

**IN THE COURT OF DISTRICT JUDGE, CHITRAKOOT**  
**Present – Shesh Mani..... H.J.S.**

**UPCH010013172023**



**Regular Civil Appeal No.-28/2023**

1. Rajesh, aged 45 years,
  2. Dileep Kumar, aged 49 years,
  3. Omprakash, aged 51 years,
  4. Vijay Kumar, aged 47 years,
  5. Ajay Kumar, aged 45 years,
- All sons of Motilal, residents of Gandhinagar Manikpur, Tehsil Manikpur,  
District Chitrakoot.

**.....(Appellants/Defendants)**

Versus

Sri Ganesh, son of Shivprasad, aged 49 years, resident of Pata, Tehsil  
Manikpur, District Chitrakoot.

**.....(Respondent/Plaintiff)**

U/s 34 of Gram Nyayalaya Act, 2008

**JUDGMENT**

**THE APPEAL**

1. The present Civil Appeal has been preferred under Section 34 of the Gram Nyayalayas Act, 2008 against the Judgement dated 24.03.2023 and decree dated 03.04.2023 passed in New Original Suit No. 66 of 2020 (Old Suit No. 64/2019), Sri Ganesh Vs Motilal and others, whereby the suit was decreed.

**BRIEF RESUME OF FACTS**

2. The facts giving rise to the present appeal are that Original Suit No. 64 of 2019 (now 66/2020) was preferred by Sri Ganesh (Respondent herein) against the defendants (appellants herein) seeking relief of permanent injunction in regard to the plot no. 141 area 0.5600 hectares which is shown as ABCD in the site plan of the plaint. In the plaint, it is

stated that plaintiff is the Bhumidhar with transferable rights and in possession of the disputed land plot no. 141 area 0.5600 hectares situated in village Pata, Tehsil Manikpur, District Chitrakoot. The defendants does not have any rights to interfere in the peaceful possession of the plaintiff. The plaintiff had sown mustard crop which had ripen at present. The defendants purposely want to harvest the crop situated in the disputed land and to take unauthorised possession of the said land. Cause of action accrued on 20.02.2019 time at about 10:00 AM, when the defendant along with labourers reached on the disputed land to harvest the crop. By means of present suit, the plaintiff has sought relief of permanent injunction in respect of the disputed land.

**3.** The defendant has filed written statement paper number 22ka, wherein he has admitted that plot number 141 area 0.5600 hectares is situated in village Pata Tehsil Manikpur District Chitrakoot. The rest averments made in the plaint have been denied and it is stated that Plot No. 141 area 0.5600 hectares, is the post-consolidation number. Prior to consolidation, the land comprised Plot No. 296/2 area 0.481 hectare and 297/2 area 0.079 hectare, which after consolidation were renumbered. The plaintiff is fully aware of these facts, yet has filed the present suit despite the execution proceedings being under consideration, hence, the suit is liable to be dismissed. The defendant purchased Plot No. 296/2 (2 bigha 15 biswa), 297/2 (9 biswa) and 207 (12 biswa) through a registered sale deed dated 24.06.1975 from Babbu, son of Ramsajeevan. The mutation was effected in fasli years 1382 to 1387 in Khata No. 91/6, and since then the defendant has been in continuous possession. The plaintiff has made incorrect statements in the plaint despite knowing the true facts. The suit is barred by the principle of estoppel. The person from whom the plaintiff allegedly purchased the property his name was wrongly mentioned in the revenue record and never had possession, and the sale deed in favour of the plaintiff is based on incorrect entries and is intended to interfere with the defendant's lawful possession. Earlier, Shivpal @ Shivbalak filed a suit for declaration (Suit No. 226/1978) under Section 229-B of the U.P.Z.A. & L.R. Act before the Additional District Magistrate, Karwi/Mau, which was decreed in his favour. However, in Appeal No. 88/27 year 1980-81, Motilal vs. Shivpal, the learned Additional Commissioner, Jhansi, set aside the order dated 13.11.1978 on 17.01.1981 and allowed the appeal of the defendant. Thereafter, Shivpal

