



2026:AHC:180701

HIGH COURT OF JUDICATURE AT ALLAHABAD

SECOND APPEAL No. - 475 of 2026

Hamid Khan And 4 Others

.....Appellant(s)

Versus

Jwala Prasad And 13 Others

.....Respondent(s)

Counsel for Appellant(s) : Najakat Ali, Sumit Suri

Counsel for Respondent(s) : Dushyant Singh, Mahesh Chand, Rahul Upadhyay

Court No. - 54

HON'BLE ANIL KUMAR-X, J.

1. Heard Shri Nipun Singh, learned Senior Advocate assisted by Shri Hemant Tyagi and Shri Sumit Suri, learned counsel for the appellants and Shri Mahesh Chand and Shri Dushyant Singh, learned counsel for the respondents.

2. This second appeal has been preferred with a prayer to allow this appeal and set aside the judgment and order dated 02.04.2026 and the decree dated 10.04.2026 passed by the learned Additional District and Sessions Judge, Court No.4, Hathras in Civil Appeal No.26 of 2023 (Hamid Khan and others Vs. Jwala Prasad and others) and as well as the impugned judgment and order dated 29.03.2023 and its decree passed by the learned Civil Judge, (S.D.), F.T.C., Hathras in Civil Suit No.71 of 2001 (Jwala Prasad (deceased) and others Vs. Hamid Khan and others).

3. For the sake of convenience, the parties hereinafter shall be referred to by their nomenclature as assigned in the plaint. The appellants and respondent nos.4 to 7 are the defendants and the respondent nos.1 to 3 are the plaintiffs in the aforesaid suit.

Facts as stated in the plaint

4. The plaintiffs/respondents instituted Civil Suit No. 71 of 2001 (Jwala Prasad (deceased) and others Vs Hamid Khan and others) before the Civil Judge (Senior Division), Hathras, seeking permanent injunction in respect of a portion of Khasra No. 815 situated at Mauja Sherpur, Tehsil Sadabad, District Hathras (hereinafter referred to as the “disputed

property”). It was pleaded that the plaintiffs were owners in possession over an area of 0.60 acre of Khasra No. 815, as shown in the plaint map by letters Aa, Ba, Sa, Da, Ya and Ra.

5. It was further pleaded that Khasra No. 816, recorded in the names of the defendants, lies towards the southern side of the disputed property. According to the plaintiffs, the disputed property was not part of Khasra No. 816 and the defendants had neither any right or title nor possession over the same. The plaintiffs further alleged that the defendants were trying to forcibly raise construction over the disputed property and to dispossess the plaintiffs therefrom, despite having no right to do so. The plaintiffs prayed for a decree of permanent injunction restraining the defendants from interfering with their possession over the disputed portion of Khasra No. 815, as shown by letters 'Aa, Ba, Sa, Da, Ya and Ra' in the plaint map, and from making any construction thereon.

Defence taken in the written statement

6. The defendants denied the claim of the plaintiffs. It was pleaded that the plaintiffs had wrongly shown the southern boundary of their plot in Gata No. 815 and had included therein a portion of Gata No. 816, which belonged exclusively to the defendants. It was further pleaded that the southern extension of Gata No. 815, as shown by letters 'Ba, Sa, Da and Ya', included the drain of Gata No. 816 and the said portion was also being used as a passage by the defendants.

7. It was also pleaded that the land shown by the plaintiffs through letters 'Aa, Ba, Ya, Ra and Sa' was in fact part of Gata No. 817, and the portion shown by letters 'Ba, Sa, Da and Ya' formed part of Gata No. 816. Thus, according to the defendants, the property shown by the plaintiffs as part of Gata No. 815 wrongly included portions of Gata Nos. 816 and 817.

Issues framed by the Trial Court

8. On the basis of the pleadings of the parties, the learned Trial Court framed the following issues:

"1. Whether the plaintiffs are the owners in possession of Gata No. 815?

2. Whether the disputed property forms part of Gata No. 815 or forms part of Gata No.

816?

