

Court No. - 4

Case :- SECOND APPEAL No. - 195 of 2011

Appellant :- Gafoor Ali And Ors.

Respondent :- Israr Ahmad And Another

Counsel for Appellant :- Vimal Kishore Verma

Counsel for Respondent :- Shiva Shankar Lal Awasthi, Vinod Kumar

Hon'ble Rajnish Kumar,J.

1. Heard Shri Vimal Kishore Verma, learned counsel for the appellants and Shri Bajhul Qamar Siddiqui holding brief of Shri Vinod Kumar, learned counsel for respondent no.1. The respondent no.2 is the proforma respondent and was with the appellants.

2. This second appeal under Section 100 of the Code of Civil Procedure has been filed against the judgment and decree dated 07.04.2011 passed in Civil Appeal No.161 of 2009 (*Gafoor Ali and others Vs. Israr Ahmad*), by the Additional District Judge, Court No.5, Sitapur, by which the appeal has been dismissed and the judgment and decree dated 26.10.2009, passed in Regular Suit No.176 of 1998 (*Israr Ahmad Vs. Gafoor Ali and others*) passed by Judge Small Causes/Civil Judge (S.D.), Sitapur has been confirmed, by means of which the suit filed by the plaintiff-respondent no.1 for permanent injunction was decreed.

3. Learned counsel for the appellants submits that the land in dispute was the *Sahan* land of the appellants, therefore, he was constructing a pit on the same. A suit for permanent injunction was filed by the appellants claiming the land in dispute on the basis of a sale deed executed by one Chheddu s/o Himayatulla, whereas Chheddu had one another brother Abdul, who was joint owner of the land in dispute after their father Himayatulla, therefore, the respondent no.1 could not get the right on the

land in dispute on the basis of the said sale deed. He further submits that a *well* is situated on the land in dispute and as admitted by P.W.2, the same was constructed by Raja Kashmanda and after abolition of Zamindari, the same settled with the Gaon Sabha, therefore, the respondent no.1 would not have claimed the right over it and accordingly the injunction could not have been granted, but the learned trial court without considering the same decreed the suit. The appeal filed by the appellants has also been dismissed without considering the grounds raised by the appellants.

4. Per contra, learned counsel for respondent no.1 submits that the land in dispute was purchased by the respondent no.1 through registered sale deed dated 29.12.1971 from Chheddu s/o Himayatulla. The brother of Chheddu, Abdul had died prior to death of his father, therefore, Chheddu was the only successor and owner of the land in dispute and he had executed three sale deeds of his land, which were purchased by the respondent no.1 and his family members. The land in dispute is the appurtenant land of the house purchased from Chheddu, which was settled with him after abolition of Zamindari and it has been admitted by D.W.2 and accordingly he sold the same along with the land in dispute to the respondent no.1, which was purchased by him. The contention of learned counsel for the appellant is misconceived and not tenable. The learned trial court has rightly and in accordance with law decreed the suit and the appeal filed by the appellants has also been dismissed rightly and in accordance with law. Thus, the appeal has been filed on misconceived and baseless grounds and it is liable to be dismissed.

5. I have considered the submissions of learned counsel for the parties and perused the records.

6. The suit for permanent injunction was filed by the respondent no.1 claiming that the land in dispute was purchased by him through registered sale deed dated 29.12.1971 from Chheddu s/o Himayatulla, on which the appellants, who were defendants in the suit, were trying to make a pit. P.W.1 and P.W.2 proved the pleadings made in the plaint and that the respondent no.1 had purchased the land in dispute from Chheddu and he is in possession on the land in dispute alongwith the house. D.W.2 -Mahavir Prasad has admitted in his evidence that Chheddu was the sole owner of the land in dispute. Chheddu had sold the land in dispute in pieces. 20 feet space on the southern side of the house of Israr, i.e. respondent no.1 was the *Sahan* of Chheddu and he was in possession on the same. Thus, the learned trial court came to the conclusion that Chheddu was the only owner and in possession of the land in dispute who had executed the sale deed in favour of the respondent no.1.

7. So far as the submission of learned counsel for the appellants in regard to the *well* on the land in dispute is concerned, as recorded by the appellate court, P.W.2 has stated that he had seen the *well* on the land in dispute since beginning and the land in dispute was of Raja Sahab Kasmanda during Zamindari and thereafter it vested in Gaon Sabha. Thus, he has not stated that the *well* was made by Raja Sahab Kashmanda. He has only stated that the land in dispute was of Raja Sahab Kasmanda, which had vested in Gaon Sabha, but no proof thereof has been filed by the appellant. As per Section 9 of U.P. Zamindari and Land Reforms Act, 1950, all wells, trees in abadi and all buildings situate within the limits of an estate belonging to or held by an intermediary or tenant or other person whether residing in the village or not, shall continue to belong to or be held by such intermediary tenant or person, as the case may be, and the site of the wells or the buildings within the area

appurtenant thereto shall be deemed to be settled with him by the State Government, therefore the same also stands settled with the respondent. Thus, since the land in dispute settled with Chheddu after abolition of Zamindari, the same was sold by him to the respondent and this Court does not find any illegality or error in it.

8. The learned trial court as well as appellate court has also considered and decided the issue as to whether the land in dispute is a public land and recorded a finding that the land in dispute had settled with Chheddu under Section 9 of U.P. Zamindari and Land Reforms Act, 1950, which was sold by him through a registered sale deed to the respondent no.1. No contrary evidence or material could be brought before this Court to disbelieve the findings recorded by the trial court as well as the appellate court.

9. In view of the above and considering the oral facts and circumstances of the case, this Court is of the view that the learned trial court has decreed the suit after considering the pleadings, evidence and material on record which does not suffer from any illegality, perversity or error and accordingly the appellate court has passed the order in accordance with law and the judgment and decree passed by the courts below does not suffer from or error and call for any interference by this Court. No substantial question of law arises in this case.

10. The second appeal is, accordingly, **dismissed**. Consequently, all the pending applications stands dismissed.

Order Date :- 17.10.2024
Anand/-