

Court No. - 19

Case :- SECOND APPEAL No. - 596 of 1988

Appellant :- Kashi Ram And Others

Respondent :- Kishori Lal And Anr.

Counsel for Appellant :- Avadhesh Kumar, Avadhesh Kumar

Counsel for Respondent :- Sushil Kumar Rastogi

Hon'ble Jaspreet Singh, J.

Heard Shri Avadhesh Kumar, learned counsel for the appellants and Shri Sushil Kumar Rastogi, learned counsel for the respondents.

The instant second appeal has been preferred under Section 100 CPC by the defendants being aggrieved against the judgment and decree passed by the first Additional District Judge, Kheri whereby by means of the judgment and decree dated 01.10.1988 dismissed the defendants' appeal and affirmed the findings of the trial Court recorded in the Suit No.58/1984, decided on 23.01.1988 by the Forth Additional Munsif, Lakhimpur Kheri.

The record further indicates that the appeal was not yet admitted.

The Court on 13.12.2023, after hearing the parties, had passed the following order, which read as under:-

"Heard learned counsel for the appellants and Shri S. K. Rastogi, learned counsel for the respondents.

The issue involved in the instant appeal which is fixed for admission is that during consolidation proceedings the disputed land bearing No.292 which is the new number allotted after consolidation was carved out for construction of the girls school. The suit was filed in representative capacity to restrain the defendants from encroaching upon the said land. The trial court dismissed the suit on the ground that since the suit was in representative capacity coupled with the fact that the possession of the defendant was prior to the date of institution of the suit. Accordingly, no case for injunction was made out. The lower appellate court allowed the appeal and decreed the suit. The defendants were directed to remove their chappar which has been shown with alphabet as mentioned in the judgment and decree.

The Court has called upon the Additional Chief Standing Counsel Shri J. P. Maurya to assist the Court and ascertain what is the actual current position; inasmuch as once the land being plot No.292 situate in village Moora Buzurg, Pargana Bhoor, District Kheri had been carved and left out

for a girls school, then the land would naturally vest with the Government. In the aforesaid circumstances, what is the current status whether any school has been constructed and whether the land is vacant or as alleged encroached by the appellants.

Put up this matter on 15th of December, 2023 peremptorily under the head "old cases shall not be adjourned." It shall be open for the learned counsel for the appellants also to seek instruction from his client regarding the status."

In furtherance of the said order, the Additional Chief Standing Counsel, Shri J.P. Maurya has provided a written instructions under the signatures of the District Magistrate, Lakhimpur Kheri indicating that the land in question bearing Gata No.292 measuring 0.91 acres situate in Gram Muda Burjug, Paragna Bhood, Tehsil Gola Gokarannath, District Kheri is recorded in the name of Kanya Pathshala and the land is lying vacant and does not have any encroachment.

The purpose of ascertaining the aforesaid report was for the simple reason that the plaintiffs-respondents had instituted a suit for permanent injunction and possession after removal of thatch on the ground that they are the villagers and they had substantial right in the well being of the village and the suit had been filed under Order 1 Rule 8 CPC, in a representative capacity, indicating that the land in question was reserved for the girl school and since the defendants who are appellants before this Court had attempted to encroach accordingly, the same had to be cleared. It is in the aforesaid backdrop that the suit filed was decreed by the trial Court so also by the lower Appellate Court.

In light of the subsequent development which have taken place and which has been confirmed by the learned Additional Chief Standing Counsel, the issue does not remain subjudice any more in pursuance of the judgment, the possession of the defendants have already been removed. The land stood recorded in the name of Girls School (Kanya Pathshala) and in view thereof no substantial question of law arises in the second appeal which is accordingly dismissed.

Order Date :- 15.12.2023

Rakesh/-