3. Whether the suit is barred by Section 331 of the U.P. Zamindari Abolition and Land Reforms Act?

4. Whether the suit is barred by Section 49 of the U.P. Consolidation of Holdings Act?

5. Whether the suit is barred by Sections 38 and 41 of the Specific Relief Act?

6. Whether the suit is bad for non-joinder of necessary parties?

7. Whether the suit has been properly valued and the court fee paid is sufficient?

8. To what relief, if any, are the plaintiffs entitled?

9. Whether the suit falls within the subject-matter jurisdiction of the Court?"

9. The plaintiffs relied upon the records of rights relating to the disputed land and the revenue map. In oral evidence, plaintiff Yatendra Kumar appeared as P.W.-1 and Anil Kumar Sharma as P.W.-2. The defendants relied upon the certified copy of the plaint and judgment in O.S. No. 94 of 1988 (Nasiruddin Vs. Gram Sabha and others), the revenue map of Village Sherpur, District Hathras, and the Commission report (Paper No. 15-C) along with objections thereto. In oral evidence, Hamid Khan appeared as D.W.-1, Anwar as D.W.-2 and Chaman Kha as D.W.-3.

Findings of the Trial Court

10. After considering the oral and documentary evidence led by the parties, the Trial Court held that the disputed property shown in the revenue map and the plaint map was the same and the same was corroborated by the Amin's report. The said evidence was further found corroborated by the oral testimony of the plaintiffs' witnesses. It was also observed that the defendants had nowhere denied that Gata No. 815 belonged to the plaintiffs.

11. The judgment passed in O.S. No. 94 of 1988 (Nasiruddin Vs. Gram Sabha and others) relied upon by the defendants, was held to have no bearing on the present suit, as in the said case it was held that Gata No. 817 belonged to the defendants, whereas the present dispute relates to

Gata No. 815. Accordingly, Issues Nos. 1 and 2 were decided in favour of the plaintiffs.

12. As regards Issue No. 3, the objection that the suit related to demarcation of the boundaries of agricultural land and was therefore barred under Section 331 of the U.P. Zamindari Abolition and Land Reforms Act, was found to have no substance.

13. Issues Nos. 4, 5, 6, 7 and 9 were also decided against the defendants. The Trial Court held that the suit was not barred by Section 49 of the U.P. Consolidation of Holdings Act or Sections 38 and 41 of the Specific Relief Act, there was no non-joinder of any necessary party, and the suit was properly maintainable before the Court. It was accordingly held that the Court had jurisdiction to entertain the suit. The Trial Court, vide judgment and decree dated 29.03.2023, decreed the suit and restrained the defendants from interfering with the plaintiffs' possession over the disputed property and from raising any construction thereon. The disputed property was described as a portion of Gata No. 815, bounded by points 'Aa, Ba, Ca, Da, Ya and Ra', having the following dimensions:

(1) Eastern side (North-South): 30 Kadi

(2) Western side (North-South): 30 Kadi

(3) Northern side (East-West): 20 Kadi

(4) Southern side (East-West): 20 Kadi

Thus, the decree specifically identified the disputed property by its Gata number, boundary points and dimensions.

14. Aggrieved by the aforesaid judgment and decree, the defendants preferred Civil Appeal No.26 of 2023 (Hamid Khan and others Vs. Jwala Prasad and others) before the First Appellate Court.

Findings of the First Appellate Court

15. The First Appellate Court framed three points of determination, substantially arising out of Issues Nos. 1 and 2 framed by the Trial Court.

16. After considering the oral and documentary evidence on record, the First Appellate Court held that the disputed property was sufficiently identified by the evidence produced by the plaintiffs. It further held that the plaintiffs had successfully established their ownership and possession over the disputed property and that the disputed property forms part of Gata No. 815. Accordingly, the findings recorded by the Trial Court on the aforesaid issues were affirmed and the civil appeal was dismissed.