filed objections under Section 9-A(2) of the U.P. Consolidation of Holdings Act before the Consolidation Officer, Manikpur, who after consideration decided the matter in favour of the defendant on 05.11.2011. When Shivpal failed in all proceedings, he executed a sham and fraudulent sale deed in favour of the plaintiff on the basis of incorrect entries, though neither earlier nor at present has the plaintiff ever been in possession. During consolidation, Plot No. 296/2 area 0.481 hectares and 297/2 area 0.079 hectares were merged and renumbered as Plot No. 141, area 0.5600 hectare. On verification, possession was found of the defendant and not of Shivpal. Shivpal repeatedly filed frivolous applications to harass the defendant and attempted to interfere with his possession, compelling the defendant to file Writ Petition No. 50828 of 2009 (Motilal vs. State of U.P.) before the Hon'ble High Court, Allahabad. The Hon'ble High Court directed to dispose of objection of Shivpal Case No. 423/09 and granted protection against interference in possession. Thus, the objections of Shivpal have already been decided. Due to administrative delay, the execution of orders remains pending. Taking undue advantage of such delay, Shivpal executed an illegal sale deed in favour of the plaintiff, which is void and without basis. Prima facie case, balance of convenience and irreparable loss are in favour of the defendant. The plaintiff never had possession, and no cause of action has arisen. Hence, the suit is liable to be dismissed with costs.

**4.** On the basis of the pleadings of both parties, the learned Presiding Officer framed the following issues on 29.01.2021:

1- Whether the plaintiff is the owner in possession of the disputed property, and on the basis of the averments made in the plaint, whether the plaintiff is entitled to obtain the relief of permanent injunction against the defendants in respect of the disputed land shown in the site plan attached with the plaint?

2- Whether the suit of the plaintiff is undervalued?

3- Whether the court fee paid by the plaintiff is insufficient?

4- Whether the plaintiff's suit is barred by the provisions of Section 49 of the U.P. Consolidation of Holdings Act?

5- Whether the plaintiff's suit is barred by the principle of estoppel?

6- Whether the plaintiff's suit is barred by the provisions of Section 206 of the U.P. Revenue Code?

7- Whether the plaintiff is entitled to any other relief?

5. The plaintiff has filed documentary evidences through list 9 Ga1 which includes certified copy of Khatauni (Paper No. 10 Ga1) and certified copy of Khasra (Paper No. 11 Ga1), through list 54Ga1 which includes certified copy of Khatauni (Paper No. 55Ga1) and certified copy of Khasra (Paper No. 56Ga1), through list 61Ga1 which includes photocopy of the order passed by the Court, Manikpur (Paper No. 62Ga1) & photocopy of registered sale deed dated 05.10.2015 (Paper No. 63Ga1) and through list 68 Ga1 which includes copy of plaint in Original Suit No. 360/2019 pending before the Court of Civil Judge (J.D.) (Paper No. 69Ga1).

6. In support of his suit, plaintiff Shri Ganesh son of Shiv Prasad himself had appeared before the Court as PW-1 and examined Natthu Prajapati son of Ulfat Prajapati and Bacchulal son of Darshan as PW-2 and PW-3 respectively.

7. On the other hand, defendants had filed documentary evidences through list 57Ga1 which includes copy of the order dated 05.11.2011 passed by the Court of Consolidation Officer, Manikpur (Paper No. 58 Ga1), Photocopy of the order dated 17.01.1981 passed by the Court of Additional Commissioner, Jhansi Division, Jhansi (Paper No. 59 Ga1), Copy of plaint in Original Suit No. 360/2019 pending before the Court of Civil Judge (J.D.) (Paper No. 60 Ga1) and through list 65 Ga1 which includes photocopy of sale deed dated 08.07.1975 (Paper No. 66Ga1).

8. On behalf of the defendants, D.W.-1 Rajesh Kesharwani son of Late Motilal D.W.-2 Hubbalal son of Shivdhari and D.W.-3 Kamlesh son of Ramasare were examined before the Court.

9. After hearing the parties, the learned Nyayadhikari, Gram Nyayalaya, Manikpur, Chitrakoot decreed the suit in favour of plaintiff. Being aggrieved with the said judgment dated 24.03.2023 and decree dated 03.04.2023, the present appeal has been preferred by the defendants (appellants herein).

