2026:UHC:2831

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Second Appeal No.49 of 2011

Mussoorie Dehradun Development Authority, through its Secretary .... Appellant

Versus

Lt. General R.K. Jasbir (Retired) and others
..... Respondents

Presence:-
Mr. Rahul Consul, learned counsel for the appellant.
Mr. Piyush Garg, learned counsel for the respondents.

Hon'ble Siddhartha Sah, J.

This second appeal has been preferred against the judgment and decree dated 11.03.2011 passed by the Additional District Judge/FTC-III, Dehradun in Civil Appeal No. 10 of 2007, Mussoorie Dehradun Development Authority v. Lt. Gen. R.K. Jasbir Singh & Others, as well as the judgment and decree dated 14.02.2007 passed by the Additional Civil Judge-I (Senior Division), Dehradun in Original Suit No. 621 of 2004, Lt. Gen. R.K. Jasbir Singh & others v. Mussoorie Dehradun Development Authority.

2. The genesis of the present second appeal is traceable to a suit instituted by the plaintiffs/respondents before the Court of the Civil Judge (Senior Division), Dehradun, seeking declaration and possession. The suit was filed on the premise that the

plaintiffs are the owner and Bhumidhars of part of Khasra No. 430 (New No. 908), situated at village Adhoiwala, Central Doon. DEAL, Dehradun acquired 14.17 acres of plaintiff's land in Khasra No.430, 431, 307, in village Adhoiwala in 1990, but left 0.670 hectare land out of Khasra number 430. DEAL put up fencing around acquired land blocking access to part of Khasra number 430 (New No. 908), left by DEAL. The suit property is fully described in schedule of properties and attached sketch given at the end of the plaint. MDDA occupied 0.4000 hectare of Khasra number 430, new number 908 in 1996 and started constructing flats. The plaintiffs are in correspondence with the defendant since 1998 when they came to know about illegal occupation of their land in 1998. Plaintiffs gave an application to Tehsildar, Central Doon for joint survey of Khasra number 430. Suit number 30/2001-2002 titled Lt. Gen. R.K. Jasbir Singh vs. MDDA was filed in the court of SDM for demarcation under sec. 41 of Land Revenue Act. Joint survey of land under occupation of MDDA was carried out by Tehsildar, Central Doon along with Kanungo and Lekhpal. MDDA sent their Tehsildar along with their Lekhpal for joint survey. The report of joint survey submitted by Tehsildar, Central Doon shows 0.4000 hectare of land of plaintiffs under occupation of MDDA.

3. That it is further pleaded in the plaint that MDDA referred the matter to DGC (Revenue) for his opinion, who opined that though land is shown under Class 6(2) that is Abadi of land Revenue Manual, but that does not take away the ownership of Bhumidhar who are entitled to compensation. MDDA later requested the

SLAO, Special Land Acquisition Officer, Dehradun, for initiating of acquisition proceedings. The SLAO expressed his inability to initiate acquisition proceedings with retrospective effect. Consequent to above correspondence, then Secretary MDDA suggested to file a suit under 209 and 229 of UP ZA & LR Act for declaration of title and eviction. He assured the plaintiff No. 1 that they would compromise the suit and pay compensation. Accordingly, suit number 39/2004 titled Lt. Gen. R.K. Jasbir Singh and another versus MDDA and others was filed in the court of SDM Dehradun. In the meantime, Vice Chairman and Secretary MDDA were transferred. The above suit has been dismissed by SDM on the grounds that the suit is time-barred. This was done inspite of various rulings of Revenue Board and High Court Allahabad that Abadi does not take away ownership of Bhumidhar and he can be declared owner and Bhumidhar even if there is some construction on land. The land is shown as Abadi in Khatauni, though the plaintiffs are still shown owner in Khatauni. It is in the interest of justice that plaintiffs be declared owner and Bhumidhar of Khasra No.430 (New No.908) and possession be delivered to plaintiffs after demolition of unauthorized and illegal construction. The litchi and guava orchard was fetching Rs.20,000/- per year. Defendant is liable to pay damages of Rs.20,000/- per year. While the defendant accept the fact of illegal occupation of 0.4000 hect. of plaintiffs land in Khasra No. 430, (New No.908) they have been avoiding payment of compensation on one pretext or the other.

4. That it was also pleaded that cause of action arose in July 1996 when the defendants started

construction on plaintiff's land without acquiring it and later they had entered in class 6(2) of Land Revenue Manual. It further arose on 11th June 2003 when Tehsildar submitted joint survey report and the MDDA refused to pay compensation. The plaintiffs prayed for the following reliefs:- A. Plaintiffs be declared owner and Bhumidhar of Khasra number 430 (New No. 908), measuring 670 hectare, of which 0.4000 hectare is under occupation of MDDA. B. Possession of suit property be restored to plaintiffs after demolition of unauthorized construction. C. Mesne profit at the rate of Rs. 20,000/- per acre per year be awarded to the plaintiffs. C1. The defendant is liable to handover possession to plaintiff (Nos.1, 2/1 and 2/2) pay damages and cost.

5. The aforesaid suit was numbered as OS No.621 of 2004, Shri R.K. Jasbir Singh and anr. Vs. M.D.D.A. and the defendant MDDA contested the suit by filing its W.S. and contended that Onus to prove the allegations raised in para 1 & 2 of the plaint is on the plaintiff; that, contents of para 3 & 4 of the plaint are matter of record. Contents of para 5 of the plaint are wrong and are denied. The plaintiff filed the suit purporting to be under section 209 and 229 of UPZA & LR Act, which was dismissed. It is wrong to state that the Secretary, MDDA made any suggestion to the plaintiff to file a suit under the above provisions of the aforesaid Act. It is further wrong to state that the Secretary, MDDA made any assurance that in case the plaintiff files any such alleged suit, the same would be compromised by the defendant or that any alleged compensation would be paid. The present suit is legally not maintainable and is barred by the principles of res- judicata. The present suit