Arguments advanced by the Appellants/defendants

17. Learned counsel for the appellants vehemently submitted that the suit itself was not maintainable in view of Section 41(h) of the Specific Relief Act, 1963. The said provision provides that an injunction cannot be granted when an equally efficacious remedy is available to a plaintiff through any other usual mode of proceeding, except in cases where such remedy is meant only to enforce a trust.

18. It was next submitted that the real dispute between the parties was not regarding the title of the plaintiffs over Gata No. 815, but was essentially a boundary dispute between Gata Nos. 815 and 816. Such dispute relating to determination and demarcation of the boundaries of agricultural holdings is required to be decided by the Revenue Court under Section 24 of the U.P. Revenue Code, 2006, and the Civil Court had no jurisdiction to determine the same.

19. Learned counsel further submitted that both the Courts below have principally relied upon the map/report of the Advocate Commissioner for identifying the disputed property. Even the said Advocate Commissioner, whose map was relied upon by the Courts below, was not summoned and examined before the Trial Court. However, no proper survey commission or revenue demarcation was conducted to determine the actual boundary between Gata Nos. 815 and 816. The Advocate Commissioner's report could not have been treated as a substitute for the statutory demarcation by the competent Revenue Authority.

20. It was, therefore, submitted that the findings recorded by both the Courts below are not only erroneous but are contrary to the statutory scheme of the U.P. Revenue Code. The Civil Court cannot assume the

jurisdiction of the Revenue Court and determine the boundaries of agricultural holdings when the law provides a specific remedy before the Revenue Court. On this ground alone, the judgments and decrees passed by the Courts below are liable to be set aside.

Arguments advanced by the Respondents/Plaintiffs

21. Learned counsel for the respondents submitted that the findings recorded by both the Courts below are concurrent findings of fact and cannot ordinarily be interfered with in a Second Appeal. The High Court, while exercising jurisdiction under Section 100 CPC, does not re-appreciate the evidence or substitute its own view for the findings of fact recorded by the Courts below, unless such findings are shown to be perverse, based on no evidence, or otherwise give rise to a substantial question of law.

22. It was further submitted that the Courts below have not relied upon the Advocate Commissioner's map alone. The revenue map was also produced and considered by the Courts. The disputed land shown in the plaint was found to correspond not only with the map prepared by the Advocate Commissioner but also with the revenue map. Thus, the finding that the disputed land forms part of Gata No. 815 is based upon appreciation of both oral and documentary evidence available on record.

23. Learned counsel submitted that the findings recorded by both the Courts below regarding the identity and location of the disputed property are purely findings of fact. Mere challenge to such findings, or a request for re-appreciation of the evidence, cannot constitute a substantial question of law within the meaning of Section 100 CPC. Lastly, it was submitted that the appellants have failed to demonstrate any substantial question of law arising from the judgments of the Courts below. The present appeal, therefore, does not call for interference in exercise of the limited jurisdiction available to this Court under Section 100 CPC and is liable to be dismissed.

Discussion

(i) Scope of substantial question of law

24. Before examining the submissions advanced by the learned counsel for the parties, it would be appropriate to notice the limited scope of jurisdiction of this Court under Section 100 CPC. A second appeal does not lie merely because another view on appreciation of evidence is possible. Ordinarily, findings of fact recorded by the Trial Court and affirmed by the First Appellate Court are binding. However, the expression “substantial question of law” is wide enough to include a case where the finding of fact itself suffers from a serious legal infirmity.

25. In **State of Rajasthan v. Shiv Dayal, (2019) 8 SCC 637**, the Supreme Court held that a concurrent finding can be interfered with where it is recorded *de hors* the pleadings, is based on no evidence; is based on misreading of material documentary evidence; is contrary to a provision of law; or is such that no judicially acting Judge could reasonably have reached it. Similarly, in **Second Appeal No. 826 of 2010 (Arjula Ponnala Vaishalli v. P. Srividya)**, decided on 29-10-2018, the High Court for State of Telangana observed that recording a finding without evidence, disregarding relevant evidence, relying upon irrelevant or inadmissible evidence, or recording a perverse finding are circumstances which may give rise to a substantial question of law.