10. In the appeal, it is stated that the order passed by the learned trial court is contrary to law and facts on record and has been passed without proper appreciation of the documentary and oral evidence available on the record. The appellants have clearly proved that Arazi No. 141 area

0.560 hectare corresponds to the pre-consolidation Arazi Nos. 296/2 area 0.481 hectare and 297/2 area 0.079 hectare, which were purchased by the appellants' predecessor Motilal through a registered sale deed dated 24.06.1975 from Babbu son of Satyanarayan and the mutation was also recorded in the revenue records (Khata No. 91/6 Fasli Year 1382 to 1387), and since then the appellants have been in lawful possession as owners. Shivpal @ Shivbalak filed a suit no. 229/1978 under Section 229-B of the U.P. Zamindari Abolition and Land Reforms Act and obtained order/decreed dated 13.11.1978 in his favour, against which the appellants filed Appeal No. 88/27 in 1980-81 before the Additional Commissioner, Jhansi, who set aside the order/decreed dated 13.11.1978 and allowed the appeal through order dated 17.01.1981, but due to a clerical mistake, the correction was not entered in the revenue record and the name of Shivpal continued to remain recorded. Taking advantage of this wrong entry, Shivpal executed a sale deed dated 05.10.2015 in favour of the respondent Sri Ganesh without any right or title, the cancellation of which a Suit No. 360/2019 is already pending before the Civil Judge (Junior Division), Chitrakoot, and even the Hon'ble High Court had earlier restrained Shivpal from interfering in the possession of the appellants; however, the learned trial court ignored these material facts and passed the impugned order, which is therefore liable to be set aside.

11. I have heard Sri B. K. Gupta, learned counsel for the appellants and Sri Prakashchandra Tripathi, learned counsel for the respondent and perused the record.

### **CONTENTIONS OF THE PARTIES**

12. Learned counsel for the appellant has submitted that disputed land is recorded as plot no. 141, area 0.5600 hectares, situated in Village Pata, Tehsil Manikpur, District Chitrakoot. The appellants/defendants purchased the said land from the original owners, namely, Babbu, son of Ramsajeevan, and Lalji, son of Heera, residents of village Pata. It is further submitted that Shivpal was not the owner of the disputed land and his name was wrongly entered in Khatuani. Taking advantage of the false entry, Shivpal executed a sale deed in favour of the plaintiff (respondent herein). Learned counsel has further submitted that Shivpal had instituted a suit under Section 229-B of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, which was decreed by the learned Sub-Divisional Magistrate. Being aggrieved by the said order, an appeal was

preferred before the Commissioner, who set aside the impugned order passed by the learned S.D.M. Meanwhile, consolidation operations came into existence, and the matter was raised before the Consolidation Officer. Vide order dated 05.11.2011, the learned Consolidation Officer directed cancellation of the entry made in favour of Shivpal and ordered mutation of the land in the name of Motilal. Learned counsel has furthermore submitted that from the perusal of the Paper no. 20Ga (Form 41), it transpires that the Plot no. 141 was made out from the Plot Nos. 296/2 and 297/2, which were purchased by Motilal from its original owners. Learned counsel has further submitted that on the basis of the sale deed executed in favour of Motilal, he is in possession of land in dispute. Therefore, the relief of permanent injunction cannot be granted in favour of Ganesh, who claims title through Shivpal, whose name was cancelled and the land was mutated in the name of Motilal.

**13.** Per contra, learned counsel for the plaintiff (respondent herein) submits that Shaivpal was the original owner of Plot no. 141, the land in suit and the said land was purchased by Sri Ganesh. His name was entered in the Khatauni during the consolidation proceedings and Form 41 was issued by the consolidation authorities wherein the name of Ganesh was recorded. The plaintiff (respondent herein) is the owner in possession of the land in dispute and that the learned Civil Judge rightly decreed the suit in favour of the plaintiff (respondent herein).