is therefore liable to be dismissed under order 7. Rule-11 CPC in limine at the threshold itself. The last portion of para 5 of the plaint is argumentative in nature and therefore is liable to be expunged. The onus, however, is on the plaintiff to prove the same. Onus to prove the allegations raised in para 6 of the plaint is on the plaintiff. It is wrong to state that is owner of the said property. It is further wrong to state that the plaintiff can be declared as owner/Bhumidhar by this learned court. It is further wrong to state that any possession could be delivered as alleged. All such reliefs had been sought in the suit as stated in para 5 of the plaint before the Revenue Court and the said suit was dismissed and therefore present suit is barred by the principles of res-judicata. It is further submitted that this learned court has no jurisdiction to appear and decide the present suit. Contents of para 7 of the plaint are wrong and are denied. It is wrong to state that the defendant accepted any fact with regard to alleged occupation. It is emphatically denied that the plaintiff is the owner of the property as stated in its para of the plaint. It is submitted that the land in question was recorded as Abadi and is in possession of MDDA. MDDA is recorded owner duly recorded in the present Revenue Records and as owner MDDA made flats over the same and the same have been allotted to different individuals, who are in possession thereof and consequently MDDA is not in possession. The possession was delivered by MDDA in 2003/04 to the different individuals. The plaintiff is not the owner of the property, however, he has alleged the same in the plaint. Onus to prove the ownership of the plaintiff is on him. However, he has to get the alleged papers corrected before the Revenue Court. Till such time corrections are

made the plaintiff cannot agitate the present suit and the Civil Court lacks jurisdiction to give any relief to the plaintiff as the plaintiff has sought declaration and the declaration cannot be granted by the Civil Court. Contents of para 8 of the plaint are wrong and are denied. No cause of action for the present suit arose in 1996 or on any other date. The suit lacks cause of action and therefore the suit is liable to be dismissed. Contents of para 9 of the plaint are wrong and are her denied. This Hon'ble Court has no jurisdiction to hear and decide the present suit. Contents of para 10 of the plaint are wrong and are denied. The suit is undervalued for purpose of court fee and jurisdiction and therefore for this reason also the plaint is liable to be rejected. Contents of para 11 of the plaint are vague and incomplete. The contents therefore are not admitted.

6. That it was further contended that the plaintiff is not entitled to any of the reliefs claimed and the suit of the plaintiff is liable to be dismissed with cost. No declaration can be sought from this Hon'ble Court as the land in question according to the plaintiff is agricultural land. This learned court lacks jurisdiction to grant any such declaration. Declaration as stated in para 10 of the plaint whereas on relief-B no court fee has been paid, as relief -B is for possession and for mandatory injunction. Since no court fee has been paid on relief-B as such plaint is liable to be rejected. No court fee on relief -C has also been paid. As Plaintiff has paid court fee on such on this ground the plaint is liable to be rejected. The matter stated in the plaint is with regard to the declaration in respect of land which according to the plaintiff is agricultural land and therefore this learned court lacks

jurisdiction to hear and decide the present suit. In para 8 of the plaint, the plaintiff has stated that cause of action arose in July, 1996 and the suit has been filed in November, 2004 after more than 8 years. Limitation for declaration as provided under Article 58 of the Limitation Act, 1963, is three years when the right to sue first accrues. According to the plaintiff, right to sue arose in 1996 and therefore the present suit is barred by limitation. The suit is legally barred and is liable to be dismissed with cost.

7. In reply to the written statement filed by the defendant, a replication was filed on behalf of the plaintiffs. In the replication, the version set out in the plaint was largely reiterated. It was further pleaded that, at the time of construction of the boundary wall, it was discovered that 0.4000 hectares of the unacquired land had been encroached upon by MDDA. The plaintiffs came to know about the change of land use only after the year 1998. No notice regarding the change of land use was ever issued to the plaintiffs. The plaintiffs continue to be recorded as owners in the revenue records. It was further pleaded that the defendant neither purchased the land nor acquired or requisitioned it. There is no limitation prescribed for filing a suit under Sections 209 and 229(B) of the U.P. Z.A. & L.R. Act, 1950, and therefore, the suit was wrongly dismissed. The plea of res-judicata is incorrect. After the land was declared Abadi, the provisions of the U.P. Z.A. & L.R. Act ceased to apply. The Revenue Court has no jurisdiction in the matter, and any order passed without jurisdiction is a nullity and does not operate as res-judicata. There is no estoppel on a pure question of law, nor was the matter decided on

merits. It was further pleaded that the defendants have occupied the land belonging to the plaintiffs. In the Khatauni, the plaintiffs are shown as clear owners and Bhumidhars. The Revenue Court has no jurisdiction. Revenue records, report of joint survey of Tehsildar, report of DGC (Revenue), clearly state that the plaintiffs are the owners of Khasra No.430 (908). The cause of action arose when the defendants illegally occupied portion of Khasra No. 430 (new No. 908). It is not understood how the defendant calls it declaration of ownership of agricultural land. After declration of "Abadi" the land ceases to be agricultural land. The plaintiffs have been shown as owners of the said property in the revenue records, even after it was occupied the defendants. The plaintiffs became aware of the illegal occupation by MDDA only in the year 1998, and since then, they have been continuously contesting the matter before the courts of the Tehsildar and the Assistant Collector. The defendants have attempted to mislead the Court by contending that the suit is barred under Article 58 of the Limitation Act, 1963. The present case falls under Article 65 of the Act, as the principal relief sought is recovery of possession. Therefore, the suit is not barred by limitation. The plaintiffs also filed a replication in response to the amended written statement. In the said replication, it was specifically pleaded that the contents of paragraph 7A are wrong and denied. It is wrong to say that defendant is shown as owner in the Revenue Records. The plaintiffs are shown as owners of the suit property, i.e., Khasra No. 430 New No. 908, Village Adhoiwala, Dehradun. Defendant has illegally occupied plaintiffs land. The contents of paragraph 7B are also incorrect and are denied. The latest Khatauni filed by the

plaintiffs shows Abadi in Khasra No. 908, Village Adhoiwala. If a plot comes in Abadi, the ownership does not change. Issue to this effect has already been framed and will be proved with documents already on file. Any plot which comes under Abadi only the Civil Court has jurisdiction to adjudicate suit in respect of the plot. Question of jurisdiction has already been decided by Hon'ble Court, it cannot be raised again.

8. On the basis of the respective pleadings of the parties, the Trial Court framed the following issues:

1. Whether the plaintiff is the owner of the disputed property as Bhumidhar?

2. Whether the defendant has taken possession of the disputed property unlawfully?

3. Whether the present suit is barred by the provisions of the U.P. Zamindari Abolition and Land Reforms Act?

4. Whether the present suit is barred by limitation?

5. Whether the suit has been undervalued and insufficient court fee has been paid?

6. To what relief, if any, is the plaintiff entitled?

7. Whether the suit is barred by the principle of res-judicata? If yes its effect!

9. During the pendency of the suit, an application under Order XXVI Rule 9 CPC was filed on behalf of the defendant, stating that constructions existed over the suit property in the form of flats occupied by various individuals. It was contended that since possession was with different occupants, a local inspection through a Court Amin was necessary, and a prayer was made for appointment of a Court Amin.