26. Thus, the bar against interference with concurrent findings of fact is not absolute. Where the challenge goes beyond mere appreciation of evidence and demonstrates that the finding has been reached by applying an incorrect legal test, relying upon legally incapable evidence, or by assuming a jurisdiction which the Court does not possess, a substantial question of law may arise.

(ii) Whether the present challenge is merely to a finding of fact

27. In the present case, the appellants are not merely questioning the appreciation of the evidence. The principal contention is that the Courts below have determined the identity and boundary of agricultural holdings, particularly the boundary between Gata Nos. 815 and 816, on the basis of the material which, according to the appellants, was not legally capable of determining such boundary.

28. The distinction is material. If a finding is based upon legally relevant

evidence, its sufficiency or adequacy may ordinarily remain outside the scope of Section 100 CPC. But where the very evidentiary basis relied upon by the Court is incapable of legally determining the question in issue, and such finding consequently affects the substantive rights of the parties, the matter assumes a different character. It then becomes a question as to whether the Courts below applied the correct legal test for determination of the disputed right.

29. The present case, therefore, cannot be examined merely by asking whether the revenue map or the Commissioner's map was correctly appreciated. The more fundamental question is whether the Civil Court could have finally determined the disputed boundary between agricultural Gata Nos. 815 and 816 in the manner in which it has been done, particularly when a statutory mechanism for such determination is provided under the revenue law.

(iii) Effect of the alleged assumption of jurisdiction

30. The appellant has specifically pleaded that the real controversy between the parties was regarding the boundary of Gata Nos. 815 and 816 and that such dispute was required to be dealt with by the competent Revenue Authority under Section 24 of the U.P. Revenue Code, 2006. If this contention is legally correct, the issue would not remain a mere question of fact. It would directly concern the jurisdiction of the Civil Court to grant the decree in the form in which it has been granted.

31. Therefore, where a decree passed by a Civil Court is challenged on the ground that, in substance, the Court has exercised a jurisdiction vested by statute in another competent authority, the challenge cannot be rejected merely by describing the findings as concurrent findings of fact. The Court must first examine the nature of the dispute and the statutory allocation of jurisdiction.

(iv) Application to the present case

32. In the present case, the plaintiffs sought injunction in respect of a specifically described portion of Gata No. 815, whereas the defendants' specific case was that the land so described included portions of Gata No. 816, belonging to them. Thus, the identity of the disputed land and the

boundary between the two Gatas constituted the central controversy between the parties.

33. Both the Courts below have held in favour of the plaintiffs principally on the basis of the revenue map and the map/report prepared by the Advocate Commissioner. The Advocate Commissioner was also not examined before the Trial Court. However, the question that requires consideration is whether such exercise could legally substitute the statutory process of demarcation contemplated under the revenue law, when the very dispute between the parties was as to the boundary of two agricultural Gatas.

34 This aspect, therefore, is not a prayer for re-appreciation of evidence merely because another view is possible. It raises a question as to the legal competence of the Court to determine the controversy in the manner adopted by it. Consequently, the objection of the respondents that the present appeal involves only concurrent findings of fact cannot, at this stage, by itself conclude the matter.

Finding on maintainability of Second Appeal

35. In view of the above discussion, the substantial question arising in the present appeal is not confined to the correctness of the factual finding that the disputed land corresponds with the maps produced before the Court. The substantial question is whether, in the facts of the present case, the Civil Court could have determined the disputed boundary of agricultural Gata Nos. 815 and 816 and granted an injunction on that basis, when the law provides a statutory mechanism for determination and demarcation of such boundaries.

36. Accordingly, the present appeal cannot be dismissed at the threshold merely on the ground that the findings of the Courts below are concurrent findings of fact. The question of jurisdiction and the legal effect of the statutory remedy provided under the revenue law constitute a substantial question of law requiring examination under Section 100 CPC.

