

Neutral Citation No. - 2023:AHC-LKO:77733**Court No. - 19**

Case :- SECOND APPEAL No. - 701 of 1988

Appellant :- Ram Dayal

Respondent :- Bhagwati Prasad Andd Another

Counsel for Appellant :- H.S.Sahai,U.S. Sahai

Counsel for Respondent :- Babu Ram Shukla,Rajesh Kumar Pandey

Hon'ble Jaspreet Singh,J.

1. Heard Shri Shraswat Srivastava under the authority of Shri U.S. Sahai, learned counsel for for the appellant and Shri Rajesh Kumar Pandey, learned counsel for the respondents.
2. The instant second appeal has been preferred by the defendant assailing the judgment and decree passed by the 5th Additional District Judge, Faizabad dated 25.08.1988 in Civil Appeal No.154/1984 whereby the lower Appellate Court dismissed the defendant's appeal and affirmed the judgment and decree passed by the trial Court dated 24.01.1984 passed in R.S. No.142/1979, whereby the suit of the plaintiffs-respondents for permanent injunction was allowed.
3. The brief facts giving rise to the instant appeal are encapsulated in a narrow parameter. The original plaintiffs Bhawati Prasad and Ram Shanker had instituted a Regular Suit No.142/1979 before the Munsif, Haveli, Faizabad seeking a decree of permanent injunction on the ground that the disputed trees in question had been planted by the ancestors of the plaintiff and they were more than 100 years old. The plaintiff had the right over the said trees and therefore the defendant be restrained from interfering in the use and occupation of the plaintiff vis-a-vis the said trees. The plaintiff had also annexed a site-plan forming part of the plaint in suit indicating that the

house of the plaintiff was on the northern side. The sehan dwar of the plaintiff was on the western side which opened in a corridor (galiyara). Thereafter, the dilapidated structures of the defendant were present which has been indicated as khandhar of the defendant and thereafter the disputed trees have been shown which the plaintiff claimed to be theirs. The said suit came to be contested by the defendant, who filed their written statement and further took a plea that the plaintiff could not have a right over these trees and the trees had better proximity with the defendant and for the said reason the suit of the plaintiff cannot be decreed as the plaintiff has failed to establish his own case.

4. After exchange of the pleadings, the trial Court framed seven issues, however, primarily the important issues upon which the parties went to trial were issue No.2 and 4 to the effect as to whether the defendants are the owners of the area shown as 30 x 11 metres on the basis of the sale-deed and whether the defendants were the owner of the trees in question.

5. Another issue relating to the ownership of the trees vis-a-vis the plaintiff is concerned was framed and thereafter the parties led their evidence. The trial Court by means of the judgment and decree dated 24.01.1984 decreed the suit of the plaintiff-respondents restraining the defendants from cutting or disturbing the said trees which were held to be belonging to the plaintiff.

6. The defendants assailed the judgment and decree in Regular Civil Appeal under Section 96 CPC bearing Civil Appeal No.154/1984 before the District Judge, Faizabad which was thereafter transferred to the 5th Additional District Judge for hearing.

7. The lower Appellate Court also noticed that the sale-deed upon which the defendants were claiming it indicated the age of the trees to be 3 to 5 years and as such they were also not within the area which was purchased by the defendants. The lower Appellate Court also noticed that since as per the plaintiff's case, the trees were quite old, accordingly, it did not match with the pleadings as well as the evidence led by the defendants, consequently, it dismissed the appeal of the defendants by means of the judgment and decree dated 25.08.1988.

8. Being aggrieved against the concurrent judgment and decree, the defendants preferred the instant second appeal which was admitted by this Court on 14.12.1988. However, at the relevant time, the question of law was not framed. It is later on 01.11.2023, the Court had framed solitary question of law as to "whether the two Courts were justified in decreeing the suit while ignoring the material evidence on record".

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

10. Primarily, the submission of the learned counsel for the appellant is that in a suit for permanent injunction it was the duty of the plaintiff to have established his own case and the plaintiff could not get the benefit of any weakness of any defence.

11. It is urged that since it was specifically pleaded in Para-5 of the plaint in suit that three mango trees, one tree for Mahua which was not less than 50 years and the Mahua tree was not less than 100 years while the Gular tree was 35 years old which were planted by the ancestors of the plaintiff.

Since, the defendants were attempting to dislodge the said trees, accordingly, the suit was filed seeking to restrain the defendants from interfering or disturbing the said trees from the property in question.