10. The said application was opposed by the plaintiffs, who contended that the defendant had continued construction even after the institution of the suit and that no commission was required, as the suit primarily related to declaration and recovery of possession.

11. After considering the objections, the trial court, vide order dated 12.01.2007, rejected the application for appointment of a Court Amin.

12. In support of their case, the plaintiffs filed documentary evidence along with the List 6 Ga-certified copy of plaint filed in the Court of the SDM; the report of Tehsildar Kendriya Doon and the report of the DGC (Revenue); three Khataunis and certified copy of the order of SDM Addl. Collector Dehradun. Vide list 19 Ga Khatauni Fasli 1400 bearing Paper Nos. 20C1/1 to 20C1/15; an extract of Khasra No. 430, Village Adhoiwala Central, for the year 1992–93 Paper No. 56C; a certified copy of the General Power of Attorney Paper No. 37-A1; the Advocate Commissioner's report Paper No. 24-A1. The affidavit of plaintiff's witness R.K. Jasbir Singh Paper No. 49-A1 was also brought on record. The

said witness was duly cross-examined by the learned counsel for the defendant.

13. Further documentary evidence was filed by the defendant vide List No. 80 Ga1-the original application Paper No. 81Ka 1. On behalf of the defendants, the affidavit of examination-in-chief of Shri V.D. Nautiyal Paper No. 75A1 was filed along with Khasra and Khatauni records (Annexures 1 and 2). The said witness was cross-examined by the learned counsel for the plaintiffs as DW-1.

14. After hearing the arguments of the learned counsel for the parties and perusing the entire record, Issue No. 1 was decided in favour of the plaintiffs, holding that they are Bhumidhars of the disputed land. The basis for such a finding was that the defendant, in its written statement, did not dispute the ownership of the plaintiffs. The plaintiffs had filed a photocopy of the khatauni as an annexure, and the defendant's witness also proved the same by filing a photocopy of the said document. Thus, the defendant institution itself provided evidence for the plaintiffs. On the basis of the evidence led by both parties, along with Khatauni No. 13/1, the trial court concluded that the plaintiffs are Bhumidhars of the disputed property.

15. On the basis of paragraph 7 of the affidavit of the defendant's witness, as well as document Nos. 75/1–5, it was incumbent upon the defendant institution to establish that it had obtained possession through due process of law or had otherwise acquired rights over the property. However, no such evidence was led by the defendant. Therefore, the trial court held that the

possession of the defendant over the disputed land was wholly illegal. Accordingly, issue No. 2 was also decided in favour of the plaintiffs.

16. On Issue No. 3, vide order dated 24.10.2005, the trial court held that since the land had been declared Abadi, there was no bar to the jurisdiction of the Civil Court.

17. Issue No. 4 was decided against the defendant on the ground that, in view of Article 65 of the Limitation Act, 1963, the suit had been filed within the prescribed period of limitation.

18. Issue No. 5, relating to valuation and court fees, was disposed of vide order dated 24.10.2005, whereby the plaintiffs were directed to carry out the necessary amendment. Subsequently, vide order dated 06.02.2006, the trial court allowed the amendment, and thereafter, upon the report of the Munsarim, no objection to the revised valuation was raised by the defendant.

19. Issue No. 7, relating to the bar of res-judicata, was decided in favour of the plaintiffs. It was held that the order of the Revenue Court, having been passed on technical grounds, did not operate as res-judicata in the present suit.

20. In view of the findings recorded on Issue Nos. 1 and 2, wherein it was established that the plaintiffs are Bhumidhars and owners of the disputed land, and that the defendant institution is in unauthorized occupation thereof without any legal right, the trial court held that the plaintiffs are entitled to recovery of possession.

21. Accordingly, vide judgment and order dated 14.02.2007 passed by the 1st Additional Civil Judge (S.D.), Dehradun, the suit of the plaintiffs was decreed with costs. The plaintiffs were declared owners of the disputed property, and the defendant institution was directed to vacate the same and hand over peaceful possession to the plaintiffs within one month. It was further directed that the plaintiffs shall be entitled to mesne profits at the rate of Rs. 20,000/- per acre per annum from the year 1996 till the date of delivery of possession.

22. Aggrieved by the judgment and decree dated 14.02.2007 passed by the First Additional Civil Judge (Senior Division), Dehradun, the defendant preferred an appeal in the Court of the District Judge, Dehradun, vide memorandum of appeal dated 16.03.2007. The said appeal was registered as Civil Appeal No. 10 of 2007, *MDDA v. Lt. Gen. R.K. Jasbir Singh & Others*.

23. During the pendency of the appeal before the Court of the ADJ/FTC-I, Dehradun, a similar application under Order XXVI Rule 9 CPC was filed by the defendant–appellant seeking inspection of the suit property through a Court Amin. The said application was opposed by the respondents and was rejected by the first appellate court on the ground that it had been filed only to delay the proceedings. Vide order dated 06.02.2008, the said application for inspection was rejected.

24. Thereafter, during the pendency of the aforesaid civil appeal, an amendment application was filed on behalf of the defendant–appellant. In the said application, it was stated that, as per the averments

made in the replication, the suit land is not in the occupation of MDDA but is in the possession of the general public, and that multi-storied flats have been constructed thereon. It was contended that this fact had also been admitted in the replication filed by the plaintiffs. On this basis, it was urged that the suit is bad for non-joinder of necessary parties, as the actual occupants have not been impleaded, and that the suit has been wrongly instituted against MDDA alone. Accordingly, the defendant–appellant prayed that in paragraph 10 of the written statement, after the word “denied” and before the word “the”, the following words be added:-

> “The plaintiff, in his replication, particularly in paragraph 8, has stated that the property is worth crores of rupees.”
>
> At the end of para 14, the following be added:-
>
> "Plaintiff's man relief is for declaration of title as contained in relief -A. The said relief for declaration is barred by principle of res-judicata as well as barred by limitation in view of what is provided under Article 58 as well as barred by limitation in view of what is provided under Article 58 of the Limitation Act. The relief of possession can only be claimed against the occupants. The plaintiff has admitted in the replication that the possession is with general public as contained in para 15 of the replication. It has further been stated that the land is in occupation of various people and that multi-storied flats have been constructed

> thereon. Actual occupants of the flats have not been arraigned parties in the suit. Relief of possession can only be sought against those individuals, who are in possession and not against those who are not in possession. Defendant is not in possession so the relief of possession cannot be sought against MDDA. From the plaint, as well as from replication filed by the plaintiff it is abundantly clear that MDDA is not in possession and those in possession have not been impleaded as defendant. The suit is therefore bad for non joinder of necessary parties and even otherwise the suit is barred by limitation as cause of action according to plaintiff arose in 1996 and therefore the relief of possession is also barred by limitation."