### **ANALYSIS**

**14.** For the effective adjudication of the present appeal, following points are required to be proved by this Court:

1. As to whether the plaintiff (respondent herein) is the owner and in possession of Plot no. 141 bearing, area 0.5600 hectares?
2. As to whether the learned Civil Judge has committed any illegality in decreeing the suit in favour of the plaintiff?
3. As to whether the plaintiff is entitled to the relief of permanent injunction as prayed in Suit no. 64 of 2019?

### **Disposal of Point 1, 2 and 3.**

**15.** In the plaint, it is stated that plaintiff is owner in possession over the disputed land plot no. 141 area 0.5600 hectares and the defendants does not have any legal rights to interfere in the peaceful possession of the

plaintiff. The defendants purposely wants to take unauthorised possession of the said land and thus relief of permanent injunction in respect of the disputed land is prayed by the plaintiff.

**16.** Contrary to it, in the written statement paper no. 22 Ka, it is stated that earlier, Shivpal @ Shivbalak filed a suit for declaration (Suit No. 226/1978) under Section 229-B of the U.P.Z.A. & L.R. Act before the Additional District Magistrate, Karwi/Mau, which was decreed in his favour. However, in Appeal No. 88/27 year 1980-81, Motilal vs. Shivpal, the learned Additional Commissioner, Jhansi, set aside the order dated 13.11.1978 on 17.01.1981 and allowed the appeal of the defendant. Thereafter, Shivpal filed objections under Section 9-A(2) of the U.P. Consolidation of Holdings Act before the Consolidation Officer, Manikpur, who after consideration decided the matter in favour of the defendant on 05.11.2011. Taking undue advantage administrative delay in execution of orders, Shivpal executed an illegal and fraudulent sale deed in favour of the plaintiff, which is void and without basis.

**17.** From the perusal of Paper No. 20Ga, certified copy of the CH Form 41, it reveals that the new number 141 is made out from the old number (previous number) 296/2 area 2 bigha 15 biswa, 297/2 area 9 biswa. Paper no. 10Ga-1 certified copy of extract of Khatauni reveals that vide order dated 14.06.2017 passed by Tehsildar Manikpur in Case No. 82 the name of Sri Ganesh S/o Shivprasad was recorded in place of Shivpal @ Shivbalak S/o Ram Nihore.

**18.** The learned counsel for the appellant/defendant submits that the name of Shivpal was wrongly mutated in the revenue record and on the basis of wrong entry he executed sale deed in favour of Sri Ganesh on 05.10.2015. Paper bearing number 63Ga1 to 63Ga1/14 reveals that Shivpal @ Shivbalak executed sale deed in respect to the land plot No. 141 Area 0.560 hectare in favour of Sri Ganesh for consideration amount Rs 5,60,000/-. Thus, it is evident from record that sale deed was executed in favour of Sri Ganesh by Shivpal.

**19.** From the record, it transpires that DW-1, Rajesh Kesharwani, in his affidavit paper no. 50 Ka/1 to 50 Ka/4 has stated that Shivpal instituted a suit for declaration of title under Section 229B of the U.P.Z.A. & L.R. Act in the court of S.D.M., Karwi titled Shivpal vs Ram Nihore which was decided in favour of Shivpal. Being aggrieved by judgement and decree

dated 13.11.1978, the appeal was filed before Additional Commissioner Jhansi Mandal and vide order dated 17.01.1981 of Additional Commissioner Jhansi Mandal passed in Appeal No. 88/27 year 1980-81 of U.P.Z.A & L.R Act, the appeal was allowed and the impugned judgement/decreed dated 13.11.1978 was set aside. Photocopy of order dated 17.01.1981 paper no. 59 Ga1, is on record. The said facts had not been denied. The learned commissioner has also observed in the said judgement that the entry made in the revenue record appears to be forged and the learned Trial Judge (S.D.M.) has committed grave illegality in passing the order.

**20.** The learned counsel for the appellant has drawn the attention of this Court upon the certified copy of order dated 05.11.2011 passed by Consolidation Officer, Manikpur in case 13/39/2010-11 titled Shivpal vs. State and Others under Section 9 Ka(2) Consolidation of Holding Act wherein the Consolidation Officer has cancelled the entry made in favour of Shivpal and further directions were made for recording the name of Motilal son of Satyanarayan resident of village Manikpur as Bhumidhar with transferable rights at Khata No.- 127.

