

HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal From Order No.127 of 2026

Ganga Devi and othersAppellants

Versus

Prabhat Shah Deceased and othersRespondents

Present:- Mr. Bhupendra Singh, Advocate for the appellants appeared through video conferencing.

Mr. Tarun Mohan, Brief Holder for the State/respondent no.5.

Mr. Shakti Sourabh Purohit, Advocate holding brief of Mr. Sandeep Kothari, Advocate for respondent no.6.

Hon'ble Ravindra Maithani, J. (Oral)

Instant appeal is preferred against the judgment and order dated 30.01.2026, passed in Original Civil Suit No.88 of 2023, Ganga Devi and others Vs. Prabhat Shah and others, by the court of Civil Judge (Sr. Div.), Haldwani, District Nainital ("the suit"). By it, the application 6(C) filed under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 ("CPC") seeking temporary injunction by the appellant was dismissed.

2. It is the claim of the appellant that the predecessor-in-interest late Shri Bala Ram Chaudhary got the property transferred in his own name from Lala Parmat Shah, Rai Sahab Lala Shiv Lal Shah by virtue of an exchange deed and Late Shri Bala Ram Chaudhary had transferred his own *Hissedari* land at some other place in favour of Lala Parmat Shah and Rai Sahab Lala Shiv Lal Shah. At the relevant time, Shri Bala Ram Chaudhary though applied for mutation, but he could not pursue the matter, as such his name was not mutated. Subsequently, according to the appellants in the month of May, 2022, the appellant no.2 visited the spot and found that the respondent no.2 had raised construction on it. He had applied for freehold also. The construction was made without sanction of the plan map from the

Development Authority. He also came to know that the respondent no.2 Ashok Pal had applied for freehold right on the basis of sale deed, executed in his favour by Prabhat Shah S/o Mathura Prashad.

3. In the suit, the challenge is made to the sale deed that has been executed by Shri Prabhat Sah in favour of respondent no.2 Ashok Pal. The appellants also seek various other reliefs including physical possession of the land. In the suit, objections to the application under Order 39 Rules 1 and 2 of CPC were filed. After hearing the parties, by the impugned order dated 30.01.2026, the interim temporary injunction application filed by the appellant was dismissed.

4. Heard learned counsel for the parties and perused the record.

5. Learned counsel for the appellants submits that their predecessor in interest Bala Ram Chaudhary did acquire rights in the property in suit by virtue of exchange deed dated 25.03.1945, but now the respondent no.2 Ashok Pal had purchased the property by virtue of the sale deed and have started raising construction after getting the freehold of it. He would submit that the appellants have right in the property; therefore, it may be protected. He submits that the respondents are raising construction illegally without any sanction of map.

6. In the matter of grant of temporary injunction the parameters that are to be looked into are (i) *prima facie* case; (ii) balance of convenience; and (iii) the irreparable loss.

7. The name of predecessor in interest of the appellants namely, Shri Bala Ram Chaudhary was never mutated in the suit property. Though, it is the case of the appellants that Late Shri Bala Ram Chaudhary had acquired right in the property in suit in the year 1945 by virtue of exchange deed and, thereafter, it is the case of the appellants that the appellant no.2 visited the property in suit in the month of May, 2024. In between in the year 2006, the respondent no.2 did purchase the property from Prabhat Shah. During the course of arguments learned counsel for the appellants submits that Prabhat Shah is grandson of Lala Parmat Shah with whom Shri Bala Ram Chaudhary had exchanged his land.

8. Respondent no.4 Mahesh Pal, according to the plaintiff, purchased the property in the year 2006, thereafter, acquired freehold of it and now raising construction.

9. For the first time, according to the case of appellants themselves after 1945 they visited the property in the month of May, 2022, almost after 75 years. Now, cancellation of sale deed has been sought.

10. It is also admitted that the freehold of the property has been done in favour of respondent no.2, though the appellants claim that it is illegal. In the impugned order, in paras 16, 17 and 18, the court below has discussed the factors of *prima facie* case, balance of convenience and irreparable loss and rightly held that there is no *prima facie* case in favour of the appellants. Balance of convenience does also not lean in favour of the appellants. It is also

held that if temporary injunction is not granted, the appellants may not have bear irreparable loss.

11. As stated, the appellants are not in possession of the property. After 1945, according to the plaint case itself, in the year 2022, the appellant no.2 visited the property. The respondent no.2 has sale deed in his favour and freehold was also granted in his favour. He has also reconstructed it. Therefore, this Court is of the view that, in fact, no *prima facie* case is made out by the appellants and balance of convenience is also not made out. It is also not the case that in case, temporary injunction is not granted; it may cause irreparably injury to the appellants. Therefore, the court below has rightly rejected the application under Order 39 Rules 1 and 2 of CPC. Accordingly, there is no reason to interfere in the impugned order and the appeal deserves to be dismissed.

12. The appeal is dismissed.

(Ravindra Maithani, J.)
07.05.2026

Sanjay