25. Objections to the said amendment application were filed on behalf of the plaintiffs, contending that the application was mala fide, designed to delay and protract the litigation, and therefore liable to be dismissed. It was further contended that a same plea regarding impleadment of allottees had already been taken before the trial court and had been rejected. It was also submitted that the plaintiffs and their counsel had been visiting the site since 1998 along with revenue and MDDA officials. The construction was in progress at that time, with no flat was occupied till filing of the suit. It was contended that MDDA knew it very well that the land had not been acquired, yet it continued with construction and allotment of flats when various cases were going on in courts. It was further contended that the plaintiffs

cannot be made to pay for the wilful and illegal acts of the defendant. It was also pointed out that the amendment application and supporting affidavit had been signed by counsel instead of the defendant. Additionally, it was submitted that the defendant's counsel had already addressed arguments on all issues, including ownership, jurisdiction, limitation, court fees, and res-judicata, and had argued in detail on various aspects of the plaint, including the remaining area of Khasra No. 430 not occupied by the defendant. It was further contended that the Secretary, MDDA had neither taken steps for acquisition of the land through the Special Land Acquisition Officer. Accordingly, it was prayed that the amendment application be dismissed with heavy costs.

26. The said amendment application was considered by the Additional District Judge/1st FTC, Dehradun, and vide order dated 28.07.2008, the same was rejected on the ground that it was neither bona fide nor helpful for the final adjudication of the case.

27. The aforesaid civil appeal was finally heard by the Additional District Judge/3rd FTC, Dehradun. After affording a detailed hearing to the learned counsel for the parties, the first appellate court came to the conclusion that, from the pleadings on record, it is clear that the plaintiffs were recorded owners and Bhumidhars in the revenue records.

28. The plaintiffs had filed a copy of Khatauni No. 13 Ga1 before the trial court, wherein the names of Kunwar Jasbir Singh, S/o Maharaja Rasbir Singh, and Rajkumari Geeta Devi, W/o Jasbir Singh, were recorded

as tenure holders. In the said Khatauni, in Column No. 9, with respect to old Khasra No. 430, the possession of the defendant, MDDA, was reflected.

29. Before the trial court, the defendant, MDDA, examined its witness, Shri V.D. Nautiyal, and filed a copy of the Khatauni, which was marked as Paper No. 75 Ka-1/5. The said document was found to be an exact photocopy of the Khatauni filed by the plaintiffs.

30. In view thereof, the appellate court observed that the defendant itself had filed the Khatauni before the trial court and had not raised any objection regarding its admissibility. Furthermore, the defendant's witness, Shri V.D. Nautiyal, had duly proved the said document. Thus, there was sufficient evidence on record in the form of the Khatauni. The trial court was, therefore, justified in accepting its veracity and relying upon it. Consequently, the finding of the trial court declaring the plaintiffs as Bhumidhars of the disputed property was held to be in accordance with law and based on facts.

31. So far as the possession of MDDA over the disputed property is concerned, the appellate court noted that, on one hand, the defendant had stated in its written statement that it was not in actual possession, as the property had been constructed upon and possession handed over to various persons. On the other hand, its witness, Shri V.D. Nautiyal, in his examination-in-chief, stated that MDDA was in possession of the disputed property. This fact also stood corroborated by Column No. 9 of the Khatauni, wherein possession of MDDA over old Khasra No. 430 was recorded.

32. Thus, from the evidence on record, it was evident that MDDA was in possession of the disputed property. The appellate court further held that the evidence adduced by the defendant itself substantiated the case of the plaintiffs. Accordingly, the findings of the trial court on this issue were affirmed as being in consonance with the evidence on record.

33. The appellate court also considered documentary evidence on record, including Paper No. 8C, being a report submitted by the Additional Tehsildar, Dehradun, before the SDM, Sadar, Dehradun. The said report indicated that in old Khasra No. 430, area 0.501 hectare land, the names of Jasbir Singh and others were recorded. During record operations, a portion measuring 0.4000 hectare was carved out and assigned new Khasra No. 908, which was recorded as Abadi under Class 6(2), over which MDDA had constructed a colony. The matter pertains to the plaintiffs and MDDA. From this document, the appellate court observed that MDDA had changed the nature of the land from agricultural to Abadi recorded in Class 6(2) and that a new Khasra number 908 had been assigned.

34. Further reliance was placed on Paper No. 9C1, being a letter dated 09.12.2003 written by the DGC (Revenue) to the Secretary/Vice-Chairman, MDDA. The said letter pertained to an application dated 18.11.2003 filed by Lt. Gen. Jasbir Singh for inspection of Khasra No. 908, area 0.4000 hectare, Village Adhoiwala, Dehradun.

35. In the said letter, it was stated that upon perusal of the Tehsildar's report dated 27.11.2003 and Khatauni No. 238 relating to Fasli years 1398–1401, it

was clear that the owner of old Khasra No. 430, area 1.6800 hectares, was Lt. Col. Jasbir Singh. Out of this an area of 0.4000 hectare had been taken into possession by the department and construction had been carried out thereon. It was further noted that no compensation had been paid to the landowner.

36. It was also observed that during survey operations, the said portion had been assigned new Khasra No. 908 and was wrongly recorded under Class 6(2) in the revenue records. However, such incorrect recording did not affect the ownership of the applicant. Upon spot inspection and measurement, the ownership of the applicant over the disputed land stood established.

37. The DGC (Revenue) opined that there was no legal impediment to payment of compensation to the landowner. From this fact, the appellate court inferred that the plaintiffs were the owners of the disputed property and that MDDA was in occupation thereof.

38. However, the appellate court noted that there was no material on record to establish how MDDA had come into possession of the land. No evidence was led by the defendant to show that possession had been obtained through any lawful means. In the absence of such evidence, the possession of MDDA over the disputed property was held to be illegal. The findings of the trial court in this regard were found to be clear, justified, and in accordance with law, and no interference was deemed necessary.

