

Court No. - 8

Case :- SECOND APPEAL No. - 722 of 1988

Appellant :- Ganga Prasad And Others

Respondent :- Satya Dev And Others

Counsel for Appellant :- S.K.Mehrotra

Counsel for Respondent :- R.S. Tripathi

Hon'ble Ajay Bhanot,J.

Heard Shri Durgesh Kumar Pathak, learned counsel holding brief of Shri S.K. Mehrotra, learned counsel for the appellants.

The instant second appeal arises out of the judgement and decree dated 26.08.1988 in Civil Appeal No.384 of 1985 passed by the learned IIIrd Additional District Judge, Pratapgarh dismissing the appeal against the judgement and decree dated 10.09.1985 in Regular Suit No.281 of 1983 passed by the learned IInd Munsif Kunda dismissing the suit.

The second appeal has been filed by the plaintiffs/appellants.

The plaintiffs/appellants had brought a civil action against the defendants/respondents by instituting the suit for injunction which came to be registered as Regular Suit No.281 of 1983 passed by the learned IInd Munsif, Kunda.

The prayer in the suit made by the plaintiffs/appellants was that the defendants/respondents be enjoined from interfering in the passage of the plaintiffs/appellants and

restricting the water flowing through the disputed parcel of land.

The sole point which arose for determination before the learned appellate court was whether any rasta was passing through the disputed land which is depicted in red ink with letters ABCD in the plaint.

The learned appellate court non-suited the plaintiffs/appellants and affirmed the judgements of the learned trial court by finding that the existence of the rasta could not be established by the plaintiffs/appellants. The plaintiffs/appellants could not make a lawful claim for injunction on any legal footing. The learned appellate court relied on the findings of the commissioner report which was drawn up after a visit to the site and no infirmity in the same could be pointed out before the courts below. The learned appellate court also noticed the compromise between the parties over the Garhi near the disputed land. The learned appellate court reasoned that the Garhi land was in a very close proximity to the disputed rasta and was earlier a matter of civil dispute between the parties. The said civil dispute culminated in a compromise wherein the claims of the defendants/respondents over the Garhi land was accepted unconditionally by the plaintiffs/appellants. The learned appellate court rightly opined that had a rasta been an existence, the same would have been part of the said compromise.

Another matter of fact found by the learned appellate

court was that the change of the topography of the area over the long years had also needed to be factored in since that also came in the way of the plaintiffs/appellants inability to prove the existence of the rasta.

In this manner the learned appellate court affirmed the judgment rendered by the learned trial court dismissing the suit by the plaintiffs/appellants, and rejected the appeal filed by the plaintiffs/appellants.

The substantive questions of law which according to the plaintiffs/appellants arise in this case are in fact pure questions of fact upon which the learned courts below have returned unequivocal findings based on evidence in the record. A brief discussion though will suffice. No ambiguity or misreading of the advocate commissioner's report could be established before this Court during the course of this arguments. There was no failure on part of the learned appellant court in regard to determination of the length and width of the disputed land/rasta, since the existence of rasta could not be established as per the applicable standards of evidence. In any case as seen earlier those are questions of facts which have been duly adjudicated as per law by the learned courts below.

No substantial questions of law arise for consideration.

The second appeal is dismissed.

Order Date :- 16.8.2023/Ashish Tripathi