

Court No. - 19

Case :- SECOND APPEAL No. - 186 of 1981

Appellant :- Sarjoo And Another

Respondent :- Ram Manorath And Another

Counsel for Appellant :- Anoop Kumar, Anoop Kumar

Counsel for Respondent :- Anil Kumar Pandey

Hon'ble Jaspreet Singh, J.

1. Heard Shri Anoop Kumar, learned counsel for the appellants and Shri Anil Kumar Pandey, learned counsel for the respondents.

2. This is the defendants' second appeal assailing the concurrent judgements and decree passed by the trial court dated 30th August, 1977 in Regular Suit No.223 of 1976, whereby the suit of the plaintiff-respondents was decreed for permanent injunction. The defendants carried the matter in first appeal under Section 96 of the CPC before the District Judge, Faizabad registered as Civil Appeal No.414 of 1977. The lower appellate court also dismissed the appeal, which prompted the appellants to file the instant second appeal.

3. The question of law came to be framed by this Court on 19.10.2023 to the effect:

"Whether the court below was justified in ignoring the defense of the appellant regarding the demarcation of the disputed plots and without getting the plots actually demarcated whether the suit could have been decreed."

4. In order to appreciate the contention of the respective parties, it will be appropriate to take a glance at the facts giving rise to the instant appeal.

5. The plaintiffs-respondents, namely, Ram Manorath Tiwari and Mulk Raj Tiwari had filed a suit for permanent injunction in the Court of Munsiff, District- Faizabad, which was registered as Regular Suit No.223 of 1976. The plaintiffs had taken a specific plea that the disputed property, which has been shown by letters A,B,C,D with the map annexed and forming part of the plaint in the suit was the *Sahan* land of the plaintiffs and the same was essential for the beneficial use of the house as well as for tying the domesticated animals and other cattle. It was further pleaded that the defendants have no right or interest

on the said land, but they were attempting to dispossess and create interference in the possession of the plaintiffs. Hence, they were required to be restrained by means of a decree of injunction from interfering in the peaceful possession of plaintiffs on the aforesaid property marked by letters A,B,C,D.

6. The suit came to be contested by the original defendants, namely, Bhagwat Prasad, Sarjoo and Gaya Prasad, who filed their joint written statement. While refuting the contention of the plaint, the primary defense taken by the defendants was that the parties to the suit had come down through the common ancestors Ram Subhawan. It was also pleaded that the disputed property in question fell on plot Nos.69 and 75, which was received by the ancestors of the defendants, namely, Sarvadin. It was also pleaded that a partition had taken place between the ancestors and the said property belonged to the defendants and in the aforesaid circumstances, the plaintiffs had no right rather by means of the said suit, an attempt was being made to grab the property of the defendants. Thus, the suit deserved dismissal.

7. Upon the exchange of the pleadings, the trial court framed four issues. However, in order to adjudicate the controversy, the issue Nos.1, 2 and 3 were important, upon which the parties went to trial. The first issue as framed by the trial court was whether the disputed land in question is the *Sahan* of the plaintiff's house and he has acquired rights. The other issue was whether the defendants are owner of the land in suit as alleged in the written statement and lastly whether the plaintiff is not in possession of land in suit and if so its effect.

8. Parties led both oral as well as documentary evidence and after considering the same, the trial court by means of its judgement and decree dated 30th August, 1977 decreed the suit in favour of the plaintiffs-respondents.

9. This was assailed by the defendants in first appeal under Section 96 CPC, which also came to be dismissed affirming the findings of the trial court by means of the judgement and decree dated 13.10.1980 and it is in the aforesaid backdrop that the appellants are before this Court in terms of Section 100 CPC.

10. Shri Anoop Kumar, learned counsel for the appellants while making his submissions has attacked the two concurrent judgements on the ground that once it was specifically pleaded that the plot Nos.69 and 75 had been received by the ancestors of the defendants in a partition, which took place sometime in the year 1894, accordingly, it was not open for the two courts to decree the suit without demarcating the said land and further

without getting a survey commission executed, it was not open for the two courts to have given any categorical finding in the light of the aforesaid dispute.

11. It is further urged that the courts have also not considered the issues regarding the possession and even in a suit for injunction primarily the possession had to be ascertained and without doing so the finding has been recorded, which is contrary to the settled principles and gives rise to the substantial questions of law as framed by the court. In the aforesaid background, the appeal deserves to be allowed.