39. On the question of limitation, the appellate court held that since the plaintiffs had sought relief of

possession in addition to declaration, Article 65 of the Limitation Act, 1963 would apply, prescribing a period of 12 years. As the plaintiffs came to know about the defendant's possession in the year 1998, the suit was held to be within limitation. The findings of the trial court on this issue were accordingly affirmed4041. With regard to the plea of res-judicata, the appellate court held that the same was not attracted. The defendant itself had stated that the land in question was Abadi, and therefore, prima facie, the jurisdiction of the Revenue Court was excluded. The earlier suit under Section 229-B had been dismissed on technical grounds. It is well settled that a decision rendered by a court lacking jurisdiction does not operate as res-judicata.

40. On the aforesaid reasoning, the first appellate court concluded that the judgment of the trial court was based on proper appreciation of evidence and did not warrant interference. Accordingly, the appeal was dismissed with costs vide judgment and order dated 11.03.2021 passed by the Additional District Judge/3rd FTC, Dehradun.

41. Aggrieved by the judgments and decrees of the courts below, the present second appeal has been preferred. The second appeal was admitted by this Court vide order dated 14.11.2011 on substantial questions of law Nos. (ii) and (vi) as framed in the memorandum of appeal, which read as under:-

> *ii. Whether possession of the property could be ordered to be delivered to the respondents, when possession of the property/ building was*

already delivered to various individuals, who all have not been made parties to the litigation?

vi. Whether the suit of the respondents/ plaintiffs was barred under Article 58 of the Limitation Act, 1963 since the Relief sought was to declare themselves as the owner of the property?

42. While addressing substantial question of law No. (ii), as framed in the memorandum of appeal, Mr. Rahul Consul, learned counsel for the appellant, while assailing the impugned judgments, firstly submitted that MDDA was initially in possession of the land in question and had developed a colony thereon. It was further submitted that possession had already been handed over to certain individuals, and that MDDA is no longer in possession of the property.

43. It was contended that the first appellate court failed to consider that no effective decree could be passed, as MDDA was not in possession of the suit property. It was argued that merely on the basis of the Khatauni, both the trial court and the first appellate court held the plaintiffs to be Bhumidhars and entitled to declaration of ownership as well as recovery of possession. According to the learned counsel, the decree passed by the trial court is inexecutable in the facts and circumstances of the present case.

44. Mr. Rahul Consul further submitted that an earlier suit for declaration and possession had been filed before the Assistant Collector, First Class, which was

dismissed; therefore, the subsequent suit was barred by the principles of res-judicata.

45. He further referred to paragraphs 7A and 7B of the written statement, which were incorporated by way of amendment. In paragraph 7A, it has been pleaded by the defendant–appellant that the land in question was recorded as Abadi and was in possession of MDDA. It was further pleaded that MDDA is recorded as owner in the revenue records and, being the owner, had constructed flats over the property and allotted the same to various individuals, who are presently in possession. It was further contended that possession had been handed over by MDDA during the years 2003–2004, and therefore, MDDA is no longer in possession.

46. In paragraph 7B, it has been pleaded that the plaintiffs are not the owners of the property, although such ownership has been asserted in the plaint. It was contended that the burden to prove ownership lies upon the plaintiffs. It was further argued that merely on the basis of certain entries in revenue records, the plaintiffs cannot maintain the present suit, and that the Civil Court lacks jurisdiction to grant the relief sought, particularly when the relief of declaration is claimed in respect of matters falling within the domain of the Revenue Court. Referring to the cross-examination of plaintiff No. 1, Shri R.K. Jasbir Singh, learned counsel submitted that the plaintiffs had knowledge of the construction being raised over the suit property by the defendant, yet no objection was raised at the relevant time.

47. Learned counsel further drew the attention of this Court to the judgment of the Hon'ble Supreme Court in *Moreshar Yadaorao Mahajan v. Vyankatesh Sitaram Bhedi (D) through LRs & Others*, 2022 SCC OnLine SC 1307, and specifically to paragraphs 17, 18, and 19 thereof. Relying on the said judgment, it was contended that the subsequent occupants of the buildings constructed by the defendant over the suit property are necessary parties, and unless they are impleaded, no effective and executable decree can be passed. It was submitted that the plaintiffs themselves have admitted that certain persons are in possession of the property; however, such persons have not been impleaded as parties to the suit. Lastly, it was submitted that in view of the aforesaid facts, the submissions advanced, and the legal position laid down by the Hon'ble Supreme Court in *Moreshar Yadaorao Mahajan* (supra), substantial question of law No. (ii) deserves to be answered in favour of the defendant–appellant. Para 17, 18 & 19 of the said judgment are being extracted hereunder:-

> *"17. This Court, in the case of Mumbai International Airport Private Limited (supra), has observed thus:*
>
> > *"15. A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed. A "proper party" is a party who, though not a necessary party, is a person whose presence would enable the*

court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance."

18. It could thus be seen that a "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. It has been held that if a "necessary party" is not impleaded, the suit itself is liable to be dismissed.

19. As already discussed hereinabove, the plaintiff himself has admitted in the plaint that the suit property is jointly owned by the defendant, his wife and three sons. A specific objection was also taken by the defendant in his written statement with regard to non-joinder of necessary parties. Since the suit property was jointly owned by the defendant along with his wife and three sons, an effective decree could not have been passed affecting the rights

of the defendant's wife and three sons without impleading them. Even in spite of the defendant taking an objection in that regard, the plaintiff has chosen not to implead the defendant's wife and three sons as party defendants. Insofar as the reliance placed by Shri Chitnis on the judgment of this Court in the case of Kasturi (supra) is concerned, the question therein was as to whether a person who claims independent title and possession adversely to the title of a vendor could be a necessary party or not. In this context, this Court held thus:

> *"7. .....From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are" (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party."*

48. Per contra, Mr. Piyush Garg, learned counsel for the respondents, submitted that for determination of substantial question of law No. (ii), it must first be established whether the alleged occupants were necessary parties to the suit. It was contended that, in the absence of proper pleadings and evidence on record, such occupants cannot be treated as necessary parties. On the contrary, an adverse inference is liable to be drawn against the defendant, as it is the defendant who would be in possession of the relevant records regarding the status of the alleged allottees.

49. Learned counsel for the respondents further referred to the application dated 20.12.2006 filed by the defendant before the trial court. In the said application, the defendant itself had stated that constructions existed over the suit property in the nature of flats, which were occupied by different individuals. On that basis, the defendant had sought appointment of a Court Amin with the following directions:- Court Ameen be directed to measure the land in question with its boundaries. He be directed to prepare a plan. He further be directed to give the nature of constructions and the names of the occupants thereof.

