

Court No. - 19

Case :- SECOND APPEAL No. - 448 of 1987

Appellant :- Dukh Haran And Another

Respondent :- Shital Prasad

Counsel for Appellant :- U.K.Srivastava,Nirmit Srivastava

Counsel for Respondent :- L.P.Mishra

Hon'ble Jaspreet Singh,J.

Heard Sri Nirmit Srivastava, learned counsel for the appellants. None has put in appearance on behalf of the respondents despite the name of Sri L.P. Mishra, Advocate has been shown as counsel for the respondents.

In view of the aforesaid, the Court has proceeded to hear the learned counsel for the appellants.

This is the defendant's second appeal assailing the judgment of reversal passed by the First Additional District Judge, Bahraich dated 27.07.1987 passed in Regular Civil Appeal No. 37 of 1987, as a consequence, the suit of the plaintiff-respondent which was dismissed by the Trial Court has been allowed and decreed by the Lower Appellate Court.

The instant appeal was admitted by this Court vide order dated 17.08.1987 on the substantial questions of law as mentioned in the memo of appeal marked as A, B, D, E and G which for the ease of reference read as under:-

(A) Whether the lower appellate court has acted in accordance with law in holding that since the proceedings initiated by Tahsildar Bahraich under Rule 115-C and Rule 115-D of the U.P. Zamindari Abolition and Land Reforms Rules, 1952 were dropped, as such the plaintiff-respondent became the owner of the property in suit?

(B) Whether the lower appellate court has acted in accordance with law in holding that the order passed by Tahsildar Bahraich in proceedings under Rule 115-C and Rule 115-D of the U.P. Zamindari Abolition and Land Reforms Rules, 1952 were binding on the defendant-appellants who were not party to the said proceedings and who had no right to prefer any revision or appeal?

(D) Whether the lower appellate court has acted in accordance with law in holding that the defendant-appellants who were admittedly not party to the proceedings under Rule 116-C and Rule 115-D decided by the court of Tahsildar Bahraich could prefer appeal or revision to the higher court?

(E) Whether the impugned judgment and decree of the reversal of the

judgment and decree of the Trial Court passed by the Lower Appellate Court, without specifically setting aside the findings of facts recorded by the trial court, and without substituting its own findings of facts after re-appreciation of the entire oral and documentary evidence led before the trial Court, can be said to be a judgment and decree in accordance with law?

(G) Whether the lower appellate court has acted in accordance with law in decreeing the suit of the plaintiff-respondent for permanent injunction, even though, the plaintiff completely failed to establish his possession on the property in suit on which the defendant-appellants have been in possession?

The learned counsel for the appellants assailing the judgment passed by the Lower Appellate Court submitted that the findings have been reversed by the Lower Appellate Court without dealing with the evidence which was led before the Trial Court and apparently, the Lower Appellate Court which is the final court of fact and law has not appropriately considered the pleadings or the evidence and in derogation of the mandate conferred on the Lower Appellate Court in terms of Section 96 read with Order 41 Rule 31 C.P.C. has been breached.

The further submissions of learned counsel for the appellants is that the Lower Appellate Court has heavily relied upon the proceedings which were initiated by the Tehsildar, Bahraich under Rule 115-C and Rule 115-D of the U.P. Zamindari Abolition and Land Reforms Rules, 1952.

It is submitted that the said proceedings were collusive in nature and the said proceedings had actually been dropped as such no strength could be derived by the plaintiff-respondents from the aforesaid proceedings and the Lower Appellate Court has misdirected itself to rely upon the same to decree the suit of injunction in favour of the plaintiff-respondent.

It was also pointed out that even otherwise, the appellants were not a party to the said proceedings under Rule 115-C and Rule 115-D of the U.P.Z.A. Rules, 1952 and as such the same could not be made binding on the appellants and by doing so the Lower Appellate Court has committed a grave error which has prompted the appellants to file the instant appeal on the questions of law which have been enumerated hereinabove.

Before advertng to the submissions made by learned counsel for the appellants, it will be worthwhile to take a glance at the facts giving rise to the instant appeal first:-

The record indicates that the original plaintiff Sri Shital Prasad had instituted a suit for injunction before the Court of Munsif, Bahraich which was registered as Regular Suit No. 596 of 1984.

