

**HIGH COURT OF UTTARAKHAND AT NAINITAL**

**Hon'ble Justice Sri Rakesh Thapliyal**

**24<sup>th</sup> June 2025**

**Civil Revision No. 65 of 2025**

Hulasi Ram and another

..... Revisionists

Vs.

Rajkumar Sharma and others

..... Respondents

Counsel for the Revisionist :

Mr. Ziaul Mustafa Ansari and Mr. Rishab Ranghar, learned counsel for the revisionist

Counsel Respondents:

Mr. M.S. Tyagi, learned Senior Advocate assisted by Mr. Sunil Chandra, learned counsel for respondent no. 1 and 2.

**(Mr. Rakesh Thapliyal, J.)**

1. The instant revision has been preferred by the revisionists against the order dated 05.05.2025 passed by the learned 2<sup>nd</sup> Civil Judge (Sr. Div.) Rudrapur Udham Singh Nagar in Original Suit No. 44 of 2016, Rajkumar Sharma and another vs. Late Omwati through LRs and others, whereby the application moved by the revisionist under Order 1 Rule 10(2) of CPC has been rejected.

2. Brief facts, of the case, are that an agreement to sell was executed by one Omwati in favour of one Rajkumar Sharma and his wife Smt. Ruchi Sharma and when the sale deed was not executed then a suit was filed by respondent no. 1 and 2 for specific performance bearing O.S. No. 44 of 2016 against Omwati but, unfortunately, on 23.05.2016 Omwati died. After the death of Omwati the name of legal heirs were mutated in the revenue records and subsequent thereto, the legal heirs were also substituted in the suit filed by respondent no. 1 and 2, i.e., O.S. No. 44 of 2016 on 13.02.2019.

3. Before substitution of the LRs of Omwati the LRs executed sale deed in favour of the present revisionists on 10.12.2018. Thereafter the revisionists, being subsequent purchaser of the property in question, moved an application under Order 1 Ruled 10 of CPC for their impleadment as party-defendant in suit preferred by respondent no. 1 and 2 but the same was rejected by observing that the application is pending since 2016 and barred by Section 52 of the transfer of Property Act. Being aggrieved with the order rejecting application moved under Order 1 Rule 10 of CPC the instant revision has been preferred.

4. During course of argument the learned counsel for the revisionists placed before this Court the copy of the judgment and order passed by the III<sup>rd</sup> Addl. Civil Judge (Sr. Div.) Rudrapur passed in Original Suit No. 16 of 2019 which in fact was instituted by the present revisionist against the LRs of Omwati and by this suit permanent injunction was sought which was decreed on 27.03.2024 wherein in para 15 it is observed that the present revisionists are in possession over the property in question which, in fact, is the subject matter of the suit filed by respondent no. 1 and 2, i.e., O.S. No. 44 of 2016.

Learned counsel for the revisionists submits that the present revisionist are still in possession over the land in question and since their interest are also involved, therefore, they should be arrayed as defendants in the suit filed by respondent no. 1 and respondent no. 2.

5. On the other side, Mr. M.S. Tyagi, learned Senior Advocate for respondent no. 1 and 2 submits that by virtue of Section 52 of T.P. Act, the application moved by the present revisionist under Order 1 Rule 10 is not maintainable and the learned Civil Judge rightly reject the same and he further submits that the suit is pending since 2016 and after death of Omwati the LRs have already been substituted, therefore, principle of *lis pendens* will apply, therefore, there is no need to implead the present revisionists as defendants since the property in question sold after initiation of the suit, i.e., O.S. no. 44 of 2016 though there was interim order and proceeding under Order 39 Rule 2A of CPC was also initiated.

6. Apart from this, Mr. Tyagi, further submits that the Original Suit No. 16 of 2019 filed by the revisionist was a collusive suit and in that suit only two legal heirs of Omwati were arrayed as defendants and remaining three LRs were not substituted. Mr. Tyagi also bring to the notice of the Court that the legal heirs of Omwati also filed suit for cancellation of sale deed which was executed by the legal heirs in favour of the revisionist on 10.12.2018 which is still pending for consideration.

7. Be that as it may, undisputedly the property which was sold out by the legal heirs of Omwati in favour of the revisionist is subject matter of Original Suit No. 44 of 2016 which was instituted by respondent no. 1 and 2, and, therefore, since interest of the revisionist is also involved therefore for deciding the issue whether present revisionists should be arrayed as defendants in O.S. No. 44 of 2016 or not it requires deliberation for which counter affidavit of the respondents is necessary.

8. Issue notices to respondent nos. 3 to 8.
9. Steps to be taken within a week.
10. Let the respondents may file their counter affidavit within two weeks. One week thereafter is granted to the revisionists to file rejoinder affidavit.
11. List this case on 22.07.2025.
12. In the meantime, parties are directed to maintain status quo in respect of the property in question.

**(Rakesh Thapliyal, J.)**