

Court No. - 19

Case :- SECOND APPEAL No. - 58 of 1979

Appellant :- Ram Laut

Respondent :- Maheswar

Counsel for Appellant :- D.P.Dwivedi, Rakesh Kumar Srivastava, Sharad Dwivedi

Counsel for Respondent :-

A.S.Chaudhary, A.K. Verma, C.B.Chaudhary, R.K. Srivastava

Hon'ble Jaspreet Singh, J.

1. Heard Shri Sharad Dwivedi, learned counsel for the appellants and Shri Rakesh Srivastava, learned counsel for the respondents.

2. This is the plaintiff's second appeal assailing the judgement and decree dated 24.07.1978 passed by the Civil Judge, Faizabad in Civil Appeal No.45 of 1978, whereby the appeal was dismissed and the cross-objections filed by the defendants-respondents were allowed, thereby modifying the decree of the trial court, as a result the suit was dismissed in respect of the *Saria* lying in plot No.45 and *Gulaur* in plot No.47.

3. The instant second appeal was admitted by this Court by means of the order dated 08.09.1983. However, at that time, the questions of law were not framed. Later, this Court on 17.05.2023 framed two substantial questions of law, which read as under:-

"(i) Whether the two courts have ignored the material evidence on record in failing to appreciate the contention that the rights of the appellant had been perfected in terms of Section 9 of the U.P.Z.A. & L.R. Act, 1950 over the property in question?"

"(ii) Whether the two courts have erred in failing to consider that once the possession was admitted that trees planted over the said land would also belong to the defendant-appellant?"

4. In order to appreciate the controversy involved in the instant second appeal, it will be relevant to notice the facts giving rise to the appeal.

5. The plaintiff-appellant filed a suit bearing No.248 of 1970 before Munsif, Haveli, Faizabad seeking a decree of permanent injunction restraining the defendant from interfering with the possession of the plaintiff over the trees, bamboo clumps, *Saria*, *Gulaur* and the house situate over the land in suit and further relief was sought that the defendant be restrained from cutting

the trees or damaging the constructions situate on the land, which was shown in the site-plan at the foot of the plaint.

6. It was specifically pleaded that plot Nos.47, 46 and 72 are old *Abadi* plots, over which the plaintiff had his residential house including *Saria*, *Gulaur* besides the *Sahan* of the plaintiff existed, which has also been shown by the letters *Ta*, *Tha*, *Da*, *Dha* in the plaint. It was further pleaded that there were three mango trees, one *Kathal* tree, one *Pipar* besides the bamboo clumps, which were all there since the time of the father of the plaintiff and the plaintiff has been enjoying the usufruct of the trees and was utilizing the suit property including the *Sahan* for storing grain, fodder and other agricultural and domestic items.

7. The suit was contested by the defendant primarily on the ground that the site-plan annexed with the plaint was incorrect. It was also stated that the property in question belonged to Shri Babu Giri. Upon his death, it was inherited by his son Sheo Prasad. After the death of Sheo Prasad, his widow Deo Raji inherited the property and thereafter her daughters Suryapati and Ramapati. Ramapati died and Suryapati became the owner of the property. The third daughter, namely, Kailashpati was married with the defendant and he also started living at his father-in-law's place and was managing and looking after the property. Upon the death of the Kailashpati, Suryapati executed a sale deed dated 27.05.1970 in favour of the defendant relating to the property in question and as such the defendant became the owner of the same. It was also stated that there is a well on the west side on the land in suit, which was constructed by the ancestors of Suryapati, of which now the defendant is the owner. The said trees on the land are more than 100 years old and even the house was constructed by the Deo Raji. In the aforesaid circumstances, the plaintiff had no right, title or interest in the property nor there was any subsisting cause of action. Accordingly, the suit was liable to be dismissed.

8. Upon exchange of the pleadings, the trial court framed as many as 10 issues. However, the important issues upon which, the parties went to trial was (i) whether the plaintiff is owner of the property in suit; (ii) whether the plaintiff is in possession over the land; (iii) whether Smt. Deo Raji was the owner of the house and cattle shed in suit and the plaintiff is in possession as licensee on her behalf; (iv) whether Suryapati was the owner of the land and property in suit, as stated by the defendant; (v) whether Suryapati executed the sale deed dated 27.05.1970 in favour of the defendant and its effect and (vi) whether the plot Nos.72, 46 and 47 are the *Abadi* plots.

9. The parties led evidence and the trial court by means of its

judgement and decree dated 26.11.1977 partly decreed the suit restraining the defendant not to interfere in the possession of the plaintiff in respect of the disputed house, *Saria*, *Gulaur* and the land situate between it. The suit relating to the trees, bamboo clumps was dismissed and the map prepared by the Advocate Commissioner was made part of the decree.

