below:

> "9. .....A permissive possession cannot be converted into an adverse possession unless it is proved that the person in possession asserted an adverse title to the property to the knowledge of true owners for a period of twelve years or more. There is no evidence to show that either Krishnan Krishnan or Vellu or Kuruvilla asserted any hostile title to the suit property to the knowledge of the true owners at any time before the present suit."

51. Mere possession for a long time does not result in converting permissive possession into adverse possession. In the case of Bhura Mogiya and others Vs. Satish Pagariya and others, reported as (2001) 9 SCC 385, Hon'ble Supreme Court held that permissive possession cannot be converted into adverse possession unless it is proved that person in possession asserted and acquired adverse title to the property, to the knowledge of the true owner for a period of 12 years and above. Para 5 of the said judgment is extracted below:

> "5. Learned counsel then urged that in any case the defendants having remained in possession for a considerable period of time, more than 12 years, thereby acquired title by adverse possession. Admittedly, the defendants came into possession on the basis of agreement, which was a permissible possession. Once the defendants' possession was by virtue of an agreement it is not open to them to take a plea that they acquired title by adverse possession. Permissible possession cannot be converted into adverse possession unless it is proved that the person in possession asserted and acquired adverse title to the property to the knowledge of the true owner for a period of 12 years and above. We do not find any merit in the contention of the learned counsel for the appellant."
>
> (Emphasis supplied)

52. Similar view was expressed by Hon'ble Supreme Court in the case of Achal Reddy Vs. Ramakrishna Reddiar, reported as (1990) 4 SCC 706. Relevant extract of para 9 of the said judgment is extracted below:

> **"9.** ..... The purchaser who got into possession under an executory contract of sale in a permissible character cannot be heard to contend that his possession was adverse. In the conception of adverse possession there is an essential and basic difference between a case in which the other party is put in possession of property by an outright transfer, both parties stipulating for a total divestiture of all the rights of the transferor in the property, and in a case in which there is a mere executory agreement of transfer both parties contemplating a deed of transfer to be executed at a later point of time. In the latter case the principle of estoppel applies estopping the transferee from contending that his possession, while the contract remained executory in stage, was in his own right and adversely against the transferor. Adverse possession implies that it

> commenced in wrong and is maintained against right. When the commencement and continuance of possession is legal and proper, referable to a contract, it cannot be adverse."

53. The finding returned by learned Assistant Collector is unsustainable. It is settled law that possession based on Contract for Sale is permissive and in the absence of any pleading regarding the date from which possession of the plaintiffs became adverse, the suit could not have been decreed. Moreover, in the absence of any issue regarding contract for sale, the suit could not have decided by holding that possession based on contract for sale is adverse.

54. Learned Commissioner, Kumaon decided the First Appeal filed by petitioners without adverting to the findings returned by Assistant Collector. No points for determination were formulated while deciding the first appeal, even though provisions of Code of Civil Procedure are made applicable by Section 341 of Z.A. Act.

55. Learned Commissioner has cursorily dismissed the appeal by holding that plaintiffs are in continuous possession over the land in question ever since execution of Contract for Sale on 13.07.1989, without examining whether long possession in itself is sufficient for decreeing the declaratory suit in which title is claimed based on adverse possession.

56. Learned Board of Revenue dismissed the Second Appeal filed by petitioners without considering the relevant aspects. Although 09 questions of law were

formulated and reproduced in the judgment, however, there is no discussion on those questions. Learned Board of Revenue also dismissed the appeal by holding that plaintiffs are continuing in possession over the land in question for sufficiently long period of time.

57. In para 3 and 5 of the plaint, plaintiffs asserted that the land in question is recorded as category ‘2’ in revenue records. This is an admission on the part of plaintiffs that the land was not transferable. Defendant No. 3 admitted that he was not having transferable rights, even though he was recorded as bhumidhar. Section 152(2) of Z.A. Act deals with bhumidhar with non transferable rights. Section 166 of Z.A. Act provides consequence of transfer made in contravention of provisions of the Act. Learned Assistant Collector, learned Commissioner and learned Board of Revenue, however, have overlooked this vital aspect of the matter, therefore the matter deserves to be remanded to Assistant Collector-I Class.

58. In the case of Estralla Rubber V. Dass Estate (P) Limited, reported as (2001) 8 SCC 97, Hon’ble Supreme Court held that exercise of power under Article 227 of the Constitution of India involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. It was further held that exercise of this power and interfering with orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or

justice, where if the High Court does not interfere, a grave injustice remains uncorrected.” Para 6 of the said judgment is reproduced below:

> “6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.

59. Similarly, in the case of M/s Garment Craft Vs. Prakash Chand Goel, reported as (2022) 4 SCC 181, Hon’ble Supreme Court held that jurisdiction exercised under Article 227 of the Constitution is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. It was further held that the power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It was

further held that it is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice. Para 15 of the said judgment is reproduced below:

> "15. Having heard the counsel for the parties, we are clearly of the view that the impugned order [Prakash Chand Goel v. Garment Craft, 2019 SCC OnLine Del 11943] is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. [Celina Coelho Pereira v. Ulhas Mahabaleshwar Kholkar, (2010) 1 SCC 217 : (2010) 1 SCC (Civ) 69] The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.

60. As discussed above, judgment rendered by learned Assistant Collector is contrary to fundamental principles of law and the finding are so perverse that no reasonable person can possibly come to such a conclusion based on the case set up by the parties. Therefore this Court thinks that hands-off approach, if adopted by this Court, will result in grave injustice remaining uncorrected.

61. In such view of the matter, impugned judgment and orders, passed by learned Assistant Collector, First Class,

Haldwani, as affirmed by learned Commissioner, Kumaon and learned Board of Revenue, are liable to be set aside and are hereby set aside.

62. Writ petition is allowed.

63. The matter is remanded to learned Assistant Collector, First Class, Haldwani, who shall decide the suit afresh, as per law.

MANOJ KUMAR TIWARI, J.

Dt: 15.09.2026
Mahinder

MAHINDER SINGH

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