

Court No. 19

Case :- SECOND APPEAL No. - 159 of 1995

Appellant :- Bhaiya Ram Yadav

Respondent :- State Of U.P.And Others

Counsel for Appellant :- N.K.Seth,Ashish Chaturevedi,Sudeep Seth,Vijay Krishna Srivastava,Vijay Krishna

Counsel for Respondent :- C.S.C.

Hon'ble Jaspreet Singh,J.

1. Heard Sri V.K. Srivastava, learned counsel for the appellant as well as Sri J.P. Maura, learned Additional Chief Standing Counsel for the State-respondents.

2. This is the plaintiffs second appeal being aggrieved against the judgment of reversal passed by the Lower Appellate Court in Regular Civil Appeal No. 92 of 1990 (State of U.P. Vs. Bhaiya Ram Yadav), as a result, the suit for possession bearing R.S. No. 194 of 1984 which was decreed by the Trial Court on 16.04.1990 has been set aside and the suit has been dismissed.

3. The aforesaid second appeal was admitted by this Court by means of order dated 02.05.1995, however, at the relevant time, the question of law was not framed. Later, this Court by means of order dated 21.09.2023 had framed two substantial questions of law which read as under:-

"(a) Whether the lower appellate court was justified in allowing the appeal and dismissing the suit of the plaintiff when the plaintiff was not in possession and in light thereof, the suit for injunction could have been maintained;

(b) Whether there is any perversity in appreciation of the evidence in order to arrive a finding regarding possession to maintain the suit for injunction especially when it is categorical case of the defendants-respondents that the property belong to them and it was in their possession."

4. Before adverting to the submissions of the learned counsel for the

parties, it will be relevant to take a glance at the facts giving rise to the instant appeal.

5. The original plaintiff Bhaiya Ram Yadav instituted a suit for possession and permanent injunction impleading the State, the I.G. (Home Guards) of the State of U.P. and the Commandant (Home Guards) as the defendants.

6. It was stated that the plaintiff is the owner and landlord of a kaccha pakka house measuring 23x 60 i.e. 1380 square feet situate in Sikandarpur Nazool, Kailashpuri, P.S. Alamgabh, Lucknow which he had purchased by a registered sale deed dated 14.04.1983 from its erstwhile owner Sri Maiku Lal S/o late Hazari and the boundaries of the said house was also mentioned in Para 1 of the plaint.

7. It was further pleaded that the plaintiff has been in physical possession of the aforesaid house and prior thereto as a licensee. It is stated that the defendant no. 3 pressurized the plaintiff to vacate the house in question without having any legal basis to do so as the property of the defendant was separated by a fence. The plaintiff had served a notice on the defendants under Section 80 C.P.C. and the plaintiff attempted to file a suit for permanent injunction, however, the defendant succeeded in removing the fence and dispossessed the plaintiff, as a result, the plaintiff had to amend the suit and seek a decree of possession and injunction. The said suit was registered as R.S. No. 194 of 1984 which came to be contested by the defendants who filed a joint written statement stating that the alleged sale deed upon which the plaintiff based his title was fabricated as Maiku Lal had no right to sell the property to the plaintiff which belonged to the State-

Government and the defendants also gave its own boundaries of the disputed land of paragraph 1 of the written statement.

8. It was also denied that the plaintiff had any physical possession rather the defence was that the property in question was located on Khasra No. 131/2 which belonged to the State of U.P. and was bounded by a boundary wall wherein the Home Guards Department had their office, residential quarters for their employees.

9. It was also pleaded that the defendant had allotted one of such quarters to Sri Ram Khelawan who was working as a tube-well operator in the Home Guards Department vide order dated 26.04.19684. Sri Ram Khelawan is the real brother of the plaintiff and as Sri Ram Khelawan had violated the conditions of his service and allotment of quarter, accordingly, the same was got vacated from Sri Ram Khelawan on 01.07.1984 after serving the requisite notice and as such the plaintiff illegally wanting to perpetuate his possession and right over the said property got the sale deed manufactured and had filed the suit which had no legs to stand and as such the suit deserves to be dismissed.

10. Upon the exchange of pleadings, the Trial Court framed five issues. After leading the oral and documentary evidence initially the suit was decreed by means of judgment and decree dated 16.04.1990 by the 2nd Additional Munsif, Lucknow and directed the defendants to handover the possession of the disputed property described in para 1 of the plaint to the plaintiff within two months.

11. In the aforesaid backdrop, the defendants preferred a regular civil appeal under Section 96 C.P.C. which came to be heard and decided by the

Lower Appellate Court by means of judgment and decree dated 21st January, 1995, as a result, the appeal was allowed and the suit bearing R.S. No. 194 of 1984 was dismissed.

12. In the aforesaid factual backdrop, the plaintiff filed the instant appeal which has been heard on the two substantial questions of law as noticed above.

13. The submission of the learned counsel for the plaintiff-appellants that the plaintiff in its plaint had categorically stated that the plaintiff is the owner-landlord of a house measuring 23x60 i.e 1380 square feet situate in Sikandpur Nazool, Kailashpuri, P.S. Alambagh, Lucknow which he had purchased by means of a registered sale deed dated 14.04.1983 from Sri Maiku Lal and also gave its boundaries including that it was located on bhumidhari plot No. 131/1.

