

Court No. - 19

Case :- SECOND APPEAL No. - 181 of 2023

Appellant :- Mohd. Shafi

Respondent :- Abdul Hameed Khan And Others

Counsel for Appellant :- Vinay Misra,Mukesh Dhar Dwivedi

Counsel for Respondent :- Ashish Kumar Singh

Hon'ble Jaspreet Singh,J.

Heard learned counsel for the appellant.

The instant appeal has been preferred under Section 100 C.P.C. assailing the concurrent judgment and decree passed in Regular Suit No. 304 of 2001 dated 06th May, 2014 whereby the suit of the plaintiff-appellant seeking a decree of permanent injunction was dismissed. The matter was carried in a First Appeal bearing No. 10 of 2022 before the District Judge which was heard and decided by the Additional District & Sessions Judge/F.T.C. IIIrd Raebareli who also affirmed the findings of the Trial Court by means of its judgment and decree dated 29.08.2023 and being aggrieved the plaintiff has approached this Court in the instant second appeal.

The submission of learned counsel for the appellant is that the plaintiff had instituted a suit for permanent injunction specifically stating that the property in dispute had been given to the plaintiff-appellant by the late father of the respondent nos. 1 to 4. The plaintiff had already made a thatched hut and was residing therein for a number of years and even after the death of the father of the respondent nos. 1 to 4, his son had executed an agreement, though, the same was not registered.

It is further urged that in so far as the possession of the plaintiff is concerned that was settled and for the said reason, the plaintiff could not have been dispossessed without due process of law and consequently the suit was filed for injunction which has erroneously been dismissed by the Trial Court.

It is further urged that the defendants had raised a plea that the disputed property in question was part of plot No. 1225 which was purchased by the defendant nos. 5 and 6 from the respondent no. 4 by means of a registered sale deed dated 01.03.2000. Since the defendants have raised the plea that they were the owners in possession of the property by virtue of the sale deed, it was the burden on the defendants first to establish

their title as well as the fact that the disputed property over which the plaintiff was in possession was part of Plot No. 1225 and having failed to do so the Trial Court committed an error nor any commission was executed to survey the said plot in order to ascertain where it was situate.

It is also urged that in so far as the commission report is concerned, it established the possession of the plaintiff and under these circumstances in dismissing the suit and the Lower Appellate Court also echoed the same sentiment which is not based on proper appreciation of law as well as the fact which has resulted in sheer miscarriage of justice.

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

Apparently, from the perusal of the plaint filed by the appellants which was registered as Regular Suit No. 304 of 2001, it was initially stated that the father of the original defendants nos. 1 to 4 had given land to the plaintiff measuring 35x80 feet near a well in the year 1970. The plaintiff in paragraph 3 of the plaint had also given the boundaries of the said land which reads as under:-

"उत्तर-भूमि वादी, दक्षिण-भूमि वादी, पूरब भूमि वादी एवं पश्चिम पोखता सड़क रायबरेली फैजाबाद रोड स्थित है।"

It was stated that the plaintiff has been residing in the said premises and since the defendants were attempting to illegally dispossess the plaintiff, accordingly, the suit was filed.

It is urged that the original defendant nos. 1 to 4 did not contest the proceedings and the matter proceeded ex-parte, however, later the defendants no. 5 and 6 also attempted to disturb the possession of the plaintiff which compelled the plaintiff to implead the defendant nos. 5 and 6 who are the respondents herein as such. The respondent nos. 5 and 6 filed their written statement and specifically stated that the disputed property was part of Plot No. 1225 and that the defendant no. 4 had executed a sale deed in their favour dated 01st March, 2000 and in the aforesaid circumstances where the defendants were the true owner of the said property, the plaintiff did not have a right to seek an injunction. In the aforesaid circumstances, the suit was contested and the Trial Court upon exchange of pleadings framed six issues.

The Trial Court also noticed that the plaintiff did not file any documentary evidence rather the documents in shape of sale deed dated 01.03.2000, the Khatauni for the land bearing No.

1225 for fasli year 1418 to 1423 and the copy of the Khasra for Fasli year 1410 were all filed by the contesting defendants-respondents nos. 5 and 6.

Primarily, the suit was contested on the issue whether the suit was barred in terms of Section 331 of the U.P.Z.A. & L.R. Act, 1950 and whether the plaintiff is in possession as owner of the land as demarcated and was entitled to a decree of injunction.

Considering the evidence and the material on record, the Trial Court by means of judgment and decree dated 06.05.2014 dismissed the suit holding that the plaintiff was not able to establish its case. This was assailed in Regular Civil Appeal has also been dismissed on 29.08.2023.

As far as the issue of ownership/rights over the land is concerned, there was merely an averment in the plaint that the plaintiff is in possession of the disputed property which has been demarcated and as indicated herein above the boundaries which has been mentioned. The plaintiff did not give any plot number nor where the property is situate and the manner in which the property has been described, it was so vague that even if at all the survey was sent, it could still not locate the property in question.

Moreover, since the defendants had taken a plea that they were the owner having purchased the property from its erstwhile owner which is not disputed, the fact still remains that the plaintiff did not make any attempt to get the property located nor he denied the fact that the property was not part of Plot No. 1225.

On the contrary, the evidence of the plaintiff indicates that they made a statement that the defendant nos. 1 to 4 had executed an unregistered agreement regarding the said property and it was also admitted that no consideration was paid for the same. It is in the aforesaid backdrop that the Trial Court recorded a finding that since the alleged agreement has not been brought on record, apart from the fact that any agreement without consideration and that too relating to an immovable property being unregistered could not convey any rights to the plaintiff and even if at all the same is taken to be a gift then the same would be governed in terms of Section 123 of the Transfer of Property Act. Either way the said document is not available on record and for the said reason, neither the right nor the possession could be established and therefore the Trial Court dismissed the suit. The same has been considered by the Lower Appellate Court.

In the aforesaid circumstances, this Court does not find that there is any substantial question of law involved in the instant second appeal rather it was concluded by findings of fact which this Court is loath to intervene in exercise of jurisdiction under Section 100 C.P.C. For the aforesaid reasons, the second appeal is ***dismissed*** at the admission stage itself. Costs are made easy.

Order Date :- 4.12.2023

Asheesh