10. The plaintiff preferred a regular Civil Appeal under Section 96 CPC bearing No.45 of 1978, wherein the defendant also filed cross-objections. The lower appellate court by means of the judgement and decree dated 24.07.1978 dismissed the appeal of the plaintiff and the cross-objections filed by the defendant were allowed and the impact of which was that the judgement and decree passed by the trial court was modified to the extent that the defendant-respondent was restrained from interfering in the possession of the plaintiff over the house lying on plot No.47 and *Saria* lying on plot No.72 and the land used as *Sahan* lying between the *Saria* and plot No.72 and house lying in plot No.47 as shown in the map bearing paper No.22-C/2. The suit of the plaintiff with respect to the *Saria* lying in plot No.46, *Gulaur* in plot No.47 lying over west of *Saria* in plot No.72 and the trees lying in plot No.47 and in plot No.46 was dismissed. It is being aggrieved against the aforesaid that the instant second appeal was preferred.

11. At the outset, it may be noticed that the issue involved in the instant appeal is in respect of whether the plaintiff could establish his right having perfected the same in terms of Section 9 of U.P.Z.A. & L.R. Act, 1950 and whether the two courts erred in failing to consider that once the possession was admitted and trees were planted over the said land would also belong to the plaintiff and not to the defendant.

12. Shri Sharad Dwivedi, learned counsel appearing for the appellant has first and foremost taken the Court to the site-plan, which was annexed with the plaint in suit to get an overall idea regarding the property in dispute. It was submitted that the disputed property as a house, part of which falls on plot No.46 and part on plot No.47. There is one *Saria*, which is on plot No.46 and another on plot No.72, whereas *Gulaur* is on plot No.47. The *Neem* tree, the *Kathal* tree, *Pipar* tree, mango trees and the pegs were all on plot No.47. It is thus submitted that the plaintiff has been in possession of the disputed premises since 100 years and, therefore, father had acquired the same, they had planted the trees and it was all in the possession of the plaintiff and thus the defendant had no right to either encroach or create interference in the peaceful possession of the plaintiff or to cut the trees or to create disturbance in the *Sahan* land of the plaintiff. It is further submitted that the plaintiff had also filed

evidence in the shape of *Parivar* Register bearing paper No.Ga-45/2 indicating that the date of birth of the plaintiff was 1912 and the house of the plaintiff was numbered as No.31 and the house of the defendant was house No.33. Documents relating to 1366 fasli year were also filed, which corresponds to the year 1959. The plaintiff had also led oral evidence connecting the facts and since the *Abadi* plots were of the plaintiff and his possession was also established, hence, the two courts committed an error in partly decreeing the suit and the lower appellate court was completely wrong while allowing the cross-objections of the defendant and it had ignored the material evidence. It is thus urged that the findings recorded by the two courts were not in accordance with law and suffer from grave error and as such the appeal deserves to be allowed decreeing the suit of the plaintiff.

13. Shri Rakesh Srivastava, learned counsel appearing for the defendant-respondent submits that there was no material on record indicating that the ancestors of the plaintiff were residing in the property in question or that they had acquired it. It is urged that if at all, the ancestors, of the plaintiff were in the property since last 100 years there ought to have been some documents evidencing the same. However, in absence of any documentary evidence, the plaintiff has not been able to prove his case. On the contrary, the defendant had filed old revenue records, which clearly indicated that the property initially was recorded in the name of Babu Giri. These documents relate to the third settlement and has been continuance since thereafter. The pedigree given by the defendant regarding how the property devolved on the defendant has also not been disputed nor could be discredited by the plaintiff and since the defendant was the owner and also in possession, accordingly, the lower appellate court was justified in partly decreeing the suit only in respect of limited extent after allowing the cross-objections filed by the defendant. It is thus submitted that the aforesaid issues, which have been raised by the plaintiff are pure findings of fact, which have been noticed by the lower appellate court and accordingly there is no error, which may call for any interference of this Court in exercise of powers under Section 100 CPC. Accordingly, the appeal deserves to be dismissed.

14. The Court has heard learned counsel for the parties and also perused the material on record. Apparently, the case set up by the plaintiff is that his ancestors have been in possession on the disputed property since over 100 years. The plaintiff has claimed that the property has vested in context with Section 9 of U.P.Z.A. & L.R. Act, 1950 and as such the defendant is to be restrained from interfering in the possession of the plaintiff as well as from cutting the trees or causing any disturbance in the

Sahan of the plaintiff.