**21.** From the perusal of certified copy of order passed by Consolidation Officer, it is evident that entries recorded in favour of Shivpal in Khata No. 127 is cancelled and vide said order, it is directed to record the name of Motilal upon the said Khata.

**22.** Learned counsel appearing on behalf of respondent submits that in consolidation proceeding, Sri Ganesh was not made party, therefore, the Judgement is not binding.

**23.** It is quite clear that the entry in favour of Shivpal upon Khata 127 was cancelled on 05.11.2011 and the sale deed was executed by Shivpal in favour of Sri Ganesh on 05.10.2015. Thus, it is clear that the sale deed was executed in favour of Sri Ganesh (respondent herein) after the cancellation of the entry made in his favour.

**24.** The learned counsel for the respondent has submitted that the restoration application is pending before the consolidation authority and in this regard questionnaire paper no. 44Ga is filed on record.

**25.** In reply learned counsel for the appellant submits that the writ is to be issued in compliance of order dated 05.11.2011 and only ministerial act is required to be done in compliance of the said order.

**26.** Now the question is (1) As to whether Sri Ganesh plaintiff is bound by Judgement dated 05.11.2011. (2) As to whether despite order dated 05.11.2011, Sri Ganesh is the legally owner of the disputed property.

**27.** One of the general principles of law relating to transfer of property is expressed by the maxim: '*nemo plus juris ad alium transfere potest quam ipse haberet*'- no person can transfer a better title than what he himself possess. Another maxim embodying the same principle is '*non dat qui non habet*'- he gives not who hath not.

**28.** Applying the above legal principle in the facts and circumstances of the present case, it is crystal clear that on 05.10.2015, the date of execution of sale deed, Shivpal was not the owner of the property in question. Since entry in his favour was already cancelled by the consolidation authority by order dated 05.11.2011, therefore, in the eye of law, he cannot transfer the property which he legally does not possess at the time of execution of sale deed.

**29.** It is settled principle of law that injunction includes declaration. The declaration of title in regard to agricultural land can only be made by revenue authority and not by civil court. At present, title is not in favour of Shivpal since entry made in his favour had already been cancelled by consolidation authority, therefore, due to want of title, relief of injunction cannot be granted against the true owner, i.e. the person in favour of whom order has been passed by consolidation authority. It does not gets proved that the plaintiff (respondent herein) is owner in possession of Plot no. 141 bearing, area 0.5600 hectares. The finding of the learned trial court that plaintiff (respondent herein) is the owner of the disputed land is manifestly contrary to the facts and evidences available on record. The learned trial court has failed to appreciate the evidence that Shivpal was not owner of the property in question on the date of execution of sale deed.

**30.** From the above discussions, it is established that it does not gets proved that the plaintiff (respondent herein) is the owner and in possession of Plot no. 141 bearing, area 0.5600 hectares and the learned trial court has committed illegality in decreeing the suit in favour of the plaintiff and the plaintiff is not entitled for the relief of permanent injunction as prayed in Suit no. 64 of 2019 (new number 66 of 2020). **Point nos. 1,**

**2 & 3 are accordingly disposed in favour of defendants (appellants herein) and against the plaintiff (respondent herein).**

**31.** The conclusion of the trial court is perverse contrary to the facts and law and hence is liable to be set aside. Consequently, the present Civil Appeal is liable to be allowed and the Judgment and decree dated 24.03.2023 and 03.04.2023 respectively are liable to be set-aside.

**ORDER**

The present Civil Appeal is allowed accordingly and Judgment and Decree dated 24.03.2023 and 03.04.2023 respectively passed in Original Suit No. 66 of 2020 (Old Suit No. 64/2019) titled Sri Ganesh Vs. Motilal and Others are set-aside..Suit is dismissed. No order as to cost.

Dated: 11.03.2026

**(Shesh Mani)**  
District Judge  
Chitrakoot  
J.O. Code- UP 5751

Judgment signed, dated and pronounced today by me in open Court.

Dated: 11.03.2026

**(Shesh Mani)**  
District Judge  
Chitrakoot  
J.O. Code- UP 5751