

SUPREME COURT OF INDIA

Ram Niwas

Vs.

Raj Dulari

C.A.No.5212 of 2008

(S.B. Sinha and Cyriac Joseph JJ.)

22.08.2008

ORDER

1. Leave granted.

2. Plaintiff in the suit is appellant before us. He filed a Civil Suit No. 874/1973 in the Court of Munsif and Judicial Magistrate, Jaipur City(West), Jaipur for a decree for permanent injunction in respect of Plot No. A-102 on the premise that on a portion thereof, respondent No.2 had started digging the foundation.

3. Indisputably, Respondent No.2 claimed title over the land bearing Plot No.A-57 in its favour on the basis of allotment thereof in the year 1965 in favour of the vendee.

4. The controversy between the parties relates to a plot measuring 24 ft. x 70 ft.

5. The said suit, however, was dismissed by the learned trial Court opining that allotment in favour of plaintiff having been cancelled and he having not been in possession of the land in dispute, was not entitled to any decree.

6. An appeal was preferred thereagainst. The First Appellate Court, however, allowed the said appeal and decreed the suit filed by the appellant.

7. Aggrieved by and dis-satisfied therewith, the respondent No.1 filed a Second Appeal before the High Court. By reason of an order dated 14.3.1985, the High Court formulated as many as nine substantial questions of law.

8. By reason of the impugned judgment, the High Court without referring to any substantial question of law and even without considering the contention of the appellant herein that the purported formulated questions are not substantial question of law, allowed the Second Appeal preferred by respondent No.1 stating:

“A look at the material on record demonstrates that on receiving the complaints against the allotment of plots by the UIT, Enquiry Commission was appointed by the State Government. On the basis of the report of the Enquiry Commission the State Government cancelled the allotment of plot No. A/102.

In the written statement filed by the UIT it was averred that since the allotment of plot No. A/102 was cancelled therefore the plaintiff was not entitled to any relief.

Learned lower appellate court did not properly appreciate the pleadings of the parties and committed illegality in reversing the findings arrived at by the Munsif Jaipur (West). The plaintiff after cancellation of allotment of Plot No. A-102 was not entitled to any relief.”

9. The jurisdiction of the High Court under Section 100 of the Code of Civil Procedure is limited. It, in terms of Sub-sections (3) and (4) of the Section 100, must formulate substantial question (as of law) arising in the matter and proceed to determine the same.

10. Unfortunately, the High Court did not comply with the said legal requirement. As the impugned judgment does not satisfy the legal requirement, we have no other option but to set aside the same. The Second Appeal is allowed and the matter is remitted to the High Court for consideration of the matter afresh. The High Court, if any objection is taken, will determine as to whether the substantial questions of law formulated on 14.3.1985 really raise any substantial question of law or not. It would, however, be open to the High Court to formulate any other substantial question of law.

11. As the Second Appeal is of the year 1984, we would request the High Court to dispose of the same as expeditiously as possible and preferably within a period of six months from the date of communication of this order.

The appeal is allowed.