50. The said application was opposed by the plaintiffs, and vide order dated 12.01.2007, the trial court rejected the same on the ground that the suit was primarily for declaration of ownership and recovery of possession. The court observed that the plaintiffs had already admitted that they were not in possession of the suit property, and therefore, no useful purpose would be served by issuing a commission for local inspection.

51. Learned counsel further referred to a similar application dated 18.01.2008 filed by the defendant at the appellate stage before the Court of ADJ/FTC-I, Dehradun, seeking inspection through a Court Amin. The said application was also opposed by the plaintiffs and was rejected by the first appellate court vide order dated 06.02.2008 on the ground that it was filed only to delay the proceedings.

52. It was next submitted that an amendment application was filed by the defendant at the appellate stage seeking to incorporate a plea regarding non-joinder

of necessary parties. The said application was opposed by the plaintiffs and was rejected by the first appellate court vide order dated 28.07.2008.

53. Referring to the aforesaid orders, learned counsel submitted that once the amendment seeking to raise the plea of non-joinder of necessary parties was rejected, the said issue has attained finality and cannot be re-agitated.

54. Learned counsel further submitted that in the affidavit of examination-in-chief, the defendant's witness, Shri V.D. Nautiyal, had stated that MDDA's possession is recorded in the Khatauni in the current settlement with respect to Khasra No. 430 (new No. 908), area 0.4000 hectare. It was contended that, as per the revenue records, possession is shown to be with MDDA, and the question of possession recorded in revenue entries cannot be used to defeat the present civil suit. Referring to the provisions of Order I Rule 9 CPC, learned counsel submitted that no suit shall be defeated by reason of non-joinder of parties, and the Court is competent to adjudicate the rights of the parties before it.

55. It was further contended that although certain persons may be in occupation of the flats constructed over the suit property, the defendant remains the principal party, and there was no necessity to implead such occupants.

56. Learned counsel also pointed out that the defendant has taken mutually contradictory pleas in paragraph 7A of the written statement. On one hand, it is stated that MDDA is in possession, while on the other

hand, it is claimed that possession had already been handed over to allottees in the years 2003–2004.

57. It was further argued that the use of the term allotted itself indicates that the jural relationship continues with the defendant, and therefore, the defendant cannot evade liability on that ground. It was also contended that the defendant has suppressed material facts from the Court, and therefore, an adverse inference ought to be drawn against it, particularly as it failed to disclose the complete status of the alleged allottees. It was emphasized that there is no pleading to the effect that the flats had been constructed prior to the institution of the suit. There is neither any assertion nor any evidence to establish that possession had been transferred before the suit was filed.

58. On the contrary, it is the defendant's own case that the occupants of the buildings are allottees of the defendant, thereby reinforcing the plaintiffs' contention that the defendant remains responsible for the acts in question.

59. In reply to the judgment of the Hon'ble Supreme Court in the case of Moreshar Yadaorao Mahajan vs. Vyankatesh Sitaram Bhedi (D) thr. LRs. and others, reported in 2022 SCC OnLine SC 1307, learned counsel for the plaintiff-respondents, Mr. Piyush Garg, contends that the aforesaid judgment was rendered in a factual background where the plaintiffs themselves had admitted in the plaint that the suit property was jointly owned by the defendant, his wife, and his three sons. A specific objection was also taken by the defendant in the

written statement with regard to non-joinder of necessary parties.

60. He further draws the attention of the Court to the facts of the present case and contends that, firstly, there is no co-owner, and the defendant entity itself claims exclusive ownership and possession of the property. It is also contended that the defendant has allotted portions in the building to various allottees, who are presently residing therein; however, the dates of such allotments have not been disclosed in the written statement.

61. In this background, learned counsel for the plaintiffs/respondents submits that the judgment in Moreshar Yadaorao Mahajan (supra), as relied upon by the applicant, would not be applicable to the present case. In support of his submissions, he has placed reliance upon the judgment of the Hon'ble Supreme Court in the case of H. Anjanappa and others vs. A. Prabhakar and others, reported in 2025 SCC OnLine SC 183, and has referred to paragraph 58 thereof. Placing reliance on the said judgment, he submits that every transferee pendente lite, if any, is bound by the decree, even if he is not a party to the proceedings and even if he had no notice thereof. As such, there was no necessity to implead the allottees.

62. He has also referred to another judgment of the Hon'ble Supreme Court in the case of Alka Shrirang Chavan and another vs. Hemchandra Rajaram Bhonsale and others, reported in 2026 SCC OnLine SC 55, and has placed reliance on paragraph 41.2 thereof. Referring to paragraph 41.2 of the said judgment, Mr. Piyush Garg

contends that '*where one of the parties to the suit transfers the suit property or a portion thereof to a third party, the latter would be bound by the result of the proceedings*, even if he had no notice of the suit or the proceedings'. He thus reiterates that, in law, there was no requirement to implead the alleged allottees, as contended in paragraph 7A of the written statement.

63. Now, substantial question of law No. ii is required to be examined and considered in light of the rival submissions advanced by the parties.

64. On one hand, Mr. Rahul Consul, learned counsel for the defendant/appellant, has contended that the MDDA was initially in possession of the land in question and had developed a colony thereon, and that possession of the buildings has already been handed over to certain individuals. It is thus contended that MDDA is no longer in possession of the suit property. He has further argued that the first appellate court failed to consider that no effective decree could have been passed, as MDDA was not in possession of the suit property, and therefore, the decree passed by the trial court is inexecutable in the facts and circumstances of the case.

65. Mr. Rahul Consul, Advocate, has also placed reliance upon paragraphs 7A and 7B of the written statement in support of his submissions. He has further relied upon the judgment of the Hon'ble Supreme Court in the case of Moreshar Yadaorao Mahajan (supra), to contend that the allottees were necessary parties and, in their absence, the judgments of the trial court and the first appellate court cannot be sustained.

66. Per contra, Mr. Piyush Garg, learned counsel for the respondents, has submitted that for determination of substantial question of law No. ii, it must first be established whether the alleged occupants were necessary parties to the suit. He contends that in the absence of proper evidence on record, such occupants cannot be treated as necessary parties.

67. The learned counsel for the respondents has further drawn the attention of the Court to an application filed by the defendant before the trial court seeking appointment of a Court Amin to ascertain the nature of construction and the names of the occupants, which came to be rejected by the trial court vide order dated 12.01.2007. He has also referred to a similar application filed at the appellate stage for inspection, which was rejected by the first appellate court vide order dated 06.02.2008.

