

Court No. - 21

Case :- SECOND APPEAL No. - 112 of 2024

Appellant :- Hari Krishna And Others

Respondent :- Johra Bano And Others

Counsel for Appellant :- Hari Om Rana

Hon'ble Jaspreet Singh,J.

1. Heard Sri Hari Om Rana, learned counsel for the appellants.
2. This Court had heard the learned counsel for the appellants on the last date on admission and upon his request, it was placed today for further hearing.
3. The appellants assails the judgment and decree passed in a suit filed by the plaintiff seeking a decree of injunction registered as Regular Suit No. 189 of 1988.
4. The Trial Court after contest dismissed the suit with finding that the plaintiff could not establish his title nor could indicate that he had any right over the property in question which is stated to be in the possession of the defendants.
5. The judgment and decree passed by the Trial Court dated 27.05.1993 was assailed by filing a regular Civil Appeal under Section 96 C.P.C. bearing No. 34 of 1993 which thereafter was re-numbered as 51 of 2022.
6. The District Appellate Court after hearing the parties by means of judgment and decree dated 30th March, 2024 dismissed the appeal affirming the order passed by the Trial Court, thus, faced with concurrent findings, the instant second appeal has been preferred.
7. The learned counsel for the appellant for the purposes of admission has proposed three substantial questions of law which as per the learned counsel are involved in the instant appeal.
8. It is primarily submitted that the suit of the plaintiff could not be dismissed merely because the boundaries mentioned in the sale deed which is the source of title of the plaintiff was different to the boundaries which was mentioned in the sale deed in favour of the predecessors-in-interest of the appellant.

9. It is also urged that with the passage of time, the boundaries had differed and since it was admitted that one boundary indicating a road which was on the eastern side was common and thus any discrepancy in so far as the three other boundaries are concerned, the same was liable to be ignored and the suit of the plaintiff could not have been dismissed on this ground alone.

10. The second question as proposed by the learned counsel for the appellant is that the defendants had not disputed the execution of the sale deed in favour of the plaintiff and once there was no challenge to the sale deed of the plaintiff, his title automatically stood confirmed and not in dispute and thus in this regard, the findings recorded by the two courts are erroneous.

11. It is also submitted that it is not the case that the predecessors-in-interest of the plaintiff namely Mohd. Ismail had any other property than the one which was sold by him and thus this also corroborates the fact that the property which was purchased by Mohd. Ismail from his predecessors-in-interest was the one which was conveyed to the plaintiff, hence, with this the issue of boundaries as well as the title was established and the findings to the contrary recorded by the two courts are perverse.

12. It has further been submitted by proposing the next question of law involved in the instant appeal that there was no issue framed regarding the title of the plaintiff since it was not in dispute and yet in absence of any specific issue, the findings have been returned against the plaintiff which is not in sound exercise of jurisdiction both by the Trial Court as well as the District Appellate Court.

13. A feeble submission has also been made that certain questions were asked by the Trial Court which were answered by the parties, however, that was not made the subject matter of any of its decision nor it was recorded in the order sheet and thus in view of the aforesaid, the two judgments as they have been assailed suffer from the substantial errors of law leading to perversity, consequently, the appeal deserves to be admitted.

14. In order to appreciate the aforesaid submissions, it will be appropriate to take a glance at the facts giving rise to the instant appeal.

15. The plaintiff who is the appellant before this Court had filed a suit seeking a decree of mandatory injunction indicating that he had purchased a property comprising of Plot No. 1123

measuring 3 Biswansi by means of a sale deed dated 07.11.1985.

16. It was further stated that the plaintiff had let out some part of the said property to the defendants on a license where upon the defendants had put up kiosk from where they were selling petty merchandise.

17. Since the plaintiff required the premises for his own use, accordingly, he had filed a suit for mandatory injunction requiring the defendants to vacate the property and handover the peaceful and vacant possession to the appellant.

18. The defendants contested the suit and further stated that in so far as the present plaintiff is concerned, he is neither the owner nor in possession of the property in question, the said property over which the defendants were in possession have been part of an Abadi since the time of their fore-fathers.

19. It was further urged in the written statements that the defendants are on the property in their own rights and they have never taken the property either on any license or lease and moreover since the plaintiff did not have the title to the property, he could not have maintained the suit for mandatory injunction seeking possession/eviction of the defendants.

