



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>WPMS/1456/2026</u> <u>Hon'ble Manoj Kumar Tiwari, J.</u></p> <p>Mr. B.D. Pande, Advocate for the petitioners.</p> <p>2. Mr. Ghanshyam Joshi, Additional Chief Standing Counsel for the State of Uttarakhand.</p> <p>3. Ms. Anjali Bhargava, Advocate for respondent no. 2.</p> <p>4. Petitioners are challenging judgment and order dated 12.01.2016, passed by Additional Commissioner, Kumaon Division, Nainital in Z.A. Appeal No. 26/13-14/52/14-15 and also the judgment and order dated 08.09.2025, rendered by Board of Revenue, Uttarakhand, Circuit Bench Nainital in Second Appeal No. 02/2019-20.</p> <p>5. Learned counsel for the petitioners contends that learned Trial Court returned a finding that petitioners are in adverse possession over the land in question, therefore, their declaratory suit is liable to be decreed and they are entitled to be declared as <i>bhumidhar</i> over the land in question. He submits that learned Commissioner in First Appeal filed by State Government went astray in holding otherwise. He submits that learned Board of Revenue also cursorily dismissed the appeal filed by petitioner without going into the real facts and circumstances of the case.</p>



			<p>6. Per contra, learned State Counsel submits that predecessor-in-interest of the petitioners had filed a declaratory suit under Section 229-B of Zamindari Abolition and Land Reforms Act claiming <i>bhumidhari</i> rights based on adverse possession; the said suit was numbered as Revenue Suit No. 22/122 of 1974-75 (Darshan Singh and others v. Nahar Singh and others); learned Assistant Collector, First Class, Khatima, Nainital dismissed the said suit, vide judgment dated 22.04.1977 by holding that possession of predecessor-in-interest of petitioners was permissive, as they were occupying land based on a power of attorney executed in their favour and the suit was dismissed. Learned State Counsel further submits that appeal against the judgment and rendered by Assistant Collector, First Class was dismissed by learned Commissioner and Second Appeal filed by petitioners against the judgment and order rendered by First Appellate Court was dismissed for non-prosecution and the Second Appeal was never restored. Thus, the judgment rendered by First Appellate Court, which affirmed Trial Court's judgment attained finality.</p> <p>7. Learned State Counsel further submits that in the plaint of the subsequent suit filed by petitioners, there was no pleading from which date possession of petitioners became adverse. Learned State Counsel thus submits that Board of Revenue rightly dismissed the Second Appeal filed by petitioners by holding that the subsequent suit filed by petitioners, is barred by principle of <i>res judicata</i>.</p>
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8. This Court finds substance in the submission made by learned State Counsel. Since the earlier suit filed by predecessor-in-interest of the petitioners was dismissed by returning a finding that their possession was permissive in nature, then the said finding would operate as *res judicata*, in the absence of any pleading in the plaint of the present suit indicating the date from which petitioners' possession became adverse. Since there is no such pleading in the plaint of the subsequent suit filed by petitioners, therefore, learned First Appellate Court and Board of Revenue were justified in dismissing the appeal.

9. Thus, there is no scope for interference in the matter. The writ petition fails and is dismissed.

(Manoj Kumar Tiwari, J.)

15.06.2026

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