

ITEM NO.16

COURT NO.13

SECTION XI

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

Petition for Special Leave to Appeal (C) No.7104/2025

[Arising out of impugned final judgment and order dated 24-01-2025 in FA No. 490/2024 passed by the High Court of Judicature at Allahabad]

SRI HARBILAS GOYAL CHARITABLE TRUST

Petitioner(s)

VERSUS

SANJAY KUMAR MITTAL & ORS.

Respondent(s)

(FOR ADMISSION IA No. 63706/2025 - EXEMPTION FROM FILING O.T.)

Date : 24-03-2025 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA

HON'BLE MR. JUSTICE R. MAHADEVAN

For Petitioner(s) :

Mr. Saurabh Kirpal, Sr. Adv.

Mr. Atul Krishna, AOR

Mr. Ishan Sanghi, Adv.

For Respondent(s) :

Mr. Rajesh Gulab Inamdar, AOR

Mr. Shashwat Anand, Adv.

Mr. Saumitra Anand, Adv.

UPON hearing the counsel the Court made the following

O R D E R

1. We heard Mr. Saurabh Kirpal, the learned counsel appearing for the petitioner - Trust (original defendant) and Mr. Rajesh Gulab Inamdar, the learned counsel appearing for Respondent Nos.1 and 2 respectively (original plaintiffs).

2. *Prima facie*, it appears that the plaintiffs donated a parcel of land in favour of the petitioner - Trust with some distinct understanding.

3. The petitioner - Trust after donating the parcel of land had to institute a Civil Suit No.171/2009 in the Court of Civil Judge, Senior Division, Badaun, U.P. for permanent injunction. The cause of action to institute the suit was an apprehension on the part of

the plaintiffs that the Trust was trying to dispose of the land which came to be donated by them for a specific purpose.

4. The Suit No.171/2009 came to be settled and a compromise decree was passed by the Court of Civil Judge(Senior Division) (FTC), Badaun. U.P. which reads thus:-

"1. That the disputed place, which is shown in red color in the map of Amin 28 Ga/2, will continue to be used forever by the defendant no 1 Harbilas Goyal Inter College and for this the plaintiffs have granted their consent. The plaintiffs will not have any connection or concern with this place in the future but the defendants will on the eastern large door of Harbilas Goyal Inter college Town Ujhani at the northern wall adjacent to it will install a stone of size two and a half feet long and two and a half feet wide and will inscribe the following words, which will always remain in place and the said stone will not be tampered with in any way by the defendants. The following words will be inscribed on it "In the memory of Shri Krishan Autaar Mittal, his wife Mrs. Vimala Devi and her son Sanjay Kumar Mittal donated the land related to this gate.

2. That the cost of installation of the stone at the stated wall and door on which the abovementioned words are inscribed will be entirely borne by the defendants.

3. That Harbilas Goyal Inter College will not carry out construction of any shop etc on the disputed land by the defendants.

4. That the abovementioned stone will always remain installed at the eastern wall or door in the memory of Sri. Krishan Autar Mittal. The defendants will have no right to remove the abovementioned stone from the wall or door. If at any time the college attempts to remove the stone or removes it, then the plaintiff and their legal heirs will have the right to get the stone installed by the court at the expense of the defendant, to which the defendant will have no objection.

5. That the stone will be placed above or in the connecting wall at the place which has been shown as D-1 and D-2 in the map 28Ga/2 attached with the Commission report pg no. 28Ga-1. The map Amin pg no. 28Ga/2 will be part of the decree.

6. That if on behalf of the defendant party in the police department or any other officer, administration etc. or in court any proceeding is pending, then the defendant/party will end it.

7. That each party shall bear their own cost of the case and the present settlement will be part of the decree."

5. It appears that thereafter a fresh suit came to be instituted by the plaintiffs bearing No.183/2023 pending before the same Court praying for declaration of injunction.

6. In the said Suit, the petitioner - Trust preferred an application under Order VII Rule 11 of the C.P.C. and prayed that the plaint be rejected on the ground that the same was not maintainable in view of the bar of Order XXIII Rule 3A of the CPC.

7. The Trial Court allowed the application and rejected the plaint.

8. The plaintiffs went before the High Court by way of a revision application. The revision application came to be partly allowed.