It was specifically pleaded that the plaintiff is an old resident of Mauja Tulsipur, Pargana, Tehsil and District Bahraich and is residing in his house which is shown in the site plan annexed and forming part of the plaint in suit.

It was also pleaded that the land which has been shown by the letters A, B, F, G, C, D is the appurtenant land of the plaintiff-respondent which is in the use and occupation for the beneficial enjoyment and therefore the plaintiff has a right over the same since the time of his fore-fathers. It was also pleaded that the Lekhpal of the said village had initially initiated proceedings under Section 122-B read with Rule 115-C of the U.P.Z.A. Act read with the relevant Rules of 1952, however, the said proceedings came to be dismissed after leading of evidence on 31.08.1984 and the possession of the plaintiff was found established and lawful.

It is in the aforesaid backdrop, it was stated that the defendant was not having any right, title or interest in the property in question and also did not have a right to interfere in the peaceful use and occupation of the plaintiff, accordingly, the decree of injunction was sought to restrain the defendants from interfering in the peaceful use and occupation of the property as delineated in the site plan annexed and forming part of the plaint in suit.

The suit came to be contested by the original defendants namely Dukhharan and Madhav who filed a joint written statement wherein the fact that the plaintiff was residing in the premises in question and has been an old resident of Gram Tulsipur was not disputed as shall be evident from paragraph 1 of the written statement. In paragraph 3, the factum regarding the initiation of the proceedings under Section 122-B of the U.P.Z.A. & L.R. Act and that it was dismissed as also been admitted by the defendants, however, in the additional pleas, it was stated that the defendants were Harijans and they have been allotted the land by the Pradhan by means receipt dated 28.06.1978 after taking Rs. 35/- as consideration. It is in the aforesaid backdrop, it was urged that the defendants had a right to the property which had been mis-described by the plaintiff and therefore the plaintiffs are not entitled to any relief rather the suit deserved to be dismissed.

Upon exchange of pleadings, the Trial Court framed three issues, however, the sole issue which is important for adjudication of the instant appeal is as to, whether the plaintiffs are the owners in possession of the property in question which has been shown in the site plan annexed and forming part of the plaint in suit.

On behalf of the plaintiff, Sri Sheetal Prasad was examined as P.W. 1 and Sunder Lal was examined as P.W. 2 whereas Dukhharan examined himself as D.W. 1 and Bhullar as D.W. 2. The Trial Court while dealing with issue no. 1 noticed the evidence of the P.W. 1 and P.W. 2 to the extent that they stated that the plaintiff was in the possession of the property since last 20-22 years, however, it also recorded a finding that in view of the statements made by the plaintiff-witness no. 1 and 2, the plaintiffs were unable to establish their title as well as possession of the property. With the aforesaid findings, the suit was dismissed by the 3rd Additional Munsif, Bahraich by means of judgment and decree dated 06th March, 1986. The said judgment and decree was assailed by the plaintiff by filing Regular Civil Appeal before the District Judge, Bahraich registered as Civil Appeal No. 31 of 1986.

The appeal was thereafter transferred to the Court of 1st Additional District Judge, Bahraich where after hearing the parties, the Lower Appellate Court did not agree with the findings recorded by the Trial Court and after re-appraising the evidence, it found that the possession of the plaintiff was established including on account of the fact that proceedings under Section 122-B of the U.P.Z.A. & L.R. Act was initiated by the State which was dismissed which also confirmed the lawful possession of the plaintiff apart from the fact that the plaintiffs nos. 1 and 2 also indicated that the plaintiff was in possession.

The Lower Appellate Court also noticed the fact that the plea raised by the defendant regarding having been allotted the disputed property could not establish the same as neither there was any evidence brought on record to prove the said receipt and even otherwise once the land in question was the Government land how the same came to be allotted in favour of the defendant was also not proved nor appropriately pleaded. In this light, the Lower Appellate Court noticing the possession of the plaintiff being settled decreed the suit.

It is being aggrieved against the judgment and decree dated 27.07.1987, the appellants have filed the instant appeal on the grounds as already noticed hereinabove.

From the perusal of the material on record and after hearing the learned counsel for the appellants, this Court finds that the genesis as enumerated in the plaint by the plaintiff is his possession and it has been clearly stated that the land in question was actually for the beneficial use and occupation of the plaintiff and has been in his possession since long. In a suit for permanent injunction, the Court is primarily required to look

into the possession of the parties and in order to determine the juridical possession, incidentally, it also has the power to look into the title, if pleaded.