Substantial Question of Law

37. Whether, in the facts of the present case, the Courts below erred

in law in entertaining and deciding the dispute regarding demarcation of the boundary between Gata Nos. 815 and 816, which was within the exclusive jurisdiction of the competent Revenue Court under Section 24 of the Section 41 of Land Revenue Act,1901 (U.P. Revenue Code, 2006) and consequently the decree for injunction passed by the Civil Court is legally sustainable?

38. Before entering into the present controversy, it would be apposite to discuss the scope and applicability of Section 41(h) of the Specific Relief Act along with other relevant Acts and their provisions. Section 41(h) of the Specific Relief Act embodies the principle that an injunction cannot be granted where an equally efficacious remedy is available through the usual mode of proceeding. The provision is intended to prevent a party from invoking the discretionary jurisdiction of the Civil Court when the law has provided a specific and effective remedy for determination of the dispute in question.

39. In the present case, the real controversy was not merely whether the defendants should be restrained from interfering with the plaintiffs' possession. The basic dispute was regarding the identification, extent and boundary of Gata No. 815 vis-a-vis adjoining Gata No. 816. Section 24 of the U.P. Revenue Code, 2006 (Section 41 of Land Revenue Act,1901) specifically provides a statutory mechanism for determination of boundary disputes by the competent Revenue Authority. Such authority is required to examine the revenue records, field map and other relevant material and to undertake the prescribed process of survey and demarcation.

40. Therefore, where the substance of the dispute requires determination of the actual revenue boundary between two agricultural holdings, the remedy provided under the U.P. Revenue Code is not merely an alternative remedy but is a remedy specifically designed for determination of such dispute. The Civil Court, while exercising its jurisdiction in a suit for injunction, cannot ordinarily undertake the statutory function of survey and demarcation merely by relying upon the report or map prepared by an Advocate Commissioner.

41. Section 9 CPC confers jurisdiction upon the Civil Court to try all suits

of a civil nature except those whose cognizance is either expressly or impliedly barred. Thus, the jurisdiction under Section 9 CPC is itself subject to exclusion where the legislature has created a special mechanism for determination of a particular dispute. It is settled that the question of jurisdiction is required to be examined with reference to the substance of the dispute and not merely the form in which the relief has been claimed. A plaintiff cannot confer jurisdiction upon a Civil Court by simply describing a dispute regarding demarcation of agricultural land as a suit for injunction. The principle contained in Section 41(h) of the Specific Relief Act also operates in the same direction. Where an effective statutory remedy is available for determination of the very dispute which forms the foundation of the relief claimed in the suit, the discretionary relief of injunction ought not to be granted by bypassing that statutory remedy.

42. The decree passed by the Trial Court also requires examination from another important aspect. The decree cannot be treated as one merely restraining the defendants from interfering with Gata No. 815. While granting relief, the Trial Court has identified the property by reference not only to Gata No. 815 but also by specifying its dimensions and boundaries, namely, 30 Kadi on the eastern and western sides and 20 Kadi on the northern and southern sides. Thus, the decree has, in substance, recognised a particular piece of land of specified dimensions as forming part of the plaintiffs' Gata No. 815. Such determination necessarily has a corresponding effect upon the adjoining Gata No. 816 of the appellants. In other words, determination of the extent of one Gata necessarily affects the corresponding extent and boundary of the adjoining Gata.

43. This aspect assumes significance because the dispute between the parties was itself regarding the boundary between the two agricultural holdings. Therefore, the decree is not merely prohibitory in nature; its terms have the effect of determining the identity and extent of the disputed land and, consequently, affect the proprietary and possessory rights of the appellants in respect of the adjoining land.

44. Order VII Rule 3 CPC requires that where the subject matter of the suit is immovable property, the plaint must contain a description sufficient to identify the property and, where possible, specify its

boundaries or numbers in the record of settlement or survey. The object of the provision is to ensure that the property forming the subject matter of the suit can be identified for the purpose of granting and executing the decree. However, Order VII Rule 3 CPC does not confer upon the Civil Court a power to conclusively determine a disputed revenue boundary merely because the property has been described by its Gata number and dimensions.