9. While allowing the Revision Application filed by the plaintiffs, the High Court observed thus:-

"9 It is admitted fact that the disputed Plot No.- 627 area 1.012 hectare is belonging to plaintiffs and Plot No. 633 area 0.392 hectare is belonging to plaintiff no.2. situated at Qasba- Ujhani, Tehsil & District- Budaun. The Harbilas Goyal Inter College was constructed over Plot Nos.- 631 and 632, which was adjacent to the land belonging to the plaintiffs. The management of college had tried to encroach the land belonging to the plaintiffs and as such the parents of plaintiff no.1 had filed Suit No.- 171 of 2009 (Vimla Devi and others Vs. Harbilas Goyal Charitable Trust and others), which was decided on the basis of compromise on 11.01.2017. As per compromise decree, the plaintiffs accorded permission to the defendant nos.1 to 3 for use of disputed land in the interest of students of the college. The college was closed in the year 2018 and a new school in the name of Harbilas Goyal International School, Ujhani has been started in the premises of earlier college. After due inquiry it has come in the knowledge of plaintiffs that the defendant nos. 1 to 3 had transferred the entire premises of college to defendant nos. 4 to 6 including the disputed land. The new school has been started by defendant nos. 4 to 6, who were not party in earlier suit. The land was never transferred to defendant nos. 1 to 3 and only permission was granted to use of disputed land and as such the status of defendant nos. 1 to 3 is only as a licency and they have no right or title to transfer the disputed land to defendant nos. 4 to 6. The trial court has failed to consider that the present suit has been

filed for the fresh cause of action and there was no relief for setting aside compromise decree and secondly the relief sought in the present suit is against defendant nos. 4 to 6, who were not party in previous suit. The earlier suit was in between the parents of plaintiffs and defendant nos. 1 to 3 and plaintiffs and defendant nos. 4 to 6, both were not party in earlier suit. The learned trial court, while allowing the application filed under Order 7 Rule 11 C.P.C. has failed to consider the aforesaid aspect of the matter and the order impugned suffered from non-consideration of factual aspect of the matter and is liable to be set aside.

10. The first appeal is allowed and the order dated 23.04.2004 passed by Civil Judge (Senior Division), Badaun in Original Suit No. 183 of 2003 (Sanjay Kumar Mittal and another Vs. Harbilas Goyal Charitable Trust & others) is set aside.

11. The matter is remanded back to the concerned trial court to decide the application filed by defendant no.1 under Order 7 Rule 11 C.P.C. as fresh within a period of three months from date after affording opportunity of hearing to the parties, unless there in any legal impediments"

10. Thus, the High Court thought fit to remand the matter to the trial court with a direction to reconsider the application under Order VII Rule 11 of C.P.C. afresh.

11. In such circumstances, referred to above, the petitioner - Trust is here before this Court with the present petition.

12. Mr. Saurabh Kirpal, the learned counsel submitted that the very institution of the fresh suit is on a misconceived notion that the Trust has disposed of the land which came to be donated by the plaintiff - Trust. With all responsibility, the learned counsel makes a statement before the Court that the Trust has not created any third party rights so far as the subject-land is concerned. All that has been done by the Trust is to change the name of college from Harbilas Goyal Inter College to Harbilas Goyal International School.

13. He further makes a statement, on instructions, that not a single aspect of the compromise decree has been breached in any manner.

14. On the other hand, Mr. Inamdar, the learned counsel appearing for the respondents - original plaintiffs submitted that if the statements made by Mr. Kirpal referred above are absolutely true and correct, then his client should not have any further objection. However, he wants to confirm with his clients as regards the statements which have been made today before this Court by Mr. Kripal.

15. *Prima facie*, subject to hearing both the sides, we are of the view that if the College has preserved the land, there is no good reason for the plaintiffs to drag the trust once again in a fresh litigation. This aspect should be appreciated by the plaintiffs.

16. Post this matter on 21-4-2025.

17. In the meantime, the order of the High Court shall remain stayed from its operation.

(VISHAL ANAND)
ASTT. REGISTRAR-cum-PS

(POOJA SHARMA)
COURT MASTER (NSH)