From the pleadings as they were placed threadbare, it would indicate that the plaintiff was claiming right of user over the disputed premises. This is contradicted by the defendant by stating that they were allotted the premises by the Pradhan. It is in the aforesaid backdrop that the issue no. 1 framed by the Trial Court assumes significance.

In so far as the possession is concerned both the plaintiff no. 1 and his witness P.W. 2 clearly stated that the plaintiff was in possession. There was no contrary evidence from the other side, inasmuch as, from the cross-examination of D.W. 1 Dukhharan himself, he stated that he had come into possession only about 8 years ago. This statement of fact noticed and stated by the plaintiff and his witnesses where the possession of the plaintiff is said to be since about 20-22 years and on the other hand the statement in the cross-examination of D.W. 1 stating that Dukhharahn came into possession only about 8 years ago, there is a mark difference. How the defendant came into possession is based upon a receipt which was neither proved in accordance with law nor there was any material to indicate that under what circumstances, the Gram Samaj had allotted the property, inasmuch as, for such allotment, there is a prescribed procedure as provided in the U.P.Z.A. & L.R. Act, 1952.

It will also be relevant to notice that the fact remains that even assuming for the sake of arguments that the defence of the appellants that he was allotted the land by the Gram Sabha inherently indicates that the land did not belong to the defendant rather it was that of the Gram Sabha. This fact is important because once the land is admitted to that of the Gram Sabha, it was the duty of the Tehsildar in case of any encroachment, he had the right to institute the proceedings under Section 122-B of the U.P.Z.A. & L.R. Act. Such proceedings were primarily between the State and the alleged person who is in un-authorized occupation.

The arguments raised by learned counsel for the appellants that the said proceedings cannot be made binding on the defendant does not impress this Court for the reason that the defendant himself has not been able to establish that how he came into the possession of the property. His simplicitor case that he was allotted the land by the Gaon Sabha presupposes that the land belonged to the Gram Sabha, if that be so, the Gram Sabha had a right to evict any person who was in its un-authorized occupation and in any case the same had no bearing in so far as

the right of the defendant is concerned, however, the finding or the effect of the dismissal of the suit under Section 122-B of the U.P.Z.A. & L.R. act implies that the plaintiff-respondents who were allegedly stated to be in un-authorized occupation but having dropped the proceeding and even if they were dismissed, clarifies, one aspect at least that the plaintiffs were in possession of the property in question and were not in its unlawful possession and was not a trespasser.

This being so, the possession of the plaintiff was prior in time and there is no case of the defendant that how he dispossessed the plaintiff in order to come into the possession. This was the burden of the defendant to establish his entry into the property once it was already available on record to indicate that the plaintiffs were in prior possession. The proceedings initiated by the State against plaintiffs under Section 122-B of the U.P.Z.A. & L.R. Act even if it was dropped or dismissed, it merely corroborated the case of the plaintiffs and even though not binding on the defendant but that by itself does not exempt the defendants from establishing its defence, which has not been done.

Having noticed the aforesaid, this Court also notices that in so far as the defence of the defendant is concerned, the same was not established. The receipt does not confer any rights, moreover, the receipt was also not proved by examining any member of the Gram Sabha to indicate that any part was actually given to the defendant or allotted to him in accordance with law.

Another issue that comes out from the record is that the land belonged to the Government and the plaintiff was in possession and being in possession, he has a right to restrain any stranger except the true owner from interfering in his possession. This aspect has been taken note of by the Lower Appellate Court and the suit for simplicitor injunction has been decreed. The aforesaid findings are pure findings of fact and this Court does not find that the Lower Appellate Court has committed any error in exercise of its jurisdiction, inasmuch as, it has noticed the evidence both oral as well as documentary evidence and after re-appraising the same, it has drawn inferences from the record which is a pure finding of fact and is not liable to be disturbed in exercise of powers under Section 100 C.P.C.

In view of the aforesaid, this Court does not find that there is any merit in the present appeal, it is accordingly **dismissed**. The judgment and decree passed by the Lower Appellate Court dated 27.07.1987 passed by the 1st Additional District Judge, Bahraich is affirmed. In the facts and circumstances, there shall

be no order as to costs. The records of the Trial Court be returned forthwith.

Order Date :- 19.10.2023
Asheesh