12. Shri Anil Kumar Pandey, learned counsel appearing for the respondents has submitted that even though the defendants had raised a plea in the written statement, but seriously did not contest the same inasmuch as there were no pleadings to indicate that plot Nos.69 and 75 were located at which place nor it could be connected that they were the same plots, which as per defendants had been received by their ancestors in a partition relating to the year 1894. It is further pointed out that a survey commission was conducted in terms whereof the entire topographical situation has been plotted by the Commissioner and that would indicate that the disputed house was on the eastern side of the residence and house of the plaintiff, which was part of his *Sahan*, whereas insofar as the house and *Saria* of the defendants is seen that is at a far off distance and the same could not either be treated as *Saria* or *Sahan* of the defendants. Moreover, the defendants were unable to substantiate their pleas as raised in paragraph 11 and 12 as of their written statement. The possession of the plaintiffs was duly established, which was also confirmed by the defendants' witnesses and in the aforesaid circumstances, findings of the fact have been recorded by the two courts, which require no interference in exercise of powers under Section 100 CPC.

13. The Court has heard learned counsel for the parties and also perused the material on record. In light of the question of law, which has been framed, it needs to be seen as to whether the two courts had committed any error in failing to identify or rejecting the application moved by the defendants for getting a survey commission done.

14. Having perused the record, this Court finds that even though the defendants had raised a plea in its written statement that the said plot Nos.69 and 75 were received by the ancestors of the defendants in a suit for partition which took place sometime in the year 1894. The entire defense of the defendants revolves on the aforesaid plea. Thus, the burden of proving the same was also on the defendants. There is no iota of evidence on record to

indicate that plot Nos.69 and 75 were the same plots, which were the subject matter of the alleged partition of 1894. There is also no evidence on record to indicate that in the year 1894 when the alleged partition took place then at the relevant time the proceedings would be actually governed by the Oudh Rent Act, 1886 and in context with the said Act how the rights of the appellants were crystallized is also not brought on record. This is for the reasons that under the Oudh Rent Act, 1886, there was no law of inheritance insofar as the property was concerned. In absence of any clarity on the aforesaid including the fact that the alleged plots, which have been numbered in the written statement as 69 and 75 were the same plots, which had been the subject matter of the alleged partition in the year 1894 and how with the passage of time and with advent of the second settlement, third settlement and even on the date of promulgation of the U.P. Zamindari Abolition and Land Reforms Act, 1950 what plots were available and whether they bore the comparative same plots to come to any conclusion that they were the very same plots in question, which were claimed by the defendants as having been given in the exclusive share of the ancestors of the defendants. Without any specific pleadings or information, the attempt of the defendants to get the survey commission done was spiked by lower appellate court, which has also been appropriately done as in absence of any such clear pleadings. There was no purpose of getting the plots specifically demarcated as it was never pleaded nor brought on record as to where and how the said plots were connected with the issue in question.

15. In the aforesaid backdrop, the trial court as well as the lower appellate court has considered the commissioner's map, which clearly plotted the disputed property as well as the other adjoining area and it is also clear from the perusal thereof that the disputed property was on the eastern side of the house of the plaintiffs. Apparently that was for the beneficial use and occupation of the plaintiffs. The defendants' house and *Saria* is on the northern side and quite at a distance from the disputed premises and for the said reasons could not be utilized by the defendants as alleged in written statement. The issue of possession has also been considered by the two courts and findings have been returned including, noticing the evidence of DW-2 as well as Bhagwat, who is defendant No.1 in the suit.

16. In view of the aforesaid, this Court is of the clear opinion that once in a suit for injunction, the possession has been noticed and found to be vested with the plaintiffs and the pleas as raised by the defendants could not be proved, accordingly, there is no error, which has been committed by the two courts, which may persuade this Court to interfere in exercise of

powers under Section 100 CPC.

17. With the aforesaid, the second appeal is dismissed. The judgement and decree passed by the trial court as well as lower appellate court are affirmed. In the facts and circumstances, there shall be no order as to costs.

18. The record of the trial court be returned forthwith.

Order Date :- 29.11.2023

Ashutosh Pandey