

**Court No. - 36**

**Case :-** SECOND APPEAL No. - 541 of 2024

**Appellant :-** Shailendra @ Shankar Verma And Another

**Respondent :-** Vikas Verma And 3 Others

**Counsel for Appellant :-** Rajneesh Tripathi

**Hon'ble Kshitij Shailendra,J.**

1. This is defendants' second appeal arising out of dismissal of their counter-claim as well as first appeal arising therefrom.

2. It is contended that the plaintiffs' suit was dismissed for want of prosecution on 04.03.2022 which order was never recalled.

3. A bare perusal of the two judgments impugned in the instant second appeal would show that the learned Additional Civil Judge (Junior Division), Court No.5, Mainpuri does not appear to have an understanding of the provision of a counter-claim or the manner in which it has to be dealt with. Surprisingly, though it is mentioned that DW-1 and DW-2 were produced, their oral testimony has not at all been discussed. Neither the plaint case nor the case contained in the counter-claim has been disclosed in the trial court's judgment. The conclusion drawn also does not convey any sense. Similar is the position with regard to the operative portion of the judgment, which reads as "**defendant's suit is rejected. File is to be concised to the record room.**"

4. Surprisingly, learned Additional District Judge/ F.T.C., Court No.2, Mainpuri too has failed to understand the proceedings. In paragraph no.4 of his judgment, it is mentioned that "**the defendants' counter-claim has been established by the trial court**" (although it was dismissed).

5. It appears that both the courts below have completely failed to discharge their obligation respectively as civil court and first

appellate court and have treated judgment writing as a mere formality. This Court, with great pains, records its dissatisfaction with the manner in which the suit proceedings as well as counter-claim have been dealt with and also the manner in which Civil Appeal has been decided.

6. Though, it is a fit case where some observation could be made which may occasion sending the aforesaid two officers for judicial training, however, a restraint is exercised at this stage but with a communication to the District Judge, Mainpuri so that he may look into the manner in which the courts under his administrative control are dealing with litigation involving civil rights of the litigants.

7. The instant second appeal is **admitted** on the following substantial questions of law:-

"(a) Whether the judgment of the trial court at all satisfies the requirement of deciding a counter-claim as per Order 8 Rule 6-A CPC as the same appears to be completely bereft of any discussion of facts, evidence and the conclusion ?

(b) Whether the first appellate court's judgment recording that before the trial court counter-claim was established does not run contrary to the decision of the trial court and, on this ground alone, it is at all sustainable ?"

8. Issue notice to the respondents.

9. Steps be taken by registered post within two weeks.

10. Summon the record of appellate court as well as trial court.

11. Until further orders of this Court, the parties to the instant second appeal are directed to maintain status quo with regard to nature, possession and constructions over the property forming

subject matter of Original Suit No.423 of 2020 (Vikas Verma and others Vs. Shelendra and others). Further, no third party rights shall be created in respect of the property, without leave of the Court.

**12. Registrar (Compliance) is directed to send a copy of this order alongwith photostat copies of the impugned judgments to the District Judge, Mainpur for necessary information and compliance.**

**13. List in the month of December, 2024.**

**Order Date :- 28.8.2024**  
AKShukla/-