

Court No. - 19

Case :- SECOND APPEAL No. - 197 of 1989

Appellant :- Panna Lal And Others.

Respondent :- Smt.Sundari @ Chhoti

Counsel for Appellant :- D.N.Maurya,Laxmi Mohan Khare,Naresh Kumar Pathak,P.K.Khare,Sunil Kumar Mishra

Counsel for Respondent :- A.S.Chaudhary,Kuldeep Bajpai,Mahima Dwivedi,Nitin Kumar Shukla,P.V.Chaudhary,Prem Chandra Chauhan

Hon'ble Jaspreet Singh,J.

1. Heard Shri L.M. Khare, learned counsel for the appellants and Shri P.C. Chauhan, learned counsel for the respondent.

2. The instant second appeal has been preferred by the defendants assailing judgement and decree passed by the IInd Additional Munsif, Hardoi dated 20.05.1986, whereby suit for permanent injunction bearing No.291 of 1983 was partly allowed by the trial court. The defendants carried the matter in appeal before the lower appellate court, bearing Civil Appeal No.149 of 1987, wherein the plaintiff also filed his cross-objection in terms of Order 41 Rule 22 of CPC assailing the finding insofar as the dismissal of part of the suit is concerned. The lower appellate court by means of its judgement and decree dated 03.12.1988 passed by Additional District Judge, Hardoi, dismissed the appeal of the defendants and also dismissed the cross-objections. It is the defendants, who have approached this Court assailing the concurrent judgements under Section 100 CPC.

3. The record indicates that the matter is of the year 1989 and till date, it has not been admitted. The Court has heard Shri L.M. Khare, learned counsel for the appellants on admission.

4. The submission of the learned counsel for the appellants is that the suit of plaintiff was not maintainable for seeking a decree of permanent injunction specially when there was no pleading to the effect that the plaintiff was in possession of his property in question. It is also urged that neither the plaintiff could establish by leading cogent evidence about his possession or in respect of the disputed property, which needless to say was situated on the other side of the road from where the house of the plaintiff existed. In this view of the matter, it is urged that both the courts had committed a grave error in ignoring this aspect of the matter including noticing Commissioner's report and this gives rise to the substantial question of law.

5. Shri P.C. Chauhan, learned counsel for the plaintiff-respondents submits that a right at the inception in paragraph 2 of the plaint, the plaintiffs-respondents had clearly indicated that the property, which has been shown in the site-plan annexed and forming part of the plaint in suit belonged to the grand-father of the plaintiff, namely, Shri Manohar Lal, who was its owner in possession. It was further indicated that after the death of Manohar Lal, the said property vested with the father of the plaintiff, namely, Vishnu Narain and consequently upon his death, it is now the plaintiffs, who are owner in possession. It was further submitted by learned counsel for the plaintiff-respondent that it is absolutely incorrect to suggest that plaintiff did not disclose regarding his title and ownership including the possession and, therefore, the submission made by learned counsel for the appellants that the suit for permanent injunction was not maintainable without seeking a decree of possession is not worthy of any attention.

6. In the aforesaid circumstances, it is prayed that both the two courts have considered the submissions including the evidence available on record and have recorded a categorical finding in favour of the plaintiff being in possession and has been granted injunction for part of the land. These findings are pure finding of facts and are not likely to be assailed in exercise of jurisdiction under Section 100 CPC, unless they suffer from vice of perversity. In the aforesaid circumstances, it is submitted that the appeal is devoid of merit and is liable to be dismissed.

7. The Court has considered the aforesaid submissions and also perused the material on record.

8. However, in order to appreciate the respective contentions, it will be appropriate to notice the brief facts, which giving rise to the appeal. First, the plaintiff had instituted a suit for permanent injunction before Munsif, Hardoi seeking a decree of permanent injunction restraining the defendants from interfering in the peaceful possession and ownership of the plaintiff in respect of the property shown by letters A, B, C, D & E as shown in the site-plan annexed and forming part of the plaint in suit and also to restrain the defendants from demolishing or disturbing the wall in question.

9. The said suit came to be registered as Regular Suit No.291 of 1983 and it was contested by the defendants by filing a written statement on 18.11.1983 by denying the averments made in the plaint. It was stated in the written statement that after the death of Manohar Lal, his son Vishnu Narain had no possession or ownership over the property in question and consequently since

Vishnu Narain did not have the possession, so no possession could be available with the plaintiff-respondent. It was also stated that the property in question could not vest with the plaintiff as it was situated at a distance and intervening the same there was a road. It was also taken pleaded that there is no hostility between the plaintiff and the defendants. Consequently, the cause of action for filing a suit for injunction was also motivated. Hence, in the aforesaid circumstances, the plaint in suit deserves to be dismissed.

10. Upon exchange of the pleadings, the trial court framed five issues. However, the main issues upon which the suit came to be contested was issue No.1 and 3 to the effect as to whether the plaintiff is the owner in possession of the disputed property and the other was whether the suit was barred by Section 34 of the Specific Relief Act.

