

Court No. - 19

Case :- SECOND APPEAL No. - 514 of 1982

Appellant :- Sita Ram

Respondent :- Bhadai And Others

Counsel for Appellant :- A.S.Chaudhary,P.V.Chaudhary

Counsel for Respondent :- C.S.C.,Rakesh Kumar Srivastava,Surya Kant

Hon'ble Jaspreet Singh,J.

1. Heard Shri P.V. Chaudhary, learned counsel for the appellant and Shri Rakesh Kumar Srivastava, learned counsel for the respondents.

2. This is the plaintiff's second appeal against the judgment of reversal passed by the lower Appellate Court dated 20.08.1982 in Civil Appeal No.546/1979 whereby lower Appellate Court allowed the defendant's appeal as a result the suit for injunction which was decreed by the trial Court vide its judgment and decree dated 24.10.1979 passed in R.S. No.183/1969 has been set aside, consequently, the suit came to be dismissed.

3. The instant second appeal was filed in the year 1982 and was admitted on 12.05.1982 but the substantial question of law was not formulated. Later, this Court after hearing the learned counsel for the parties by means of its order dated 10.08.2023 had formulated two questions of law which read as under:-

"(i) Whether the Lower Appellate Court was justified in reversing the decree of injunction granted by the Trial Court simplicitor holding that the plaintiff did not have a cause of action or the *locus-standi* to maintain the suit?

(ii) Whether the Lower Appellate Court has committed an error in

misconstruing the evidence especially the statements in the cross-examination of the plaintiff while returning its finding of reversing the decree of injunction?"

4. In order to appreciate the controversy involved in the instant appeal, certain brief facts giving rise to the instant appeal are being noticed first. The original sole plaintiff Sita Ram instituted a suit for permanent injunction and damages for wrongfully use and occupation against six defendants stating therein that the plaintiff was the old resident of Village Basantpur Hathas Pargana Minjhaura, Tehsil Akbarpur, District Faizabad. The plaintiff had stated that he was the owner in possession of the property shown in the site plan annexed and forming part of the plaint in suit shown by the letters A,B,C,D. He further pointed that the eastern side was 'hatha' of the plaintiff so also on the western side followed by a khaliyan. On the eastern side after the 'hatha', the house of Khota Ram has been shown who is the son of the plaintiff and on the southern side, the sehan followed by grove of the defendant on Plot No.121.

5. The disputed property has been shown by letters La, Ya, Ma, Ta, measuring 1 biswas and was on the southern side and claimed by the plaintiff to be part of his sehan. The defendant has got their house which is on the western side from the disputed property at a distance of 15 laththa. It is urged that the defendant was attempting to encroach upon the disputed property shown by letters La, Ya, Ma, Ta by opening a door on the eastern side so that they could gain access to the sehan of the plaintiff, accordingly, a suit for injunction was instituted.

6. The suit came to be contested by the defendant by filing their written

statement and it was stated that the disputed property as alleged by the plaintiff was part of Plot No.121 which was the grove of the defendant. It was further stated that it has always been in the use and occupation of the defendant and they are utilizing it as the sehan. In the aforesaid circumstances, the plaintiff had no right to claim injunction. Moreover, it was also stated that the suit of the plaintiff was not maintainable since the plaintiff had his sehan on the southern side of his house whereas the disputed property is on south-west from the plaintiff's house and as such could not be treated or be part of the plaintiff's sehan. It was further urged that in the aforesaid circumstances, the suit was liable to be dismissed.

7. After exchange of the pleadings, the trial Court framed eight issues, however, the relevant issues upon the suit was contested was **(i)** whether the property shown by letters La, Ya, Ma, Ta was part of Hatha of the plaintiff and was being utilized as the sehan by the plaintiff and was in his possession, **(ii)** whether the property shown by letters Ya, Ta, Ma, Ya had fallen within the boundary wall of the plaintiff and whether the defendant had demolished the same, **(iii)** whether the sehan darwaja of the defendant is towards the disputed property and the defendants are its owner in possession.

8. The parties led their evidence and trial Court after noticing the oral and documentary evidence found that the version of the plaintiff's witnesses were convincing then the defendant's witnesses and thus it decreed the suit by means of the judgment and decree dated 24.10.1979. The defendant carried the matter in appeal bearing No.546/1979 and the Third Additional District Judge by means of its judgment and decree dated 20.08.1982

allowed the appeal and set aside the judgment and decree of the trial Court, as a result, the suit was dismissed.

9. Being aggrieved, the plaintiff has approached this Court in second appeal on the two substantial questions of law as noticed above.

10. The submission of the learned counsel for the appellant is that the plaintiff had a large house as is evident from the site plan annexed and forming part of the plaint and his other sons were also residing in different parts of the property and the disputed property was part of the sehan which was being utilized for the beneficial use of the house and was utilized by the plaintiff and his family for the various purposes including for the tying their cattle, stock fodder and was also used for their sitting.

11. It is urged that this was clearly established by the evidence led by the plaintiff and its witnesses and the suit was decreed. It is urged that the lower Appellate Court committed an error and noticing that even though the house of the defendant was on the western side and there was a distance of 15 laththa as such the distance between the defendant's house and the disputed property was quite large and, therefore, it cannot be said that the defendant was utilizing the disputed party as part of their sehan.

12. It is further urged that since the defendant had their grove on the southern side, therefore, there has been a repeated attempt on the part of the defendant to encroach upon the sehan land of the plaintiff which is about 1 biswa.

