

Court No. - 19

Case :- SECOND APPEAL No. - 19 of 1984

Appellant :- Keshav Prasad

Respondent :- Daya Ram And Others

Counsel for Appellant :- S.C.Srivastava,Akansha Dubey,Manish Mishra,P.L.Misra,Pradeep Kr. Singh Bisen,Pratima Srivastava,R.N.Singh,Varun Pratap Singh

Counsel for Respondent :- R.B. Singh

Hon'ble Jaspreet Singh,J.

1. Heard Shri Manish Mishra, learned counsel for the appellant. None has put in appearance on behalf of the respondents despite the name of the learned counsel for the respondents, namely, Shri R. B. Singh having been printed in the additional cause list.

2. The aforesaid appeal has been listed under the head 'These cases shall not be adjourned.'" Since this Court had started hearing the aforesaid appeal on 20.11.2023 where after it was listed on 04.12.2023 and also today. None has put in appearance as already noticed above, hence the appeal has been decided in absence of the respondents.

3. This is the defendant second appeal assailing the judgement and decree dated 31.03.1980 passed by Munsif Kunda, District Pratapgarh in Regular Suit No.283 of 1976 whereby the suit for permanent injunction of the plaintiff-respondents was decreed. The matter was carried in first appeal in Regular Civil Appeal No.120 of 1980 by the defendants which has also been dismissed by means of judgment and decree dated 30.09.1983. The appellant has knocked the doors of this Court on 12.01.1984 and the instant appeal was admitted on substantial questions of law as framed in the memo of appeal at serial no.18(1) to 18(4) which reads as under:-

(1) Whether on the facts and circumstances of the instant

dispute, can this matter be covered under Section 9 of the U.P.Z.A. & L.R. Act and is not the suit not maintainable?

(2) Whether Civil Courts are not precluded from giving relief to the plaintiffs when the suit is expressly barred under Section 49 of the U.P.C.H.Act ?

(3) Whether the entries made in the consolidation records can be challenged in a Civil Court?

(4) Whether a land which has been long used as a grove and possession of record tenure hold is proved, can be declared Abadi of the persons who are neither recorded nor were in possession?

4. In order to appreciate the controversy involved in the instant appeal, it will be relevant to take a glance at facts.

5. The original plaintiffs Daya Ram, Ram Sewak, Jagannath, Babu Lal, Rajendra Prasad alongwith Badri Prasad had instituted a suit again Gayadeen and Keshav seeking a decree of permanent injunction restraining the defendants from interfering in the peaceful use and occupation of the property in question including restraining the defendants from cutting the trees planted over the disputed land. The suit was registered as Regular Suit No.283 of 1979. It was specifically pleaded in the plaint that the disputed property was located on Plot No.625 situate in Gram Mohiddin Nagar, Tehsil Kunda, Pargana Bihar, District Pratapgarh. It was stated that the aforesaid land has been recorded as Abadi from the time of their forefathers. It was also urged that after the abolition of Zamindari, the right of the plaintiffs since the time of their forefathers stood mature in terms of Section 9 of the U.P.Zamindari Abolition and Land Reforms Act, 1950.

6. It was further stated that since the defendants did not have any right title or interest either in the disputed property or in the trees standing thereon, hence a decree of injunction was sought to restrain the defendants from the interfering in the peaceful use and occupation of the plaintiffs and further that the defendants be restrained from disturbing or cutting the trees standing thereon.

7. The suit came to be contested only by Keshav the defendant no.2 who filed his written statement and denied the plaint allegation. It was stated that the disputed property was part of Plot No.625/2 but it was never in shape of Abadi. It was set up by the defendant no.2 that Plot No.625/2, measuring one bigha was the grove land of the defendant no.1 whose name was duly recorded in the revenue records and he had possession thereof. The defendant no.1 by means of registered sale deed dated 20.09.1973 sold one bigha and ten biswa on the eastern side of the property to the defendant no.2 and he was also put in possession and for the aforesaid reason it was stated that the property belonged to the defendants and plaintiffs had no right, consequently the suit was liable to be dismissed.

8. Upon the exchange of the pleading, the trial court framed seven issues, however, the important issues upon which the suit was contested were:- **(i)** Whether the plaintiff is the owner of the trees standing on the disputed property and whether the land was the Abadi of the plaintiff; **(ii)** Whether the disputed property is the bhumidhari of the defendants as stated in the written statement; **(iii)** Whether the plaintiff is estopped from stating that the disputed land is Abadi.

9. The trial court after permitting the parties to lead evidence considered above three issues together and noticing the documentary evidence filed by the plaintiff marked as Exhibit-2, Exhibit-4, Exhibit-5 held that the land in question since the second settlement was recorded as Abadi including in the third settlement. There was nothing on record to indicate as to how the said land was recorded as bhumidhari of the defendant no.1 in 1359 fasli especially when the said land was recorded as category 6(2) and then as category 2 land in terms of the record maintained under the U.P. Land Revenue Act, 1901.

10. The trial court also noticed that there was no order passed by any competent Authority indicating how the Abadi land could be recorded as grove land especially when it was continuously recorded as Abadi since the time of second

settlement. The trial court also noticed that there was no order passed by any competent revenue authority declaring or treating the land in question as grove, hence the entries in the revenue records as filed by the defendant-appellant was found doubtful. The trial court also found that the plaintiffs were able to establish their case and by means of judgment and decree dated 31.03.1980 decreed the suit. The defendant preferred the regular civil appeal which also came to be dismissed by means of judgment and decree dated 13.09.1983.