45. Likewise, an Advocate Commissioner appointed in a civil suit may assist the Court in ascertaining physical features or elucidating the controversy. His report may have evidentiary value in accordance with law. But such report cannot be equated with a statutory survey or demarcation carried out by the competent Revenue Authority under the U.P. Revenue Code. Where the Gata number is admitted but the controversy is regarding the actual boundary or extent of land falling within that Gata, the question is essentially one of demarcation. Such determination has to be made in accordance with the statutory procedure prescribed for the purpose.

46. The requirement of approaching the Revenue Authority is not merely a matter of technical procedure. Determination of an agricultural boundary requires consideration of the revenue records, field map, measurements, location of adjoining holdings and the prescribed method of survey and demarcation. The Revenue Authorities possess the statutory machinery and expertise for undertaking such exercise.

47. If a disputed boundary between two agricultural Gatas is determined in a civil suit merely on the basis of a Commissioner's report, the Civil Court would, in substance, be undertaking a function which the legislature has specifically entrusted to the Revenue Authority. It may also create a possibility of inconsistent determinations concerning the same revenue holdings.

48. The present case demonstrates this difficulty. The plaintiffs' claim was founded upon Gata No. 815, while the appellants' rights in the adjoining Gata No. 816 were also directly involved. The question, therefore, was not simply whether the defendants had interfered with an otherwise undisputed property. The question was what land actually

constituted Gata No. 815 and whether the land claimed by the plaintiffs formed part of Gata No. 815 or encroached upon Gata No. 816. Once the Trial Court proceeded to determine the disputed land by fixing its dimensions and boundaries, without there being a statutory demarcation of the adjoining Gatas by the competent Revenue Authority, the decree travelled beyond the scope of a simple injunction and directly affected the rights of the appellants.

Conclusion

49. Thus, the substance of the dispute, the specific statutory remedy provided under Section 24 of the U.P. Revenue Code, 2006 (Section 41 of the Land Revenue Act, 1901), the principle governing exclusion of Civil Court jurisdiction under Section 9 CPC, and the restriction contained in Section 41(h) of the Specific Relief Act have to be considered together.

50. The availability of a specific statutory remedy for determination of the disputed agricultural boundary was a material circumstance which required the Civil Court to refrain from granting an injunction in a manner which effectively determined that boundary. The Civil Court could not, by merely granting a decree of injunction, indirectly undertake the exercise of demarcation which the statute has entrusted to the competent Revenue Authority.

51. Accordingly, the question is not merely whether a suit for injunction is maintainable in the abstract, but whether, in the facts of the present case, the Civil Court could legally grant a decree which, in substance, determined the identity, extent and boundary of the disputed agricultural land and thereby affected the appellants' rights in the adjoining Gata No. 816. This aspect goes to the very competence of the Civil Court to grant the decree in the form in which it has been passed.

52. In view of the foregoing discussion, the dispute between the parties being essentially one of identification, extent and demarcation of the boundary between Gata Nos. 815 and 816, the Civil Court could not have finally determined the same merely on the basis of the Advocate Commissioner's report, particularly when a specific and efficacious remedy is provided under Section 24 of the U.P. Revenue Code, 2006;

consequently, the decree of injunction, which in substance determines the extent and boundary of the disputed land and thereby affects the appellants' rights in Gata No. 816, cannot be sustained and is liable to be set aside.

53. Accordingly, the judgment and order dated 02.04.2026 and the decree dated 10.04.2026 passed by the First Appellate Court in Civil Appeal No.26 of 2023 (Hamid Khan and others Vs. Jwala Prasad and others) as well as the judgment and order dated 29.03.2023 and its decree passed by the Trial Court in Civil Suit No.71 of 2001 (Jwala Prasad (deceased) and others Vs. Hamid Khan and others) are set aside, leaving it open to the plaintiffs to avail the remedy available under the U.P. Revenue Code in accordance with law.

54. The second appeal succeeds and is, accordingly, **allowed**.

(Anil Kumar-X,J.)

August 31, 2026
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