

SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			<p>SA No.98 of 2017</p> <p><u>Hon'ble Siddhartha Sah, J.</u></p> <p>Mr. S.K. Posti, Sr. Advocate assisted by Mr. Manish Soni, Advocate holding brief of Mr. Ashutosh Posti, Advocate for the appellants.</p> <p>Mr. Lalit Sharma, learned Deputy Solicitor General with Mr. Manoj Kumar, Standing Counsel, for the Union of India.</p> <p>This second appeal is preferred against the judgment and decree dated 05.05.2017 passed by Addl. District Judge, Almora, in Civil Appeal No.30 of 2016, Devendra Singh and others vs. Assistant Conservator, Archaeological Survey of India, Almora and another, whereby learned lower appellate court dismissed the appeal of the plaintiffs/appellants and confirmed the judgment of trial court dated 09.09.2016, in Suit No.34 of 2010.</p> <p>The present second appeal arises out of suit for permanent injunction and declaration. The plaintiff has alleged that he is <i>bhumidhar</i> of khata khatauni no.26 Khet No.3577 having area of 13 mutthi adjacent to eastern boundary wall of ancient Katarmal Temple, Almora. The defendant opened the boundary wall and digging the plaintiff's Khet since 10.09.2020 and the defendant is not entitled to change the boundary wall of the ancient temple. Plaintiff sent the telegram notice on 14.09.2010, the defendants are not paying heed. Hence, the suit for the injunction.</p> <p>The defendant contested the suit by filing their WS and refuted the plaint</p>

			<p>averments. Issues were framed regarding the ownership and possession and encroachment and the trial court though found the plaintiff recorded as a bhumidhar. However, it came to the conclusion on Issue No.1 that there is no evidence led by the plaintiff that the defendants are forcibly encroaching Khet No.3577 and thus proceeded to dismiss the suit.</p> <p>Aggrieved against the same, appeal was filed before the District Judge, Almora which came to be dismissed by the judgment and order dated 05.05.2017. Hence, the present second appeal.</p> <p>Assailing the judgments and orders of the trial court as well as the first appellate court, the learned senior counsel for the plaintiff/appellant has made the submission that the plaintiff is a duly recorded bhumidhar of the land in question and though his ownership was duly found in the disposal of Issue No.1, yet the courts below committed an error by not decreeing the suit.</p> <p>The learned senior counsel for the appellant further makes the submission that the first appellate court has committed an error by returning the finding that the suit is not tenable by virtue of Section 20(O) of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and thus makes the submission that the judgments and orders of the trial court and the first appellate court deserves to be set aside.</p> <p>Per contra, the learned Deputy Solicitor General makes a submission that the Issue No.2 has been decided against the plaintiff and the trial court as well as the first appellate court did not commit any error in dismissing the suit preferred by the plaintiff/appellant and at the second appellate stage, since the case has been concluded by findings of fact, there is no scope for</p>
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interference.

In view of the rival submissions made by learned counsel for the parties and in view of the provisions of the Ancient Monuments and Archaeological Sites and Remains Act, 1958, the matter requires a deeper scrutiny.

Admit the second appeal on the following substantial questions of law: -

“(i) Whether the first appellate court’s finding that the suit of the plaintiff/appellant is not tenable in view of Section 20(O) of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 is justified?”

(ii) Whether the defendants have illegally encroached 13 mutthi land of the plaintiff/appellant recorded in his name as bhumidhari over Khet No.3577 and the trial court as well as the first appellate court erred by not decreeing the suit of the plaintiff?”

List this case on 03.07.2026.

(Siddhartha Sah, J.)

04.05.2026

Ravi