11. Shri Manish Mishra, learned counsel for the appellant in order to support the questions of law has argued that the two courts have committed an error in failing to ignore the entries as recorded by the Consolidation Authorities. Once the orders have been passed by the Consolidation Authorities noticing the grove land, hence the same were not liable to be challenged in a civil suit and was hit by Section 49 of U.P.Consolidation of Holdings. Act, 1953.

12. Shri Mishra has further submitted that the findings recorded by the two courts that there was no Abadi or the house of the defendants is contrary to the report of the Commissioner which confirmed the house of the defendants amongst other persons of the village. It is also submitted that the trial court has treated the entries recorded in revenue records including certain documents prepared under the U.P.C.H. Act and Rules as forged and fictitious is also bad as there were no pleadings or evidence to the aforesaid effect. It is thus urged that the said land being recorded as grove land could not be treated as Abadi nor it could vest with the plaintiffs in terms of Section 9 of U.P. Z.A. & L.R. Act, 1950, consequently the approach of the two courts while decreeing the suit and dismissing the defendants first appeal is quite erroneous and as such as resulted in sheer miscarriage of justice.

13. The Court has considered the submissions of the learned counsel for the appellant and also perused the material on record.

14. This Court finds that the plaintiffs had set up a plea that the disputed property was part of Abadi wherein trees were standing and they belonged to the plaintiffs since the time of their forefathers. The said disputed land was said to be recorded as Abadi since the time of the second and third settlement. In such circumstances, in pursuance of Section 9 of the U.P.Z.A. & L.R. Act, 1950 the property vested with the plaintiffs and the defendants who had no right could not interfere nor he could have the right to cut any trees standing thereon.

15. This Court further finds that the contest laid by the defendants was based on the sale deed executed by Gayadeen in favour of the defendant no.2 Keshav. The defendant no.2 had set up his title on the basis of the sale deed of the year 1973. However, once the parties had exchanged the pleading and the issues have been framed. The plaintiff was required to show that right has vested with him in terms of Section 9 of the U.P. Z.A. & L.R. Act, 1950 and it was the burden of the defendant to discharge regarding the property as being grove property. It was the defendant who had raised the plea regarding the suit being barred by Section 49 of the U.P.C.H. Act, 1953 and it is in the aforesaid context if the material on record is examined, it would reveal that the plaintiffs have filed the revenue record indicating that the land in question was recorded as Abadi in the second settlement as well as in the third settlement. If an entry is continuing since the time of second settlement and carried forward in the third settlement and even on the spot it was shown and confirmed as an Abadi as also evident from the Advocate Commissioner's report. It would be the burden of the defendant no.2/the appellant to establish how the said property could be treated as grove land.

16. Specifically, the defendant no.1 who is the vendor of the defendant no.2 did not enter into the witness box to be lead any evidence as a witness nor he filed any written statement. The defendants had to establish the title of his vendor and apart from filing the original sale deed and certain documents relating to the Consolidation

Authorities without filing any supporting orders, mere entries will not suffice for the defendant no.2 to discharge his burden. It is only for the first time in 1359 fasli, the name of Gayadeen has been recorded as the grove land but there is no document/orders passed by any competent revenue Authority to substantiate as to how the name of Gayadeen was recorded for the first time in the Khatauni of 1359 fasli. It appears that it was merely a stray entry and could not confer title on Gayadeen which could be validly transferred to the defendant no.2 (the appellant herein).

17. It is also to be seen that the reference given by the trial court that the entries are based on forged document is only in context with the fact that the defendants did not file any orders of any competent court under which the mutation entries have been incorporated in the revenue records including in the U.P.C.H. Form. Therefore, it cannot be said that the observations made by the trial court regarding fraudulent entries are bad. It was the duty of the defendants to have not only proved the title of his vendor but also to have shown as to how Gayadeen acquired title which he could validly transfer.

18. Another interesting fact that is to be seen is in either situation whether the land was treated as Abadi or if it is treated as grove both type of lands are exempted from the consolidation operation. That being so, it was not open for the consolidation Authorities to pass any order or any entry which could have a binding effect. By virtue of which, it could be said that the suit filed by the plaintiff was barred by Section 49 of the U.P.C.H. Act, 1953. It was the duty of the defendants who have established that at the commencement of the consolidation operation, a statement is prepared under Form-2A of the U.P.C.H. Act, 1953 which shows the exact location of all lands in the village and what all is situate on the said land. During consolidation the land which is recorded as grove is also shown and is exempted from the provision of the U.P.C.H. Act, 1953. While preparing the statement of principal, if any land is required for Abadi, it is done so but no such evidence to the contrary has been led by the defendants to prove

that the said land was grove land where Gayadeen had any interest which could be transferred to the defendant no.2, (the appellant herein).

19. This aspect has been considered by the two courts and they have recorded a finding that the defendants could not establish his own case nor the title of his vendor and since the land in question was the Abadi where the plaintiff had his possession including the trees, the suit for injunction was decreed.

20. These are findings of fact which have been affirmed by the lower appellate court after considering the evidence on record and it cannot be said that the findings which have been recorded suffers from any perversity in the sense that the findings are based on any inadmissible evidence or is based on no evidence or from the assessment of evidence the conclusion which has been drawn suffers from a vice as to no prudent person could arrive at such conclusion.

21. Taking a holistic view of the matter, this Court is satisfied that the findings returned by the two courts are based on material evidence and the findings of the two courts cannot be said to be perverse.

22. In light of the aforesaid, this Court does not find that there is any merit in appeal which is accordingly dismissed. The judgment and decree passed by the trial court dated 31.03.1980 which has been affirmed in appeal by means of judgment and decree dated 13.09.1983 are affirmed. The second appeal is dismissed. Costs are made easy. The record of the trial court be returned forthwith.

Order Date :- 5.12.2023

ank