15. Considering the pleadings and noticing that the plots which are the subject matter of disputes are plot Nos.46, 47 and 72, which are located adjacent to each other. The claim of the plaintiff that his ancestors have been in possession over the property since last 100 years and since the suit was filed in the year 1970, accordingly, there ought to have been some document of the plaintiff since 1870. No documentary evidence has been filed by the plaintiff to establish how the property came in the hands of the ancestors. Apparently, had the ancestors of the plaintiff being in possession of the disputed property, surely their names would have been recorded in respect of the said land. At some point of time, the land either would have belonged to some zamindar, who would have given it to the ancestors of the plaintiff or they would have acquired it, but what is relevant to notice that going back 100 year from 1970 when the suit was instituted at the relevant time the Oudh Rent Act, 1886 was in operation, prior thereto the North Western Provinces Rent Act, 1873 was in force. In both the acts any tenure holder did not have any right to inherit or transfer. It is not the case of the plaintiff that his ancestors were being the zamindar. Thus in what capacity, the ancestors of the plaintiff acquired the property 100 years ago has neither been pleaded nor proved. Even with the advent of the United Provinces Tenancy Act, 1939, where some limited transfer and inheritance was possible even in that case, some documentary evidence in name of the appellant or his ancestors could have been there. Even when the U.P.Z.A. & L.R. Act, 1950 came into force and the land in question if was declared *Abadi*, even then there ought to have been some documents that prior to the declaration of the plots as *Abadi*, it was recorded in the names of the plaintiff or his ancestors. It is also not disputed that consolidation operations were also commenced, but no evidence of the survey or the *Partal* was filed by the plaintiff to establish his previous possession as claimed by him to be of last 100 years. The only document, which has been filed is relating to 1366 fasli year, which relates to the year 1959, but it does not discredit the fact that the name of Babu Giri has been recorded in respect of three plots since the third settlement and even the *Khasras* for the 1345 fasli year has also been filed by the defendant, which shows the continuity of his title. The pedigree as indicated by the defendant has not been disputed.

16. It is in this context that the two courts have considered that there is not a single document on behalf of the plaintiff to establish that his ancestors were the old residents of the village and had any right to *Abadi* over the plots in question. It is in the aforesaid context that the trial court had rightly rejected the

claim of the plaintiff in respect of the trees. Insofar as the case of the plaintiff in respect of the house, *Saria* and *Gulaur* on plot No.47, 46, 72 is concerned, it was found that the defendant had taken a plea that the plaintiff was working with a *Halvai* and he was permitted to stay and was in permissive occupation granted by Suryapati. Even while entering into the witness-box, the aforesaid statement was not denied by the plaintiff nor the defendant was cross-examined on the aforesaid aspect.

17. It will also be relevant to notice that plot No.46 was the grove land. It could not be established by the plaintiff how he got the rights on the grove land, which is plot No.46 and is in the name of the defendant. Accordingly, the lower court correctly found that the plaintiff could not establish his concern over the *Saria* located on plot No.46, which was the grove land. The lower appellate court also re-appraised the evidence led by the plaintiff inasmuch as the plaintiff has tried to establish his case merely on the basis of the oral evidence. The two courts having taken note of the aforesaid and found that the possession of the plaintiff was permissive and the construction lying on plot No.47 and 72 was that of the defendants. The plaintiff accordingly, was granted a limited relief of injunction with respect to the house existing on plot No.47 and the *Saria* lying on plot No.72 only. The relief for injunction in respect of the *Saria* lying on plot No.46 was refused as it was the grove land of the defendant and the *Gulaur*, which was on plot No.47 along with trees on plot No.47 and 46 were also held to be that of the defendant. It is in this view of the matter that the lower appellate court allowed the cross-objections of the defendant and confined the case of the plaintiff to limited portion. As already noticed above, in order to lay a claim in terms of Section 9 of U.P.Z.A. & L.R. Act, 1950, it was important for the appellant to have shown that they were in possession of the property prior to the date of vesting and since then they have continued to utilize the property in their own rights and have perfected the rights including that the right exercised over Sahan land. However, the aforesaid necessary ingredients could not be established especially in light of the ingredients required and held in the decision of the Court in ***Gafoor and others Vs. Abdul Rashid and others as reported in 1980 Alld. L.J. 838.*** Hence, in the light of the documentary evidence and the evidence of the defendant's witnesses, which established his case, this Court is satisfied that the findings recorded by the lower appellate court is based on the proper appreciation of evidence. The findings cannot be said to be based on any inadmissible evidence or that it is a case of no evidence. The conclusion and inference drawn by the lower appellate court is in sound exercise of discretion vested with the lower appellate

court and it cannot be said that they are perverse in the sense that no reasonable person could arrive at such a finding.

18. In view of the aforesaid, this Court does not find that there is any merit in the appeal, which is, accordingly, dismissed. The judgement and decree dated 24.07.1978 passed by the Civil Judge, Faizabad in Civil Appeal No.45 of 1978 is affirmed. Costs are made easy.

19. Record of the trial court be returned forthwith.

Order Date :- 15.12.2023

Ashutosh Pandey