

Court No. - 19

Case :- SECOND APPEAL No. - 603 of 1989

Appellant :- Mohd.Jameel

Respondent :- Distt. Superintendent
U.P.Cooperative And Ors.

Counsel for Appellant :- K.P.Singh,Qazi
Mohd.Ahmad,Ravi Shanker Tewari,Sheo Pal Singh

Counsel for Respondent :-
A.K.Tewari,Mohd.Ataf Mansoor,Vinod Kumar Singh

Hon'ble Jaspreet Singh,J.

1. Heard Shri Ravi Shanker Tewari, learned counsel assisted by Shri Qazi Mohd. Ahmad, learned counsel for the appellant as well as Shri Vinod Kumar Singh, learned counsel and Shri Tushar Kant Mishra, learned counsel holding brief of Shri Ataf Mansoor, learned counsel for the respondent no.3 has argued vehemently.

2. The instant second appeal has been preferred by the plaintiff assailing the judgment and decree dated 06.10.1988 passed by the 3rd Additional District Judge, Pratapgarh in Civil Appeal No.355 of 1984 which arises out of the judgment and decree passed by the 3rd Additional Munsif Pratapgarh in suit No.326 of 1976 whereby the suit was dismissed but the appeal was partly allowed.

3. The record indicates that the aforesaid second appeal was admitted on substantial question of law which reads as under:-

Whether the two courts were justified in refusing the relief of possession once they recorded a finding concurrently that the appellant was the bhumidhar of some part of the land which was the subject matter of the suit?

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

5. Initially, Mohammad Zahoor the original plaintiff filed a suit for possession against the defendants. It was pleaded that the State

Government for the purposes of setting up a bone digester for purposes of bone mill (manure made from bone) had taken some part of the land a registered agreement to sell dated 13.08.1959. The plaintiff had his plot adjacent thereto and the defendants encroached upon the land belonging to the plaintiff and it is in this view that the plaintiff instituted a suit specifically stating that the land of the plaintiff is being encroached upon by the defendants. The suit was instituted as Regular Suit No.326 of 1978.

6. The suit came to be contested by the defendants who pleaded that the plaintiff did not have any right over the plot No.1222 and the alleged agreement to sell was void. It was also stated that the suit has not been filed within the time and the plaintiff had no right over the land in question and the suit deserves dismissal.

7. Upon the exchange of the pleading, the trial court framed five issues. However, for the purposes of the instant adjudication of the appeal issue no.1 whether the plaintiff is the bhumidhar of the disputed land in question and is in possession was framed and the other was whether the defendant no.2 is the owner of the disputed property as stated in paragraph-25 of the written statement.

8. On behalf of the plaintiff Mohammad Zahoor was examined as P.W.1, Jagdish Narain was examined as P.W.2 whereas on behalf of the defendant Moti Lal Srivastava was examined as D.W.1. The trial court while dealing with the issue regarding the bhumidhari rights of the plaintiff found that the plaintiff was not the bhumidhar of the entire land and it was not clear as to of which part, the plaintiff was bhumidhar as the land could not be located. However, while concluding it held that the defendant no.1 is the owner of some part of the disputed property but not of the whole and since the land could not be appropriately located, the suit came to be dismissed on 03.09.1984 by the 7th Additional Munsif, Pratapgarh.

9. This matter was taken up in appeal registered as Civil Appeal No.355 of 1984 which was heard by

the 3rd Additional District Judge, Pratapgarh, who after considering the material available on record found that the disputed land was not uncertain. However, it found that since there is no question of giving back the land or the possession to the plaintiff but since he is the owner of the same, accordingly, the lower appellate court granted compensation amounting to Rs.8000/- to the plaintiff while dismissing his relief of possession by means of judgment and decree dated 06.10.1988.

10. In the aforesaid backdrop, learned counsel for the appellant Shri R. S. Tiwari has submitted that though there was a clear finding that the disputed property in question belonged to the plaintiff and since the plaintiff had sought relief of possession which is in context with Section 5 of the Specific Relief Act, 1963. There was no way, the relief of possession could have been refused.