20. Upon the exchange of pleadings, the Trial Court framed five issues, however, the issue nos. (i) (ii) and (iii) were relevant for the controversy in question i.e. (i) whether the plaintiff is the owner in possession of the property in question; (ii) whether the defendants were the licensee of the plaintiff; (iii) Whether the defendants were in possession of the property in their own rights.

21. After the parties were permitted to lead evidence both oral and documentary, the Trial Court considered the material on record and returned a finding that the plaintiff could not establish his own right over the property on the basis of sale deed filed by him as out of the four boundaries mentioned in the sale deed, three boundaries did not match with the sale deed of his predecessor Mohd. Ismail.

22. The Trial Court also went ahead and noticed that in the sale deed of Mohd. Ismail, who had purchased the property from his predecessors namely Mahmood Ahmad, were different. Thus, since the plaintiff could not establish his own title or the rights over the property, hence, the first issue came to be decided against the plaintiff.

23. In so far as the second and third issue was concerned, the Trial Court recorded that the defendants were in possession over some part of the property which belonged to the Gaon Sabha. There were certain proceedings which were initiated by the Gaon Sabha against the defendants and thus in this context, it was further recorded that in any case the property could not be that of the plaintiff nor the possession was that of the defendant as a licensee of the plaintiff.

24. The Trial Court also recorded that no evidence could be brought on record to indicate as to when, how and what are the terms of the license upon which the plaintiff is said to have given the area to the defendant. In light of the aforesaid findings, the suit came to be dismissed by means of judgment and decree dated 27.05.1993.

25. The plaintiff being aggrieved preferred a Regular Civil Appeal under Section 96 C.P.C. which has also met the same fate by means of judgment and decree dated 30.03.2024.

26. It is in the aforesaid backdrop if the submissions of the learned counsel for the appellant are tested to ascertain substantial question of law, it would be found that in so far as the question of title is concerned that is pure question of fact.

27. The Trial Court as well as the District Appellate Court have noticed that the sale deed executed by the first owner namely Mahmood Ahmad who sold the property to Mohd. Ismail had different boundaries, however, the property which was sold by Mohd. Ismail to the plaintiff had different boundaries. Merely, because one boundary was found common, it would not indicate that the three remaining boundaries were the same and it matched with the boundaries as mentioned in the sale deed of their predecessor-in-interest.

28. Even if the submissions of the learned counsel for the appellant is countenanced, it would still be relevant to notice that over a period of time, if the boundaries had changed, this too was the burden of the plaintiff to have established as to how and over which period of time, the boundaries have substantially changed but there is no evidence to this effect.

29. The record would also reveal that before the two courts, there was no substantial pleadings or evidence to indicate as to when, how and at what terms the license was said to be given to the defendants.

30. In juxtaposition to the aforesaid, the material on record indicates that the area upon which the defendants were in

possession was land of the Gaon Sabha. The Gaon Sabha had initiated the proceedings for eviction against the defendants which also corroborates the finding that the land could not belong to the plaintiff over which the defendant was claiming their possession.

31. Even if at all, the defendants were on part of some land which as per the plaintiff was not the land of the Gaon Sabha but at the same time, the absence of any proper demarcation or proceedings or evidence brought on record to indicate that to what extent and how much area was actually licensed to the defendant could be recorded and if any finding to the contrary would have been given then it would have been against the weight of the material.

32. The further submission that no such issue was framed regarding title of the plaintiffs also pales into insignificance because the parties in the past instance knew the case they had to meet. Moreover, the first issue framed by the Trial Court covered the matter but nevertheless if a party felt otherwise then could have made an effort to get an additional issue framed but during the entire trial no effort was made by the plaintiff at any stage either to move an application under Order 14 Rule 5 C.P.C. for framing of the additional issue nor any such effort was made before the District Appellate Authority.

33. Considering the aforesaid, this Court is satisfied that the impugned judgments dated 27.05.1993 passed by Upper Civil Judge, District Barabanki in Suit No. 189 of 1988 (Ram Khelavan Vs. Meraj Khan and 5 Others) as well as judgment and decree dated 30.03.2024 passed by Additional District Judge, Court No. 9, Barabamki in Regular Civil Appeal No. 0034 of 1993 (new regular Civil Appeal No. 0051 of 2022) are based on proper appreciation of evidence on record and are concluded by concurrent findings of fact which this Court is loathed to intervene in exercise of powers under Section 100 C.P.C., consequently, the appeal is devoid of merits and is ***dismissed*** at the admission stage itself. Costs are made easy.

Order Date :- 27.5.2024

Asheesh