13. In the aforesaid circumstances, the lower Appellate Court has failed to notice that the defendant could not claim the said land as their sehan and

it was against the principles as laid down by the Apex Court in **Maharaj Singh v. State of U.P., AIR 1976 SC 2602**. Accordingly, the judgment and decree passed by the lower Appellate Court is bad in the eyes of law and the judgment and decree be set aside while affirming the judgment and decree passed by the trial Court.

14. Per contra, Shri Rakesh Kumar Srivastava, learned counsel for the respondents submits that the case set up by the plaintiff is quite contrary to his own evidence. From the evidence led on behalf of the plaintiff and even their witnesses, who were cross-examined, it clearly indicated that the plaintiff had stated that there was a partition amongst the plaintiff and his sons, who were all staying separately and the plaintiff do not have any concern with the house of his sons and his children had no concern with the house of the plaintiff.

15. It is urged that in the aforesaid circumstances, the plaintiff could only make a submission that insofar as his house and sehan are concerned, he had no right to agitate on behalf of his sons especially when they were not even impleaded and in their absence, their grievances could not have been ventilated in a suit for injunction which is a relief in personam. This aspect has been completely ignored by the trial Court which has been noticed by the lower Appellate Court and for the cogent reasons the suit came to be dismissed and are findings of fact, hence, the instant appeal is not maintainable and as such the appeal deserves to be dismissed.

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

17. In light of the conflicting claim and noticing the question of law and the evidence available on record, it is clear that insofar as the plaintiff is concerned, the plaintiff has clearly stated that he is the owner in possession of the property and the disputed property is being utilized by him as his sehan. The site plan has been annexed and is part of the the plaintiff, which has been perused by this Court and thereafter if the evidence led by the plaintiff is perused, it would be found that the trial Court has not properly appreciated the depositions of the witnesses and merely by noticing few extracts picked out from the depositions of the witnesses and without discussing it properly, the trial Court has recorded that the version of the plaintiff's witnesses was more convincing than the defendant's witnesses and other reason given by the trial Court in its judgment is that the distance between the house of the defendant and the disputed premises is about 15 laththa which is quite large and in the aforesaid circumstances, it cannot be construed that the defendant would have a sehan at such a distance from his house and with the aforesaid findings, the trial Court decreed the suit by means of its judgment and decree dated 24.10.1979.

18. Insofar as the judgment of the trial Court is concerned, this Court finds that apparently the evidences have not been properly appreciated by the trial Court. It selectively made reference to the statements without going through the tenor and texture of the depositions. In contrast to the aforesaid, if the judgment of the lower Appellate Court is seen, it would indicate that it has noticed and proceeded on first principle as to whether in a suit for injunction, the plaintiff has been able to make out the case on the strength of his own pleadings and evidence and the findings that the

plaintiff could not establish his own case, it has set aside the findings of the trial Court and dismissed the suit.

19. If this aspect is examined by this Court, it is found that the lower Appellate Court has taken note of the site plan filed by the plaintiff wherein his particular house has been shown by letters A, B, C, D which is quite at a distance with the disputed property which has been shown by letters Ya, La, Ta, Ma. The plaintiff and his witnesses during their cross-examination stated that the plaintiff and his sons had partitioned the property 50 years ago and the house of the plaintiff is shown by letters A, B, C, D whereas the house of the sons of the plaintiff are different and his sons do not have any concern with the property of the plaintiff nor does the plaintiff have any concern with the property of his sons.

20. In this background and the statement made by the plaintiff and his witnesses what emerges is that the plaintiff as mentioned in the plaint can only agitate his right which is alleged to have been infringed by the defendant. This would necessarily mean that the plaintiff can claim rights only for his house shown by letters A, B, C, D and his sehan which is on southern side, apparently, there is no dispute that the defendant is not attempting to encroach any right over either on the house of the plaintiff or the sehan which is on the southern side of the sehan. It is also not disputed that the disputed property shown by letters Ya, La, Ta, Ma is at a distance from the plaintiff's house. Assuming the statements of the plaintiff and his witnesses is taken at its face value, it is only indicated that if at all the disputed property shown by letter La, Ya, Ta, Ma, it is to be part of the sehan of the sons of the plaintiff but in the site plan it has not been shown

nor there are any pleadings or evidence to the effect that the disputed property is being utilized by any sons of the plaintiff. Moreover, even if at all, it was being utilized by any of the sons of the plaintiff, who had separated and had separate rights then it was for him to have instituted a suit as the relief for injunction is against a person and is a relief claimed in personam and not in rem. From the site plan annexed with the plaint, it indicates that the house of the Khota Ram, which is on the eastern side from the house of the plaintiff which is stated and shown as the house of the son of the plaintiff. Insofar as the other sons or other house is concerned that has not been indicated nor explained either in the pleadings. All what can be derived from the evidence is the fact that the sons of the plaintiff are all living separately and in view thereof if at all there is any grievance that could be raised by the affected party which in any case is not the plaintiff whose rights as owner of the house and share is apparently not being disturbed by the defendant. This has been taken note of by the lower Appellate Court and on that basis it reversed the findings of the trial Court and held that the plaintiff did not have any locus to maintain the suit especially when he was not even found to have been in possession nor had any cause of action.

21. Considering the aforesaid facts and circumstances, this Court is convinced that the findings returned by the lower Appellate Court are absolutely justified and are borne out from the evidence on record. The reasoning given by the lower Appellate Court does not suffer from any palpable error which may persuade this Court to interfere in exercise of powers under Section 100 CPC. Accordingly, the appeal sans merit and is

dismissed. The judgment and decree dated 20.08.1982 passed by the lower Appellate Court in Civil Appeal No.546/1979 is affirmed.

22. Costs are made easy. In the facts and circumstances, there shall be no order as to costs. The record of the Court below shall be returned expeditiously.

Order Date :- 29.11.2023
Rakesh/-