

IN THE COURT OF DISTRICT JUDGE, ETAH.

Present: Rakesh Dhar Dubey, H.J.S.

Civil Misc. Appeal No. 10/2025

UPET010014742025



Devlal and anr. Vs. Shailendra Kumar and ors.

J U D G M E N T

31.07.2026

1. Present Misc. Civil Appeal has been filed by the appellants against the impugned order dated: 27.02.2025 passed in O.S. No. 167/2025 Shailesh Kumar and ors. Vs. Virendra and ors.

2. By means of the impugned order dated: 27.02.2025, ld. Trial Court has allowed the application for interim injunction and restrained the respondents and their agents from interfering in possession of plaintiffs over Gata No. 281 area 0.133 hectare, situated in Mauja Nidhauri Kalan, Pargana Marhara, Tehsil & Distt. Etah.

3. The grounds taken in the memo of M.C.A. are that 1/2 of the property in question, specially Gata No. 281 is owned by appellants/respondents. Another ground has been taken in the memo of appeal, that the respondents/appellants purchased the same from legal heirs of Ajab Singh and Jawahar on 18.02.2025, as such, they are co-owners of the property in question. Another ground has been taken in the M.C.A. that ld. Trial Court has ignored the fact that khatauni and khasra filed on behalf of plaintiffs, relating to Gata No. 281-Sa is of 0.267 Are not of 0.133 Are. In spite of that the ld. Trial Court has granted the injunction in favour of plaintiffs.

4. During the course of arguments, ld. Counsel for appellant reiterated the grounds taken in memo of appeal and prayed that the order passed by the ld. Trial Court dated: 27.02.2025 is patently erroneous and liable to be set aside, hence, prayer was made to allow this M.C.A.

5. Heard ld. Counsel for appellants and perused the records of ld. Trial as well as order dated: 27.02.2025.

6. In the para 6 of the plaint, it has been stated that owners of the Gata No. 281-Sa area 0.133 hectares had executed vide sale-deed dated: 16.02.2021 in favour of plaintiffs and possession

was also handed over to the plaintiffs. it has also been stated that appellants/respondents were trying to interfere in the possession of plaintiffs/respondents over Gata No. 281-Sa area 0.113 hectare. Therefore, cause of action to file the suit for permanent injunction arose and consequently, the suit was filed.

With the plaint, photocopy of sale-deed dated: 16.01.2021, Khatauni of Gata No. 281-Sa, Khasra of Gata No. 281-Sa, through a list, were also filed, which are available on record.

7. From the perusal of photocopy of sale-deed dated: 16.01.2021, filed by plaintiffs themselves, it is established that only 1/2 of the part of Gata No. 281-Sa, area 0.267 hectare was purchased by the plaintiffs/respondents. From the perusal of Khatauni related to Gata No. 281-Sa, it is established that there are other co-sharers of Gata No. 281-Sa.

8. At this juncture, relief sought in the plaint is also very relevant, in which plaintiffs/respondents have prayed for permanent injunction over the Gata No. 281-Sa, area 0.133 hectare, situated in Mauja Nidhauri Kalan, Pargana Marhara, Tehsil and Distt. Etah. Site plan/map has also been given in the plaint.

9. Plaintiffs/respondents has also filed the map of the relevant village in question, in which the Gata No. 281 has been shown. From the perusal of map, shown in the plaint and from the perusal of map shown in the village, it is apparent that there is no demarcation in the map of village and the alleged map shown in the plaint is almost same as shown in the village. Case of the plaintiffs is that they had purchased only 1/2 of the part of Gata No. 281-Sa, vide sale-deed dated: 16.01.2021, but they have claimed relief of permanent injunction towards the entire plot no. 281.

10. The Id. Trial Court misread the sale-deed and Khatauni, filed by the plaintiffs and has granted the ad-interim injunction in favour of plaintiffs over the Gata No. 281 area 0.113 hectare, while only 1/2 of the Gata No. 281 was purchased by the plaintiffs/respondents, as such, it is apparent that order dated: 27.02.2025, passed by the Id. Trial Court suffers from manifest error apparent on the face of record.

11. In view of the discussion, made here-in-above, present M.C.A. is liable to be allowed and order dated: 27.02.2025, passed by Id. Trial Court, is liable to be set aside.

ORDER

Present M.C.A. is allowed and order dated: 27.02.2025, passed by ld. Trial Court in O.S. No. 167/2025 is set aside.

It is also directed that ld. Trial Court shall pass fresh order on application 6C₂ after giving opportunity of hearing to both the parties.

Let a copy of this order be sent to the ld. Trial Court along with the record.

Parties are directed to appear before the ld. Trial Court on 10.08.2026.

Dated: 31.07.2026

(Rakesh Dhar Dubey)

I.D. No. UP2008

District Judge, Etah.

Judgment pronounced, signed and dated in open Court today.

Dated: 31.07.2026

(Rakesh Dhar Dubey)

I.D. No. UP2008

District Judge, Etah.