

SUPREME COURT OF INDIA

Daya Sah & Ors.

Vs.

Chandra Datt Pande & Ors.

C.A.No.4747-4749 of 2009

(M.Y.Eqbal and C.Nagappan,JJ.,)

07.10.2015

JUDGMENT

C.Nagappan,J.,

1. These appeals are preferred against the common judgment dated 3.1.2008 passed by the High Court of Utrakhand at Nainital in Second Appeal Nos. 81, 82 and 84 of 2004. The appellants in all the appeals are the same and respondents are also the same.

2. The case of the appellants-plaintiffs is that the suit property belongs to them and it is situated in Haysbarton compound and they had let out to the defendants land measuring 25x15 ft. on a monthly rent of Rs.30/- per month and the defendants in contravention of the conditions of the licence had occupied the land measuring 33.850 sq. meter and made construction and also encroached 16.988 sq. meter shown in the plaint plan and constructed two rooms illegally and hence they filed suit no.32/83 for demolition of the construction; suit no.38/83 for ejection of the defendants and for possession in favour of the plaintiffs; and suit no.2/90 for permanent injunction restraining the defendants not to put illegal construction on the suit land.

3. The respondents-defendants denied the tenancy pleaded by the plaintiffs and contended that the suit land is situate at Habilion compound and it does not belong to the plaintiffs and on the other hand it is their property and due to heavy rain in July 1985 their house got damaged and they did the repairing work in both the rooms and they are in possession for the last 13 years.

4. All the three suits were tried together and the sole plaintiff examined himself as PW1 and the defendant examined himself as DW1 and documents were marked on both sides. The trial court on a consideration of oral and documentary evidence held that the plaintiff has neither identified the suit property nor proved his ownership to it and he is not entitled for the reliefs sought for and dismissed all the suits. The plaintiffs preferred three appeals and the appellate court confirmed the findings of the trial court and dismissed the appeals. Aggrieved by the same, the plaintiffs preferred three independent second appeals and the High Court

heard them on 13.6.2007 and held that the courts below had given concurrent findings on each of the issues and no interference is required under Section 100 C.P.C.; however there was no specific finding on the alleged sale deed dated 17.1.1927 and hence remanded the case to the trial court for specific finding on the said sale deed. Both the parties filed independent review applications and the High Court heard them on 17.11.2007 and recalled the order of remand dated 13.6.2007. Thereafter the High Court heard both the parties and by judgment dated 3.1.2008 dismissed all the second appeals. Challenging the said judgment the plaintiffs have preferred the present second appeals.

5. We heard the submissions of Mrs. Rachna Joshi Issar, learned counsel appearing for the appellants and Mr. Huzefa Ahmadi, senior counsel appearing on behalf of the respondents. The specific case of the plaintiffs is that the suit property is situated in Haysbarton compound owned by them and they let out land measuring 25x15 ft. on monthly rent to the defendants. The tenancy was denied by the defendants and they contended that the suit property is situated at Habilion compound and they had put up construction in the said land. There is a concurrent finding by the courts below that the plaintiffs failed to identify the suit property and the suit land is situated at Habilion compound. There is admission on the part of the plaintiffs as PW1 to the effect that the house of the defendants is constructed over the land taken on lease by the defendants from Sri Bachi Gaud Trust and the same land is subject matter of these suits. The High Court after referring to the above admission held that there is no need to give emphasis on the alleged sale deed dated 17.1.1927. Further Sub Divisional Magistrate, Nainital had sent letter 173-C/2 to the Additional District Magistrate, Nainital regarding survey of Bachi Gaud Trust Land and in said report house of the defendants have been shown in Habilion compound. The defendants have also filed copy of tax assessment by Nagar Palika which were marked as 178-C/4 and 78-C/6.

6. On behalf of the appellants the earlier judgment of the High Court remanding the matter to the trial court to render a finding on the alleged sale deed dated 17.1.1927 was pointed out and it is contended that the High Court erred in setting aside the said judgment and hearing the matter on merits. We do not find any merit in the said submission. In fact both the parties have filed independent review applications pursuant to which the High Court heard the review applications and recalled its earlier judgment. Thereafter it heard both the parties and rendered the impugned judgment. In our view, the High Court has rightly appreciated the evidence on record and confirmed the concurrent findings of the courts below. We see no reason to interfere with the impugned judgment.

7. There are no merits in the civil appeals and they are dismissed. No costs.