

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 481 OF 2007

MAHANT ASHOK PRAPAN SHARMA

Appellant (s)

VERSUS

U.P.S.R.T.C.

Respondent(s)

Date: 14/07/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MARKANDEY KATJU
HON'BLE MR. JUSTICE T.S. THAKUR

For Appellant(s)

Mr. Rakesh Dwivedi, Sr. Adv.
Mr. Saurabh Kirpal, Adv.
Mr. Ajay Sharma, Adv.
Ms. Jyoti Taneja, Adv.
Mr. Anant Prakash, Adv.
Mr. Ankit Dalela, Adv.

For Respondent(s)

Mr. Pradeep Misra, Adv.

UPON hearing counsel the Court made the following
O R D E R

The Appeal is allowed in terms of the signed order.
No costs.

However, the respondent-tenant is granted one year's
time from today to vacate the suit premises subject to its
furnishing usual undertaking before this Court within six
weeks from today.

(Parveen Kr. Chawla)
Court Master

(Indu Satija)
Court Master

[signed order is placed on the file]
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 481 OF 2007

Mahant Ashok Prapan Sharma

..Appellant

versus

U.P.S.R.T.C.

..Respondent

O R D E R

Heard learned counsel for the parties.

This Appeal has been filed against the impugned order of the High Court of Uttaranchal at Nainital dated 23rd September, 2005 in Second Appeal No. 16 of 2002.

The appellant is a landlord of the premises in dispute and the respondent is a tenant.

It appears that initially only vacant land was let out to the respondent-tenant but it has been found by the trial Court that subsequently the tenant made construction without consent of the landlord. This finding has been upheld in the first appeal but surprisingly enough, the High Court has disturbed the finding of fact in second appeal.

It is well settled that in a second appeal, the High Court cannot disturb the finding of fact recorded by the courts below. The finding recorded by the trial Court and confirmed by the first appellate court that tenant made construction without consent of the landlord is a finding of fact which cannot be disturbed by the High Court in a second appeal.

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Accordingly, we allow this appeal, set aside the impugned order of the High Court and restore that of the first appellate court and the trial Court. No costs.

However, the respondent-tenant is granted one year's time from today to vacate the suit premises subject to its furnishing usual undertaking before this Court within six weeks from today.

.....J.
[MARKANDEY KATJU]

NEW DELHI;
JULY 14, 2010

.....J.
[T.S. THAKUR]