11. In support of the case of the plaintiff, they examined five witnesses including the Advocate Commissioner, whereas the defendants examined three witnesses. The trial court while dealing with the first issue recorded a clear finding that the plaintiff is the owner in possession of the property shown by letters A,B,D,G1,G. The possession of plaintiff was not found over the area marked by letters D,E,F,G1. It is coming to the aforesaid conclusion that the suit came to be partly decreed by means of judgement and decree dated 20.05.1986. The trial court also found that the suit was not barred by Section 34 of Specific Relief Act.

12. Being aggrieved against the said judgement and decree, the defendant preferred a regular Civil Appeal before the District Judge, Hardoi, which came to be registered as Civil Appeal No.149 of 1987. The lower appellate court also after hearing the parties has affirmed the findings returned by the trial court and consequently the regular civil appeal of defendants was dismissed so also the cross-objections filed by the plaintiff-respondent. It is only the defendants who have preferred the instant second appeal and the plaintiff did not file any cross-appeal or cross-objections as contemplated under Order 41 Rule 22 of CPC before this Court.

13. In this view of the matter, this Court is only considering the appeal preferred at the behest of defendants. Another issue that is to be seen simultaneously is the fact that the instant appeal was dismissed for want of prosecution. The application for recall was preferred only by one of the appellants, i.e., appellant No.2. However, the said order came to be recalled and the appeal was re-admitted to its original number in terms of the Order 41 Rule 19 CPC. Apart from the merit, which has been

urged by learned counsel for the appellants is that it is also to be seen whether the appeal, which was filed by three co-appellants, which was dismissed for want of prosecution could be restored and even if so can be heard on merits at the behest of one, while the appeal was not restored insofar as appellant Nos.1 and 3 is concerned. In this regard, it is thus urged by learned counsel for the appellants that since it is suit for permanent injunction, hence, even any one of the aggrieved parties, who were impleaded could seek the recall and re-admission of the appeal and once the said order has been passed, the appeal as a whole stands restored and the same may not affect the maintainability of the appeal.

14. Insofar as the issue regarding the maintainability of the appeal when the appeal was restored only at the behest of the one appellant is concerned is not being adjudicated by this Court for the reason that the appeal has been considered on its merit and is of the year 1989. In the aforesaid circumstances, avoiding the technicality, this Court has decided the appeal on merits.

15. Having considered the submissions made by learned counsel for respective parties, apparently the issue, which has been raised before this Court that the suit of the plaintiff could not be decreed without seeking a decree of a possession, the same suffers from the vice of misconception. The record would indicate that specific issue was framed by the trial court relating to the ownership and possession of the plaintiff in respect of the property in question. The trial court clearly noticed the evidence led by the plaintiff including the defendants' witnesses and also the Commissioner's report, which was submitted by Wasim Ahmad Siddiqui, Advocate Commissioner who was examined as PW-4. The Court also taking note of the deposition of plaintiff's and defendants' witnesses clearly recorded a finding that insofar as the possession is concerned, the same stood confirmed only in respect of A,B,D,G1,G. This finding is based on proper appreciation of the oral evidence as well as the documents filed by the respective parties. To say that since the land in question was situated on the opposite side and was intervened by a road from the residential portion will not affect inasmuch as the ownership and possession has to be seen in context with the pleadings of the parties specially when the plaintiff had already annexed the site-plan forming part of the plaint in the suit. The issue raised by the defendants regarding opening of the door also did not find favour and it is view thereof that the suit came to be partly decreed only in respect of the portion shown by letters A,B,D,G1,G, whereas the suit insofar as D,I,F,G1 is concerned, the same was dismissed. Needless to say that this dismissal was assailed in cross-

objection, which was also rejected and since the plaintiff has not escalated the matter or assailed before this Court in second appeal, such findings had already attained finality qua the plaintiff-respondent. It is now only the contention of the defendants-appellants relating to A,B,D,G1,G is concerned, has also been held in favour of the plaintiff by the trial court, which has been affirmed by the lower appellate court. This is a pure finding of fact. Learned counsel for the appellants from the deposition could not demonstrate any perversity that is to say that upon consideration of the evidence either the trial court or the lower appellate court has recorded a finding, which is not based on the evidence or it is based on inadmissible evidence or that the finding, which has been arrived at are such that no reasonable person could arrive at the same.

16. Having said that, this Court further finds that the said issue being a pure question of fact is necessarily binding on this Court, unless any perversity shown, which as noticed above, is not the case in the instant appeal.

17. For the aforesaid reasons as well as in light of the dictum of the Apex Court as laid down in the case of **Gurnam Singh (Dead) by Legal Representatives & others Vs. Lehna Singh (Dead) by Legal Representatives (2019) 7 SCC 641**, this Court does not find that there is any patent illegality or that there is any substantial question of law involved in the instant appeal.

18. Accordingly, the appeal is devoid of merits and is dismissed at the admission stage. In the facts and circumstances, there shall be no order as to costs. The record of the court below shall be returned forthwith.

Order Date :- 17.11.2023
Ashutosh Pandey