

SL. No.	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGE'S ORDERS
			<p><u>SA No. 84 of 2013</u> <u>Hon'ble Rakesh Thapliyal, J.</u></p> <ol style="list-style-type: none"> 1. Mr. Siddhartha Singh, learned counsel for the appellant. 2. Mr. Aditya Singh, learned counsel for respondent nos. 10 and 11. 3. Mr. Nikhil Singhal, learned counsel for respondent no. 12. 4. Mr. Nagesh Agarwal, learned counsel for respondent no. 15. 5. The instant second appeal arising out of the judgment and order passed in O. S. No. 104 of 1996, which was instituted by two persons, namely, Satish Kumar and Subhash in respect of the property on which perpetual lease was granted by one Seth Lakhpat Ram on 05.06.1962. In this suit, as many as, there are 7 defendants arrayed in individual capacity and the defendant no. 8 was the Nagar Palika, Haridwar through its Chairman and defendant no. 9 was Haridwar Development Authority. Subsequently, in this suit the New Haridwar Welfare Society was also impleaded as one of the defendant. As per the perpetual lease deed dated 05.06.1962, which pertains to the land in question, Schedule 'C' property was earmarked for the School and Schedule 'D' property was earmarked for the park. The aforesaid suit bearing O.S. No. 104 of 1996 was partly decreed by holding that defendant nos. 1, 2 and 3 were the lessee of Schedule 'C' and Schedule 'D', the property which was earmarked for school and park. It is relevant to mention here that the entire

		<p>suit relates to only part of the property which was leased out on 05.06.1962, i.e. Schedule 'C' and Schedule 'D' property. While decreeing the suit, the trial court observed in the operative part of the order that defendant no. 1 to 3 will transfer the land to the Nagar Palika (defendant no. 8) within a month by a registered deed and after transferring the said land, the Nagar Palika will develop the park or will develop the park with the help of defendant no. 10, i.e, Haridwar Development Authority, another defendant. Simultaneously, defendant no. 1 to 3 were also restrained that they will not interfere in the use of the park by the plaintiffs and the public at large.</p> <p>6. Against the said judgment of the trial court, the Nagar Palika Parishad, the plaintiff and defendant no. 10 the Welfare Society filed three different appeals Civil appeal filed by the Nagar Palika was numbered Civil Appeal No. 1 of 2002, the civil appeal filed by defendant no.10,i.e, Welfare Society was numbered as Civil Appeal No. 94 of 2001 and appeal filed by the Plaintiff was numbered as Civil Appeal No. 95 of 2001. The civil appeal filed by the plaintiff, i.e. Civil Appeal NO. 95 of 2001 was dismissed for want of prosecution by the Appellate Court on 07.02.2011 So far as other two appeals are concerned, i.e., Civil Appeal No. 1 of 2002 filed by the Nagar Palika and Civil Appeal No. 94 of 2001 filed by the Haridwar Welfare Society both were also dismissed on 07.04.2013.</p> <p>7. Learned counsel for the parties apprise to this Court that against the order dated 07.02.2011 by which Civil Appeal No. 95 of 2001 was dismissed, no such further appeal has been preferred. Being aggrieved with the judgment of the trial court dated 02.11.2001 as well as</p>
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judgment dated 17.04.2013, passed by the First Appeal Court, dismissing the two appeals, i.e. Civil Appeal No. 1 of 2002 and Civil Appeal No. 94 of 2001, now the instant second appeal has been preferred, which was admitted on 16.07.2013 on two substantial questions of law, which are as follows:

(i) Whether the space earmarked by the builder for the parte and school locality would vest in its residents, and/or the society formed by the residents for their beneficial enjoyment or would vest in the owner/colonizer?

(ii) Whether the counter claim filed by the defendant no. 10 (appellant) is not maintainable under Order VIII Rule 6A of C.P.C. against the co-defendant in a representative suit, if so, its effect?

8. In O.S. No. 104 of 1996, there was also another defendant, i.e., defendant no. 4 Namdev Trust, Jassaram Road through President Omprakash Verma, S/o Shambhudayal Verma, R/o 26 Himgiri Vihar, Vishnu Garden Kankhal, Pargana Jwalapur Tehsil and District Haridwar. Undisputedly, defendant nos. 1 to 3, namely, Chaudhary Mahendra Singh, Swaroop Singh and Mahavir Singh transferred the lease hold right only to the extent of 20000 sq. ft. (approx) (.205 hct.) which is part of schedule 'C' property, earmarked for school to the said defendant no. 4. This transfer was made to this Trust only for limited purposes to construct the school.

9. Mr. Siddhartha Singh, today, on instructions from his clients apprise to this Court that approximately 42000 Sq. Ft. land was further transferred by the aforesaid defendant nos. 1 to 3 to different persons, namely, Aruna Sharma,

		<p>Abhishek Sharma, Maya, Rupesh, Rajkumar, Vikas, Nanki Devi, Mahesh Chand Rathi, Gaurav, Munesh Kumar and Amit Atre by deed dated 19.10.2002. He submits that subsequent transfer by way of lease by defendant nos. 1 to 3 to different persons reveals that as on date defendant no. 1 to 3 who are respondent nos. 6 to 11 in the instant second appeal have no right over the property in question since they have already transferred their right.</p> <p>10. Mr. Aditya Singh, who appears for respondent nos. 10 and 11 (defendant nos. 2 and 3 in the O.S.) submits that he has no instructions on such transfer and only this much instructions he has that transfer in respect of 42000 sq. Ft. land is by way of forged document which is already under challenge in another Original Suit No. 16 of 2004, titled as Chaudhary Mahendra Singh vs. Ram Singh and others. Further, Mr. Nagesh Agarwal, learned counsel for respondent no. 15 also apprise to this Court that the said suit was already dismissed in default. In response to this Mr. Aditya Singh submits that in said suit restoration application has been filed and is also pending for consideration. Apart from this, Mr. Aditya Singh also argued that counsel for the appellant has not placed on record the relevant deed in respect of such transfer and those transfers are not the subject matter of the instant second appeal.</p> <p>11. This Court is not convinced with the argument of Mr. Aditya Singh for simple reason that if defendant nos. 1 to 3 transferred their rights over the property in question though by perpetual lease than as on date in the present second appeal under which capacity they are contesting since, they have already extinguished their rights over the property in question.</p>
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12. Mr. Nagesh Agarwal also apprise to this Court that Chaudhary Swaroop Singh, who is respondent no. 10 herein and defendant in the suit also filed the writ petition bearing WPMS No. 2681 of 2013, against the order by the trial court dated 11.05.2009 passed in O.S. 16 of 2004, as well as subsequent order dated 18.04.2013 passed by 4th Addl. District Judge in Civil Revision no. 98 of 2009, Chaudhary Mahendra Singh vs. Sri Ram Singh and others , which was also dismissed as infructuous on 23.02.2016 on the ground that O.S. No. 16 of 2004 was already dismissed for want of prosecution.

13. Since all these subsequent transfers are not on record and certainly it goes to the root of the matter particularly to determine the issue whether defendant nos. 1 to 3 who are respondent herein have a right to contest in respect of the property in question in the present appeal, Mr. Siddhartha Singh is granted two days' time to bring on record the relevant document.

14. Put up this matter on 25.09.2025.

15. Interim order shall continue till disposal of the instant appeal with further rider that the parties shall not create third party interest over the property in question.

(Rakesh Thapliyal, J.)
22.09.2025

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