

SL. No	Date	Office Notes, reports, orders or proceedings or directions or Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			<p data-bbox="643 383 900 409"><u>WPMS No. 1593 of 2023</u></p> <p data-bbox="643 416 1139 459"><u>Hon'ble Rakesh Thapliyal, J.</u></p> <ol data-bbox="643 504 1509 2040" style="list-style-type: none"> <li data-bbox="643 504 1509 584">1. Mr. Siddharath Singh, learned counsel for the petitioners. <li data-bbox="643 591 1509 672">2. Mr. Piyush Garg, leared counsel for the respondents no. 1 and 2/1 to 1/5. <li data-bbox="643 678 1509 797">3. Respondent no. 3 is a proforma respondent, therefore, at this stage, notice is not required to be issued. <li data-bbox="643 804 1509 1182">4. By the present petition, the petitioners are challenging the judgment and order dated 09.08.2016 passed by JSCC /Senior Civil Judge, Rishikesh in SCC Case No. 1 of 2015 (Suraj Prakash Gulati and another Vs. Jitendra Kumar) as well as the judgment and decree dated 12.01.2023 passed by 7th Additional District Judge, Dehradun in SCC Revision No. 36 of 2016 (Jitendra Kumar Gupta through LR's Vs. Suraj Prakash Gulati and others). <li data-bbox="643 1189 1509 1653">5. Mr. Siddharth Singh, counsel for the petitioners submits that in the proceeding initiated by the respondents - plaintiffs, in the written statement petitioners had taken a specific ground that they are not the tenants of the plaintiffs. He further submits that they are tenants of Dharmshala, namely, Brahmadutt Culcuttewali Dharamshala, which was constructed by Smt. Mohri Devi, who got that land by virtue of registered perpetual Lease Deeds dated 12.05.1904 and 10.04.1907. After getting the land, she created a Trust and thereafter, she died. <li data-bbox="643 1659 1509 2040">6. Mr. Siddharth Singh, counsel for the petitioners submits that the sale-deed, on the basis of which, plaintiffs-respondents are claiming ownership over the property, in question, is void, as it was executed by Mr. Dr. Sunil Gulati, who being the power of attorney holder, sold the property to his brother - Shri Suraj Prakash Gulati and mother Smt. Shanti Devi Gulati, respondents herein. Copy of the sale deed dated 12.04.2007 is annexed as Annexure 5 to the writ

petition, which reveals that there is a reference of the legal heir of Smt. Mohri Bibi. After her death, she was succeeded by her adopted son Shri Bhagwan Dass Bajaj, who also died in 1950 leaving behind his widow Smt. Durga Devi Bajaj and three minor sons. They subsequently gave the power of attorney to Mr. Dr. Sunil Gulati.

7. Mr. Siddharath Singh, learned counsel for the petitioner submits that property, in question, is a trust property, which was created by Smt. Mohiri Bibi, therefore, the same cannot be sold out to anybody. He further submits that respondents alleged that Smt. Mohiri Bibi bequeathed the said property to her adopted son but there is no adoption deed available on record.

8. Apart from this, Mr. Siddharth Singh, counsel for the petitioners submits that same plaintiffs had initiated proceedings under Section 21 of the Act No. 13 of 1972, their application was dismissed against which they filed a Rent Control Appeal No. 43 of 2014 before 2nd Additional District Judge, Rishikesh, which was allowed by order dated 02.03.2015, against which, petitioners preferred a writ petition being Writ Petition No. 940 (MS) of 2015 wherein this Court stayed the effect and operation of order dated 02.03.2015 passed by the 2nd Additional District Judge, Rishikesh, Dehradun and the said writ petition is still pending.

9. Mr. Piyush Garg, learned counsel for the respondents no. 1, 2/1 to 2/5 seeks three weeks time to file counter affidavit.

10. Time, so prayed, is granted.

11. Let counter affidavit be filed within three weeks.

12. List on 15.09.2023.

13. In the meantime, petitioners shall not be evicted from the property, in question.

(Rakesh Thapliyal, J.)

22.08.2023

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