12. It is further urged that once the aforesaid pleadings had been placed on record, it was the primary duty of the plaintiff to have established his own case. It is urged that the trial Court as well as lower Appellate Court has primarily focused on the evidence led by the defendants to pick out the weakness of the defence and doing so it has decreed the suit, however, what two Courts failed to notice was the fact that since the plaintiff had approached the Court it was necessary for the plaintiff to have established that the said land over which the trees were standing were planted as well as was in their possession and use of the plaintiff. It is further urged that since the house of the plaintiff was on the eastern part whereas the said disputed trees were on the extreme western side as indicated in site plan annexed and formed part of the suit. It would indicate that the plaintiff could not have any access to the said trees. It is further urged that it is not disputed by the plaintiff that between the house of the plaintiff and the land where the disputed trees are planted intervening is the premises belonging to the defendants. It is thus submitted that in view of allegations, the plaintiff could not have any right over the said trees and enabling him to maintain the suit for permanent injunction which has been incorrectly decreed.

13. Shri Pandey, learned counsel appearing for the respondents-plaintiffs submits that insofar as the pleadings are concerned, the plaintiffs had clearly indicated therein that their ancestors had planted the trees. The

plaintiff's witnesses also corroborated the aforesaid fact and there is no discrepancy regarding the same. Merely because the two Courts have examined the case and found that the defendants could not establish that the land purchased by them from Smt. Narain Devi had any trees moreover even in the sale-deed, the trees which were mentioned were merely 3 to 5 years and they were valued at Rs.50/- whereas the value of the said trees much more than. This in itself is not going to create any right to the defendants to raise the contention that the plaintiff has been unable to establish his case.

14. It is further urged that in a suit for injunction which operates in personam it is only the right which has to be established which is under challenge as well as under threat at the behest of the defendants and the plaintiffs and its witnesses had clearly supported the plaint case which has been noticed by the two Courts and thereafter findings of fact have been recorded which are not assailable in the instant appeal in exercise of powers under Section 100 CPC ignoring the fact that the appeal concluded by concurrent findings of fact, consequently, the appeal deserves to be dismissed.

15. Having considered the aforesaid submissions and from the perusal of the material on record, as the proposition it is correct to state that the plaintiff has to stand on its own legs. It has also to be noticed that once the parties had led evidence, it is for the Court to examine both the plaintiff as well as the defendants pleadings and the evidence.

16. In the instant case, though the Khandhar which was purchased by the defendants clearly establishes the fact that insofar as the trees are

concerned which are subject matter of dispute, they are not within the area which was purchased by the defendants from Smt. Narain Devi. It is also not the case that they had planted the said trees inasmuch as the predecessor-in-interest of the defendants Smt. Narain Devi had stated that the said trees were not planted. On the other hand, this evidence if seen in a juxtaposition to the material on record including the pleadings as well as statements given on behalf of the plaintiff and its witnesses, they have clearly stated that the said trees were quite old and had been planted by the ancestors of the plaintiff. It is not disputed that the trees which have been indicated are quite old, the evidence led by the defendants primarily is the sale-deed upon which they claimed title wherein it does not relate to the trees which have been claimed by the plaintiffs. Only for the reasons that the house of the plaintiffs is on the extreme eastern side whereas upto the land where the said disputed trees exists there is an intervention Khandhar of the defendants which does not create any right on the defendants to claim any right, title or interest over the said trees.

17. This aspect has been considered by the two Courts considering the evidence led by the respective parties. These are pure findings of fact which is not disturbed in exercise of powers under Section 100 CPC. Moreover, it is also stated that two Courts have considered the evidence and have returned findings which cannot be said to be perverse. Only for one proposition that the plaintiff has to stand on its own legs and the plaintiff cannot claim from the weakness of the defence it may not be sufficient in the instant case for the reasons noted above that the two Courts have compared the evidence of both sides and found the version of the

plaintiffs more credible. This has been considered in the two judgments and decrees and the matter has been taken note of by the two Courts in a holistic fashion taking into account the evidence available and for the said reason, this Court is not inclined to interfere. Accordingly, this Court finds that there is no merit in this appeal which is accordingly dismissed. The judgment and decree passed by the trial Court dated 21.01.1984 and the judgment and decree passed by the lower Appellate Court dated 25.08.1988 are affirmed.

18. In the facts and circumstances, there shall be no order as to costs. The record of the trial Court concerned shall be returned expeditiously.

Order Date :- 28.11.2023
Rakesh/-