

SA No.117 of 2022

**Hon'ble Ravindra Maithani, J.**

Mr. Sudhir Kumar, Advocate for the appellant.

This is the second appeal against judgment and decree dated 27.08.2022 passed in Civil Appeal No.168 of 2018, Smt. Bhavee Gupta alias Mati Gupta Vs. Geeta Prasad, passed by the court of District Judge, Dehradun.

Heard learned counsel for the appellant.

Learned counsel for the appellant would submit that though substantial question of law has been formulated in the grounds appeal but he restricts the substantial question of law only to the point no.1 and 3 raise therein, which are as follows:

1. Whether the learned lower Appellate Court has committed a mistake of law in passing the impugned judgment and decree without considering the fact that the defendants-respondents had not challenged the findings recorded by the learned trial Court against them while deciding their counter claim and those findings had become final in absence of any challenge to them and had the force of res-judicata?

3. Whether the learned lower Appellate Court has committed an error of law in not considering that the land of the defendants-respondents is situated in a different plot number and had different boundaries than the land of the plaintiff-appellant. As such the defendants-respondents had no right to interfere in the possession of the plaintiff-appellant?

Admit the appeal on the substantial question of law as detailed above.

Issue notices to the respondent no.1 and 2.

Steps to be taken within a week.

Call for the LCR.

Heard on Stay Application IA No.1 of 2022.

Learned counsel for the appellant would submit that initially when the suit was filed in the trial court, an interim injunction was granted. Subsequent to it, the suit was decreed but now since in the appeal, the judgment and the decree has been upset, the appellant apprehends that his rights may be interfered with.

Having considered, this Court is of the view that till the next date of listing, the operation of the judgment and decree shall remain in abeyance.

**(Ravindra Maithani J.)**

24.09.2022

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