

Court No. - 19

Case :- SECOND APPEAL No. - 185 of 2023

Appellant :- Pradeep Kumar Srivastava

Respondent :- Gram Panchayat Chandpur Harbansh Thru. Its Village Pradhan And 4 Others

Counsel for Appellant :- Arun Kumar Pandey, I.M. Pandey Ist

Hon'ble Jaspreet Singh, J.

1. Heard Shri Arun Kumar Pandey, learned counsel for the appellant, who has filed the instant second appeal under Section 100 CPC assailing the judgment and decree dated 30.07.2022 passed in Original Suit No.115/2011 whereby the suit of the plaintiff for injunction has been dismissed. The matter was escalated before the lower Appellate Court under Section 96 CPC and the lower Appellate Court by means of its judgment and decree dated 06.09.2023 passed in Civil Appeal No.26/2022 has confirmed the findings of the trial Court while dismissing the appeal too and being aggrieved against the concurrent judgment and decree, the instant second appeal has been preferred.
2. The submission of the learned counsel for the plaintiff-appellant is that the property in dispute earlier was bearing Plot No.21 which after the conclusion of Consolidation Operations in the village in question was given a new Plot No.27. The plaintiff is the owner in possession of the property in dispute which was initially recorded in the name of the father of the respondent No.5.
3. It is further urged that the father of the respondent No.5 had given the said property to the respondent No.4, who in turn had borrowed Rs.4,000/- from the plaintiff, however, he could not return the money, hence, he transferred his title in favour of the plaintiff-appellant.
4. It is on the basis thereof it was urged that the plaintiff is the owner. Apart from the fact that since he is in possession, a relief was sought against

the respondents that they be restrained from dispossessing the plaintiff-appellant except in due course of law.

5. It is further urged that though the respondents were duly served, however, they failed to contest the matter and despite the plaintiff having filed his ex-parte evidence which was uncontroverted, the trial Court committed an error in refusing to consider the evidence in correct perspective and dismissed the suit by means of its judgment and decree dated 30.07.2022.

6. Learned counsel for the appellant further submitted that even the lower Appellate Court echoed the same sentiment while dismissing the appeal and failed to notice the settled legal principles that a person in a settled possession cannot be dispossessed without due process of law and in support of his submission, he has relied upon a decision of the Apex Court in **A. Subraminian and other v. R. Pannerselvam, 2021 (39) LCD 567.**

7. It is urged that once the aforesaid settled possession was proved, both the Courts have committed an error in failing to consider this aspect of the matter and the plaintiff-appellant was entitled to a decree of injunction. Accordingly, the appeal deserves to be admitted.

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

9. Apparently, what transpires from the record is the fact that the plaintiff has claimed rights over the property shown by letters A, B, C and D and it is alleged that the respondent No.4 had taken a sum of Rs.4,000/- from the plaintiff, which he failed to return and in lieu thereof he had relinquished all his rights in the property in favour of the plaintiff, who is in its settled possession.

10. Considering this aspect of the matter, the trial Court clearly noticed that in light of the provisions contained in Section 54 of the Transfer of Property Act which is duly amended by the State Amendment in the State of U.P. and in view thereof no document of transfer relating to an immovable property above the value of Rs.100/- can be validly executed without registration.

11. It is admitted to the plaintiff that there is no written document or registered document in his favour confirming any title in favour of the plaintiff.

12. The other ground upon which the trial Court did not find favour with the evidence as well as the contentions of the plaintiff is the fact that the land in question is recorded in the name of State of U.P.

13. A specific query was put to the learned counsel for the appellant that under what circumstances the State was recorded as the owner of the property inasmuch as the contention of the learned counsel for the appellant is that the land was partly abadi and partly grove land.

14. In response, the plaintiff submitted that the said land in question is the subject matter of acquisition which was made by the State for the purposes of establishing an Airport.

15. Be that as it may, the trial Court noticed that since the land in question was recorded in the name of the State, apparently neither the title or the possession of the plaintiff could be established. Apart from that once the land was acquired, the possession of the plaintiff also does not appear to be correct inasmuch as no injunction order can be granted against the true owner i.e. the State.

16. The contention of the plaintiff that the name of the State under the

revenue records have incorrectly been entered, but the fact remains that there is no effort made by the appellant to get the said entry deleted or corrected. In absence of any such evidence and the land continues to be recorded in the name of the State, this Court finds that there is no error committed by the trial Court in refusing the relief of injunction especially where the land was acquired as stated by the learned counsel for the appellant and in light thereof a suit for injunction would not be maintainable. The same issues have been considered by the lower Appellate Court which has affirmed the findings of the trial Court and are essentially questions of fact and this Court does not find that there is any substantial question of law involved in the instant second appeal especially when the plaintiff has failed to establish his title as well as possession.

17. The reference to the decision of the Apex Court in **A. Subraminian** (supra) though the proposition is not disputed, but the fact remains that the facts of the said case are entirely different to the facts of the present case where the plaintiff has been unable to establish his title and possession.

18. In view of the aforesaid, the second appeal is sans merits and it is accordingly **dismissed at the admission stage**.

19. Cost are made easy.

Order Date :- 12.12.2023

Rakesh/-