11. It is further urged that there was no material on record nor any prayer before the Court by which the lower appellate court could grant a sum of Rs.8000/- as compensation for the land in occupation of the defendants. It is further urged that the land in question was valuable and there is no material to justify the quantum and in the aforesaid circumstances, the two courts have erred in refusing the relief of possession.

12. Learned counsel for the respondent Shri Vinok Kumar Singh and learned counsel Shri Tusar Kant Mishra, holding brief of Shri Altaf Mansoor for the respondent no.3 has vehemently urged that the court below after considering the material on record has recorded finding of fact which is not liable to be disturbed in second appeal. The issue regarding damages is within the domain of the court and in case such as the present one where with the passage of time construction and development had taken place the lower appellate court has molded the relief and has awarded compensation which cannot be said to be bad in the eyes of law and for the aforesaid purposes the judgment and decree under challenge does not require any interference.

13. Having heard the learned counsel for the

parties and from the perusal of the material on record, it would be seen that Mohammad Zahoor had examined himself and deposed that it was the State Authority who had entered into an agreement to sell for the purposes of setting up a bone digester. The plaintiff was treated as the Sirdar in Consolidation proceedings and after having deposited twenty times of the land revenue, he was declared as the bhumidhar. The trial court while considering the evidence of the respective parties clearly noticed that the evidence led on behalf of the plaintiff was much more reliable. However, the trial court was of the opinion that it could not be ascertained that to what extent the plaintiff was the bhumidhar and he did not even get the land located through a Survey Commission, hence it was held that the plaintiff as well as the defendant no.2 were the bhumidhar but since the area was not demarcated, accordingly it dismissed the suit.

14. The lower appellate court also considered the evidence and found that the land of the plaintiff was clearly demarcated and since the building has been raised by the defendant and there is already a cold storage in front of the open land which is accessible to the consumers, hence in equity it refused the relief of possession and compensated the plaintiff by awarding a sum of Rs.8000/-.

15. This Court finds that the suit of the plaintiff was for possession, a relief of this nature can be claimed by a party in terms of Section 5 of the Specific Relief Act. Both the two courts concurrently found that the plaintiff was the bhumidhar of the disputed land in question. Even if at all, certain buildings have been constructed and certain other third party had an interest of accessing the said building but nevertheless the fact still remain that the property over which the said building has been constructed belonged to the plaintiff. In the aforesaid circumstances where a substantive relief of possession has been claimed based on ownership which was proved. It was not open for the Court who have refused the relief of possession or to mould it by granting compensation.

16. Another issue which can be noticed is the fact that once the Court came to the conclusion that on the land of the plaintiff constructions have been raised by the defendant, accordingly even in order to ascertain the compensation that ought to have been some material should have been considered which was available on record or some reasoning to arrive at the figure of Rs.8000/-. From the perusal of the judgment passed by the lower appellate court, there is no discussions nor any basis as to how the figure of Rs.8000/- has been arrived at by the lower appellate court especially no reasons have been assigned and it also does not indicate that for how much area the sum of Rs.8000/- has been granted.

17. Once the lower appellate court came to the conclusion that the land of the plaintiff was under the occupation of the defendant either it could have left open for the party to negotiate or some cogent methodology could have been adopted for grant of appropriate compensation but that is not being done. There is no reason accorded by the lower appellate court in order to arrive at a finding regarding grant of compensation. In the aforesaid facts and circumstances where concurrently it has been recorded that the property belonged to the plaintiff which is in the occupation of the defendant. The relief of the possession could not have been refused.

18. Accordingly, this Court is satisfied that the judgment and decree passed by the two courts are not in accordance with law, hence the second appeal is allowed. The judgment and decree passed by the lower appellate court dated 06.10.1988 passed in Civil Appeal No.355 of 1984 and judgment and decree dated 03.09.1984 passed in Suit No.326 of 1979 is set aside. The suit of the plaintiff shall stand decreed. Costs are made easy. The record of the trial court be returned forthwith.

Order Date :- 21.11.2023

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