68. Mr. Piyush Garg, learned counsel for the plaintiffs/respondents has further referred to an amendment application filed at the appellate stage, seeking to incorporate the plea of non-joinder of necessary parties, which was rejected by the first appellate court vide order dated 28.07.2008. With reference to the aforesaid orders, learned counsel submits that once the amendment seeking to raise the plea of non-joinder of necessary parties was rejected, the said issue attained finality and could not be re-agitated. He has also referred to the affidavit of examination-in-chief of the defendant's witness, wherein it has been stated that the entry regarding MDDA's possession is recorded in the Khatauni. He had also contended that

since the defendant remains the principal party, there was no necessity to implead the aforesaid occupants. He further argued that the use of the term “allotted” itself indicates that the jural relationship continued with the defendant. There is neither any assertion nor any evidence to show that possession had been transferred before the suit was filed. Therefore, the defendant remains responsible for its own acts.

69. Upon scrutiny and examination of the rival contentions and the legal submissions advanced by the parties, it is evident that the defendant, MDDA, has consistently taken the stand that it is in possession. In fact, the witness of the defendant himself has stated, while adverting to the question of possession that MDDA is in possession.

70. Paragraph 7A of the written statement states that the land in question was recorded as Abadi land and is in possession of MDDA. It further states that MDDA is the recorded owner in the revenue records. However, it is also mentioned that flats were constructed over the said land and allotted to different individuals who are in possession thereof, and consequently, MDDA is not in possession. It is further stated that possession was delivered by MDDA in the years 2003-04 to different individuals.

71. Thus, from Paragraph 7A of the written statement, it is evident that MDDA has taken inconsistent stands. While it admits that flats have been allotted to different individuals, it does not clarify the nature of such allotment or the legal status of the individuals to whom the flats were allotted. Since it is the

pleaded case of the defendant-appellant that MDDA is in possession, and the sole witness of the defendant-appellant, Mr. V.D. Nautiyal, has stated that MDDA's possession is reflected in the Khatauni, the inescapable conclusion, based on the pleadings as well as the evidence led on behalf of the defendant, is that the buildings were constructed by MDDA over the property in question and that MDDA was in possession of the disputed property, though the flats constructed thereon were allotted to several individuals.

72. In this background, it becomes necessary to examine the effect of the rejection of the amendment applications filed by the defendant-appellant at both the trial stage and the first appellate stage. It is also necessary to examine the effect of the rejection of the amendment application filed at the stage of the first appeal.

73. A perusal of the amendment application filed by the defendant-appellant before the Court of the Additional District Judge/I FTC, Dehradun, reveals that, inter alia, an amendment was sought to introduce the plea that the suit was bad for non-joinder of necessary parties. This application was rejected by the first appellate court vide order dated 28th July, 2008.

74. On a query made to the learned counsel for the defendant-appellant, he admitted that the rejection order dated 28th July, 2008 was not challenged further by the defendant-appellant and has thus attained finality. Accordingly, there was no plea in the written statement on the part of the defendant-appellant regarding the non-impleadment of the occupants of the flats. Moreover, the

statement of the defendant's witness, Mr. V.D. Nautiyal, in his affidavit of examination-in-chief regarding MDDA's possession also goes against the defendant-appellant.

75. Therefore, Mr. Piyush Garg, learned counsel for the respondents, is justified in contending that although certain persons may be in possession of the flats constructed over the suit property, the defendant remains the principal party, and there was no necessity to implead the said occupants.

76. In fact, the defendant-appellant has taken mutually contradictory pleas. On the one hand, it has stated that MDDA is in possession, while on the other hand, it has claimed that possession had already been handed over to the allottees in the years 2003-04.

77. The submission advanced on behalf of the plaintiff-respondent that the term "allotted" itself indicates that the jural relationship continues with the defendant is well-founded. Therefore, the defendant cannot evade its liability on that ground. While referring to the judgment in the case of H. Anjanappa and others (supra), as cited by the learned counsel for the plaintiffs/respondents, he has emphasized paragraph 58, sub-paragraphs (ii) and (vi), which are extracted hereinbelow, and contended that in view of the said legal position, the allottees of MDDA would still be bound by the decree, and the suit would not fail on account of their non-impleadment, if any.

> *"58. From a conspectus of all the aforesaid judgments, touching upon the present aspect, broadly, the following would emerge:*
> *i.....*

ii. Secondly, a transferee pendente lite is not entitled to come on record as a matter of right.

iii.....

iv.....

v.....

vi. Sixthly, merely because such transferee pendente lite does not come on record, the concept of him (transferee pendente lite) not being bound by the judgment does not arise and consequently he would be bound by the result of the litigation, though he remains unrepresented;

vii.....

viii.....”

78. Continuing his submissions, Mr. Piyush Garg, learned counsel for the respondent, has also drawn the attention of the Court to the judgment of the Hon’ble Supreme Court in Alka Shrirang Chavan and another (supra), referring to paragraph 41.2 of the said judgment, he has categorically submitted that ‘*where one of the parties to the suit transfers the suit property or a portion thereof to a third party, such third party latter would be bound by the result of the proceedings, even if he had no notice of the suit or proceedings*’.

79. Also, the background of the case needs to be considered in light of the above position of law, namely that the MDDA was conscious of the fact that it was not the owner of the 0.4000 hectare of land and, despite the legal opinion sought from the DGC (Revenue), it proceeded to carry out construction of buildings on the land belonging to the plaintiffs/respondents, thereby undertaking such construction at its own peril.

80. In view of the aforesaid substantial question of law, question no. ii deserves to be answered to the effect that possession of the property could have been directed to be delivered to the plaintiffs/respondents, notwithstanding the fact that certain other individuals had been allotted the buildings constructed thereon and were not impleaded as parties to the litigation. Accordingly, substantial question of law no. 2 is answered in favour of the plaintiffs/respondents.

81. Coming to substantial question of law no. vi, learned counsel for the defendant/appellant has submitted that since a relief of declaration was also sought in the plaint, the limitation would be governed by Article 58 of the Limitation Act, which prescribes a period of three years from the date when the right to sue first accrues. It is contended that the findings recorded by the trial court as well as the first appellate court on the issue of limitation are erroneous, and therefore, the suit deserves to be dismissed as being time-barred.