14. In the aforesaid context, the defendant had raised a plea that the property belonged to the State and from perusal of the additional pleas, it would indicate that the State had confined its claim on property Khasra Plot No. 131/2.

15. It was also urged that the defendant had stated that the disputed property in question was allotted to his erstwhile employee Sri Ram Khelawan who was the real brother of the plaintiff and since Sri Ram Khelawan had violated the condition for allotment of a quarter, hence, the same was got vacated from him on 01.07.1984.

16. It is further urged that the defendant did not lead any evidence to establish the fact that the property in question claimed by the plaintiff was on Plot No. 131/2. No evidence was filed to indicate that the disputed

property was ever allotted to Sri Ram Khelawan and that upon the violation of the condition, he had been evicted as stated in paragraph 14 of the written statement.

17. The learned counsel for the appellant further submits that the defendants had failed to establish that the property in question belonged or was located on Plot No. 131/2 whereas the plaintiff-witnesses clearly stated that it was located on Plot No. 131/1 and its erstwhile owner Maiku Lal was also examined as a witness who stated that he had sold the said property to the plaintiff.

18. The plaintiffs had also filed certain documentary evidence which indicated that the Khasra Plot No. 131/1 had an area of 1 Bigha, 1 biswa, 19 biswansi and 10 Kachwansi which was recorded in the name of Maiku Lal and in this fashion, it clearly indicated that the vendor of the plaintiff Maiku Lal had the right to sell the property.

19. The plaintiff had also filed the sale deed bearing Paper No. Ga-59 which also contained boundaries and considering all the aforesaid documents and the evidence on record, the Trial Court had found that the plaintiff was illegally dispossessed on 31.07.1984 and since the defendants were unable to establish their right, hence, the suit was decreed on 16.04.1990.

20. It is further urged that the Lower Appellate Court failed to consider the reasons given by the Trial Court and taking the pleadings of the defendant as the gospel truth reversed the finding without noticing the fact that the defendant had not led any clear evidence regarding its own pleadings and in absence of any clear proof supporting their pleadings,

there was practically no material on record to controvert the findings recorded by the Trial Court on the basis of evidence available on record and thus the Lower Appellate Court committed a grave error, hence, the appeal deserves to be allowed after setting aside the judgment of the Lower Appellate Court and the judgment and decree of the Trial Court be affirmed.

21. Sri J.P. Maurya, learned Additional Chief Standing Counsel on the other hand submits that there was no material on record to indicate that the property purchased by the plaintiff was on Plot No. 131/1.

22. The plaintiff who had sought the relief had to establish his own case on the strength of the evidence and could not take the weakness of the defence.

23. It has been urged by the learned Additional Chief Standing Counsel that the Lower Appellate Court has considered the evidence of the respective witnesses thread-bare and found that the statement of the witnesses were contradictory and suffered from uncertainty. The Lower Appellate Court found that from the boundaries as given by the plaintiff, it indicated that on the northern side it was a property of the Home Guards/Jail Camp, on the eastern side, the plaintiff indicates that the property of Jail was present, on the western side, house of Narayan was situate and on the southern side, a Government Road was present.

24. It is urged that seeing this in context with the boundaries given by the defendant in their written statement, it would indicate that on the northern side the Jail Camp has been mentioned. On the southern side, it has been mentioned the boundary wall of the Home Guards and thereafter the road

on the western side, house of Narayan has been mentioned which is common both to the plaintiff as well as to the defendant but what has not been indicated by the plaintiff is the fact that the house of Narayan was a quarter which belonged to the defendant and Narayan was also working as a Sweeper for the Home Guards. The plaintiff on the eastern side has mentioned the property of the Jail but he has cleverly not indicated that on the eastern side also, there was a quarter belonging to the defendants which was with Babu Lal who was also a Nayak and was employed with the defendants.

25. Thus, it is urged that practically it would be seen that the disputed property which was bounded from all four sides of the property belonging to the State then under what circumstances the plaintiff could have claimed title or only a small area of 1380 square feet existed in between an area which was belonging to the State from all three sides, this was to be clarified by the plaintiff which has not been done and thus taking a holistic view, the Lower Appellate Court has dismissed the suit after allowing the appeal and as such these are findings of fact which does not require any interference from this Court and as such the appeal deserves to be dismissed.

26. The Court has heard the learned counsel for the parties and also perused the material on record.

27. It is apparently quite clear that initially when the plaint was filed, the plaintiff had sought a decree of permanent injunction wherein only the house of the plaintiff was mentioned with the area of 1980 square feet with the boundaries.

28. It is also stated that prior to purchase of the said house on 14.04.1983 from Maiku Lal, the plaintiff was in physical possession as a licensee and later he became the owner-landlord having purchased the same. It is only later that this plaint was amended and a leave of possession was sought. It is at that stage that it was stated that the said house was constructed on bhumidhari plot No. 131/1.

