

**IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL**

Second Appeal No. 131 of 2012

With

CLMA No. 12777 of 2012

CLMA No. 12778 of 2012

1. State of Uttarakhand through Collector, Udham Singh Nagar.
2. District Education Officer (Basic), Udham Singh Nagar.

..... Appellants/Defendants

Versus

1. Ram Sewak Gupta S/o Midhai Lal Gupta R/o Village Charubeta, Tehsil Khatima, District Udham Singh Nagar.

.....Respondent/Plaintiff

2. Gram Sabha, Charubeta, Tehsil Khatima, District Udham Singh Naar through its Gram Pradhan, Charubeta.

..... Proforma Respondent

Mr. B.D. Kandpal, Deputy Advocate General, present for the appellants/defendants.

Mr. Anil Dabral, Advocate, holding brief of Mr. D.S. Patni, Advocate, present for the respondent No.1.

Mr. Deep Prakash Bhatt, Advocate, holding brief of Mr. S.C. Bhatt, Advocate, present for the proforma respondent No.2.

Hon'ble Prafulla C. Pant, J.

This is Delay Condonation Application No. 12777 of 2012, for condonation of delay in filing the appeal against judgment and decree passed by Additional District Judge/1st Fast Track Court, Udham Singh Nagar, in Civil Appeal No. 67 of 2008, whereby said court has dismissed the Civil Appeal and affirmed the judgment and decree dated 25.11.2008, passed by the trial court (Civil Judge (Junior Division), Khatima, in Suit No. 133 of 1997.

2) No objection has been filed on behalf of the respondents even after service of notice. As such, the explanation as to delay mentioned in the affidavit of Harsh Bahadur Chand, District Education Officer (Basic), Udham Singh Nagar, in support of the delay condonation application deserves to be accepted.

3) The Delay Condonation Application No. 12777 of 2012 is hereby allowed. Delay in filing the appeal is condoned.

4) Heard on admission and perused the impugned judgment and decree passed by the lower appellate court.

5) This second appeal is admitted on following substantial questions of law:-

i) Whether the courts below have erred in law in recognising the right of easement claimed by the plaintiff over the public land belonging to the Government, without there being any finding as to enjoyment of easement for more than thirty years?

ii) Whether the plaintiff/respondent No.1 who has not proved his title over the land allegedly belonging to him cannot claim right of easement under Section 15 of Indian Easement Act, 1882?

6) Summon the lower court record.

7) List after the lower court record is received. Meanwhile, status quo shall be maintained in respect of the wall said to have been raised by the defendants/appellants over their own land. (Stay Application No. 12778 of 2012, stands disposed of).

(Prafulla C. Pant, J.)

23.04.2013
JM