82. Per contra, learned counsel for the plaintiffs/respondents has contended that the suit was one not only for declaration but also for possession, and therefore, limitation would not be governed by Article 58 but by Article 65 of the Limitation Act, which provides a period of twelve years. Hence, the suit was filed within limitation. It is further submitted that issue no. 4 relating to limitation was specifically framed by the trial court and was duly considered. The trial court, in fact, relied upon the judgment of the Hon'ble Supreme Court in the case of State of Maharashtra vs. Pravin Jethalal Kamdar (dead) by LRs., reported in AIR 2000 SC 1099, and held

that in view of Article 65 of the Limitation Act, 1963, the suit was within time.

83. The issue of limitation was also examined by the first appellate court, which concurred with the findings of the trial court and held that since the plaintiff had sought relief of possession in addition to declaration, Article 65 would apply and the limitation period would be twelve years. It was further held that the conclusion arrived at by the trial court on this issue was in accordance with law.

84. A perusal of paragraph 6 of the aforesaid judgment (AIR 2000 SC 1099) clearly indicates that the mere fact that a declaration has also been sought is of no consequence where possession is in issue. Para 6 is extracted hereunder:-

> *"6. As already noticed, in Bhim Singhji's case, (AIR 1981 SC 234) (supra) Section 27(1) insofar as it imposes a restriction on transfer of any urban or urbanisable land with a building or a portion of such building, which is within the ceiling area, has been held to be invalid. Thus, it has not been and cannot be disputed that the order dated 26th May, 1976, was without jurisdiction and nullity. Consequently, sale deed executed pursuant to the said order would also be a nullity. It was not necessary to seek a declaration about the invalidity of the said order and the sale deed.* ***The fact of plaintiff having sought such a declaration is of no consequence. When possession has been taken by the appellants pursuant to void documents, Article 65 of the Limitation Act will apply and the limitation to file the suit would be 12 years.*** *When these documents are null and void, ignoring them a suit for possession simpliciter could be filed and in the course of the suit it could be contended that these*

documents are a nullity. In Ajudh Raj v. Moti S/o Mussadi, (1991) 3 SCC 136 : (1991 AIR SCW 1576 : AIR 1991 SC 1600) this Court said that if the order has been passed without jurisdiction, the same can be ignored as nullity, that is, non-existent in the eyes of the law and it is not necessary to set it aside; and such a suit will be governed by Article 65 of the Limitation Act. The contention that the suit was time-barred has no merit. The suit has been rightly held to have been filed within the period prescribed by the Limitation Act.

85. Learned counsel for the plaintiffs–respondents has also drawn the attention of this Court to the judgment of the Hon'ble Supreme Court in Sopanrao and Another vs. Syed Mehmood and Others, reported in (2019) 7 SCC 76, particularly paragraph 9 thereof, to contend that the case of the plaintiffs–respondents is squarely covered by the said judgment, which is extracted herein below:-

"9. It was next contended by the learned counsel that the suit was not filed within limitation. This objection is totally untenable. Admittedly, the possession of the land was handed over to the Trust only in the year 1978. The suit was filed in the year 1987. The appellants contend that the limitation for the suit is three years as the suit is one for declaration. We are of the view that this contention has to be rejected. We have culled out the main prayers made in the suit hereinabove which clearly indicate that it is a suit not only for declaration but the plaintiffs also prayed for possession of the suit land. The limitation for filing a suit for possession on the basis of title is 12 years and, therefore, the suit is within limitation. Merely because one of the reliefs sought is of declaration that will not mean that the outer limitation of 12 years is lost. Reliance placed by the learned counsel for the appellants on the judgment of this Court in L.C. Hanumanthappa v. H.B. Shivakumar

[L.C. Hanumanthappa v. H.B. Shivakumar, (2016) 1 SCC 332 : (2016) 1 SCC (Civ) 310] is wholly misplaced. That judgment has no applicability since that case was admittedly only a suit for declaration and not a suit for both declaration and possession. In a suit filed for possession based on title the plaintiff is bound to prove his title and pray for a declaration that he is the owner of the suit land because his suit on the basis of title cannot succeed unless he is held to have some title over the land. However, the main relief is of possession and, therefore, the suit will be governed by Article 65 of the Limitation Act, 1963. This Article deals with a suit for possession of immovable property or any interest therein based on title and the limitation is 12 years from the date when possession of the land becomes adverse to the plaintiff. In the instant case, even if the case of the defendants is taken at the highest, the possession of the defendants became adverse to the plaintiffs only on 19-8-1978 when possession was handed over to the defendants. Therefore, there is no merit in this contention of the appellants."

86. In view of the settled legal position, it is evident that the limitation applicable to the present case is twelve years, and both the trial court as well as the first appellate court has committed no error in law in holding that the suit was within limitation.

87. In view of the settled legal position, this Court comes to the conclusion that substantial question of law no. vi is to be answered to the effect that the suit of the respondents/plaintiffs is not barred under Article 58 of the Limitation Act, 1963. Since the relief sought was for possession in addition to declaration, the applicable limitation period would be twelve years under Article 65 of the Act. Accordingly, the suit was filed within time,

and the trial court as well as the first appellate court has rightly arrived at this conclusion.

88. Learned counsel for the defendant–appellant does not dispute the position regarding ownership of the property in question and fairly concedes that the defendant–appellant is not the owner thereof. However, he contends that the plaintiffs have merely placed on record the Khatauni. In this regard, it is noteworthy that the same Khatauni was also brought on record by the defendant's witness along with his affidavit of examination-in-chief.

89. In response, Mr. Piyush Garg, learned counsel for the plaintiffs/respondents, submits that the names of the plaintiffs–respondents are recorded in the Khatauni under Verg-1 ka, which denotes ownership with transferable rights. Since the Khatauni stands admitted by the defendant's own witness, and both the trial court as well as the first appellate court have concurrently held the plaintiffs–respondents to be the owners of the property in question, there exists a concurrent finding of fact regarding ownership.

90. It has further come on record that a part of the same khasra number was acquired by DEAL, and even the legal opinion obtained from the District Revenue Authorities, Dehradun, recognizes the plaintiffs/respondents as owners. Therefore, it can safely be inferred that the respondents/plaintiffs are the rightful owners of the property in question.

91. Since instant second appeal is concluded by finding of facts and since substantial questions of law

nos. (ii) and (vi), as framed in the memo of appeal, have been answered in favour of the plaintiffs/respondents, the present second appeal fails and is liable to be dismissed. Accordingly, the second appeal is hereby dismissed. The judgments and decrees passed by the trial court as well as the first appellate court are hereby affirmed and upheld.

92. The original record be transmitted back to the court concerned.

(Siddhartha Sah, J.)
17.04.2026

BS