29. At this stage, if the original sale deed by which the plaintiff had purchased the property bearing Paper No. C-59 is seen, it would be found that Maiku Lal did not indicate that the said land was situate on Plot No. 131/1. This was an improvement made by the plaintiff later by an amendment.

30. On the other hand, it would be seen that even prior to the amendment made in the plaint, the defendant in their written statement had clearly taken a plea that the disputed property in question fell on Plot No. 131/2. Another significant feature to be noticed is the fact that the amendment came to be introduced only in the month of July, 1988 whereas the written statement had already been filed in the month of August, 1984. In the aforesaid backdrop, it became important for the plaintiff not only to establish his right and title in respect of the house claimed by him on the basis of the boundaries but also the said house was situate on Plot No. 131/1.

31. In this regard, if the evidence is seen, it would be found that Commissioner had visited the property and suit and gave his report. The said Commissioner was examined as P.W. 4 and he clearly admitted that he had been appointed by the Court only to make a spot visit and he had not

gone to identify and locate as to whether the disputed house was located on Plot No. 131/1 or 131/2.

32. Thus, in so far as this aspect is concerned, it would be found that the plaintiff could not or did not lead any evidence to indicate that his house in question was situate on Plot No. 131/1.

33. At this stage, it will be relevant to notice that the controversy could have been easily resolved, if it could have been ascertained that whether the disputed property fell in Plot No. 131/1 or 131/2 but even though the plaintiff had got a commission issued but it did not get it surveyed.

34. The Trial Court while dealing with issue no. 4 clearly noticed this fact that the Commissioner did not locate the property and had only made a spot visit with measurements but it concluded that since the defendant did not lead any evidence to the contrary, hence, it would be treated that the house would not be on Plot No. 131/2 and in all probabilities, it would be on Plot No. 131/1. This finding of the Trial Court is perhaps based on surmise and not on any cogent evidence on record.

35. Needless to say that since the plaintiff was claiming possession and injunction, it was his duty to have established and right over the property in light of the pleadings delivered by him in his plaint with cogent evidence, thus, the basic controversy as to whether the plaintiff's house was located on Plot No. 131/1 was not established and this has been taken note of by the Lower Appellate Court while reversing a finding and this does not appear to be any incorrect exercise of jurisdiction by the Lower Appellate Court which exercises powers co-extensive with the Trial Court and is entitled to re-appraise the entire evidence both of law and fact and conclude

and record his own finding.

36. Taking the matter ahead, the Lower Appellate Court also noticed that it is not denied by the plaintiff that Sri Ram Khelawan was his real brother. Sri Ram Khelawan was not examined as any witness on behalf of the plaintiff to state that he was not working as a tube-well operator with the defendant. It is also not disputed nor denied by leading any evidence that Sri Ram Khelawan was not allotted the quarter in question of which the possession was taken by the defendants. This again could have been easily be cleared had the plaintiff examined his own brother Sri Ram Khelawan which was not done.

37. Another aspect that needs to be seen is that on the western side, there is the house of Narayan and it is the case that the Narayan was the sweeper working with the Home Guard Department. On the eastern side as per the plaintiff, it is the property of the Jail and as per the defendant, it is the quarter which is in occupation of Babu Lal.

38. Seeing this in context with the topography of the disputed property, it would indicate that on all three sides i.e. north, east and west is the property of the defendant and on the southern side is a road. In this context, it ought to have been the duty of the plaintiff to have shown as to how the aforesaid plot bearing No. 1380 square feet was situate in Plot No. 131/1 whereas on the three adjoining sides, it is the Khasra Plot No. 131/2 which is not disputed as it belongs to the defendant and in the written statement, the defendant also stated as such.

39. This had been appropriately considered by the Lower Appellate Court and it had also returned a finding that the version as given by the defendant

that there were a number of quarters on the land of the defendant which was for the employees out of which two on the eastern and the western side were in occupation of Babu Lal and Narayan whereas the disputed portion was allotted to Sri Ram Khelawan who is the real brother of the plaintiff and because he had violated he was evicted therefrom, hence, in view of the aforesaid, this finding which has been recorded by the Lower Appellate Court is borne out from the record and apparently these issues ought to first have been clarified and established by the plaintiff having done so then the burden would have been discharged and would then be on the defendants.

40. In the instant case, without looking into this aspect of the matter, the Trial Court considering the weakness in the defence decreed the suit which has been rectified by the Lower Appellate Court, accordingly, this Court is of the view that the findings recorded by the Lower Appellate Court in its judgment and decree dated 21.01.1995 are based on proper appreciation of evidence and are findings of fact which do not suffer from any perversity, accordingly, this Court does not find that there is any error in the judgment of the Lower Appellate Court, consequently, the appeal sans merit and is accordingly *dismissed*. The judgment of the Lower Appellate Court dated 21.01.1995 passed in Regular Civil Appeal No. 92 of 1990 is upheld. Costs are made easy. The records of the Trial Court be returned forthwith.

Order Date :- 08th December, 2023
Asheesh

(Jaspreet Singh, J.)