

**(2024) 12 UK CK 0064**

**Uttarakhand High Court**

**Case No:** First Appeal No. 42 Of 2010

Satish Kumar & Ors.

APPELLANT

Vs

Nagar Palika Parishad Laksar &  
Anr.

RESPONDENT

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**Date of Decision:** Dec. 12, 2024

**Acts Referred:**

- Uttar Pradesh Public Premises (Eviction Of Unauthorised Occupants) Act, 1972 - Section 4, 7, 15
- Code Of Civil Procedure, 1908 &mdash Order 7 Rule 11(d)

**Hon'ble Judges:** Vivek Bharti Sharma, J

**Bench:** Single Bench

**Advocate:** Nagesh Agarwal, Ashutosh Thakral, I.P. Kohli

**Final Decision:** Dismissed

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### **Judgement**

Vivek Bharti Sharma, J

1. By way of present first appeal, the appellants/plaintiffs seek to set-aside the judgment and decree dated 29.05.2010 passed by IInd Additional Civil

Judge (S.D.) Haridwar in O.S. No.117 of 2007â €œSatish Kumar & Ors. vs. Nagar Panchayatâ €, whereby the court concerned dismissed the suit

of the appellants/plaintiffs under Order 7 Rule 11(d) of CPC.

2. Factual matrix of the case is that the appellants/plaintiffs had filed a suit for a decree of declaration and permanent injunction against the

respondents/defendants thereby praying to declare the appellants/plaintiffs to be the absolute owner of the suit property comprised in khasra no.36, 37

and 44 situated at Village Simli Pargana Manglaur Tehsil Laksar, District Haridwar; that, the respondent no.1/defendant no.1 Nagar Panchayat

Laksar filed written statement taking objection therein that the respondent no.1/defendant no.1 has initiated proceedings against the

appellants/plaintiffs under section 4/7 of The Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (in short, the Act)

in respect of land comprising Khasra No.44, as stated above; that, the trial court, vide impugned order dated 29.05.2010, allowed the application of the

appellants/plaintiffs under Order 7 Rule 11(d) of CPC and dismissed the suit of the appellants/plaintiffs, hence, this first appeal.

3. Learned counsel for the appellants/plaintiffs would submit that Order 7 Rule 11(d) of CPC talks about rejection of plaint where on the basis of

averments made in the plaint the suit appears to be barred by any law, however, the trial court, vide the impugned order, has rejected the plaint of the

appellants/plaintiffs for the reason that the suit property was also under adjudication in Public Premises Case No.10/2003 initiated by respondent

no.1/defendant no.1 Nagar Panchayat.

4. At this stage, learned counsel for respondent no.1/defendant no.1 would submit that the appellants/plaintiffs had been issued the notices under

Section 4 read with 7 of the "Act" in respect of the land comprised in khasra no.36 and 37 of Village Simli also, however, he would fairly concede

that he is not aware whether any proceedings were initiated against the appellants/plaintiffs in respect of land comprised in khasra nos.36 and 37.

5. In the above circumstances, the only thing is that the land comprised in Khasra No.44, as stated above, is part of the suit property in O.S. No.117 of

2007 and also land in question in the application u/s 4/7 of the "Act" at the instance of respondent no.1/defendant. Therefore, in considered view

of this Court, the suit property in O.S. No.117 of 2007 cannot be bifurcated when the prayer for decree of declaration and permanent injunction is

composite in respect of all parts of the suit property i.e. including land comprised in Khasra Nos.36 and 37 and Khasra No.44 also.

6. At the same time, learned counsel for the appellants/plaintiffs would admit that the proceedings initiated u/s 4 read with Section 7 of the "Act",

in respect of khasra no.44, is pending which the appellants/plaintiffs are contesting.

7. It would be pertinent to note that Section 15 of The Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (in short,

the Act) bars the jurisdiction of the Civil and the Revenue courts if the proceedings under this Act are pending.

When this provision was referred in reference to the facts of the present case, the learned counsel for the appellants/plaintiffs would seek permission

to withdraw the appeal with liberty to the appellants/plaintiffs to file the suit afresh with appropriate relief in respect of land comprised in khasra no.36

and 37 of Village Simli Pargana Manglaur Tehsil Laksar, District Haridwar only.

8. Learned counsel for respondent no.1/defendant would submit that he has no objection in disposal of the appeal as withdrawn by the

appellants/plaintiffs with above liberty to them.

9. In view of the above, present first appeal is dismissed as withdrawn with liberty, as above.