

RAJASTHAN HIGH COURT

Mohanlal

Vs.

Ram Chandra

Civil S. A. No. 46 of 1969

(Prakash Tatia, J.)

07.11.2005

JUDGEMENT

Prakash Tatia, J.

1. Heard learned counsel for the appellant as well as learned counsel for the respondents.
2. The appellant's suit was dismissed by the trial Court by judgment and decree dated 10th July, 1986. However, the appellate Court decreed the suit of the plaintiff party vide judgment and decree dated 20-1-89. The plaintiff filed the suit for permanent injunction as well as for mandatory injunction against the defendants alleging that the property in dispute was purchased by the plaintiff from one Dalchand by sale deed dated 2nd Dec., 1971. Ordinarily, the property was belonging to one Ranjeet Singh who had Bopi Patta in his favor for the land in question. He sold the land to Dalchand on Poh Sud Samvat Year 2012 and Dalchand sold the property to the plaintiff on 2nd Dec., 1971. According to plaintiff, the defendants encroached upon the part of the plaintiff's land measuring 15'x4' in the West to East side after breaking the wall and also encroached upon the another land measuring 6' x 7'. The plaintiff claimed damages of Rs. 200/- also.
3. The defendant Nos. 2 and 3 remained *ex parte* whereas defendant No. 1 submitted written statement and claimed his ownership over the property in dispute. On the basis of the pleadings, the trial Court framed as many as 5 issues, which are relating to the plaintiff's title to the property and alleged illegal trespass of the defendants over the plaintiff's property on 20-12-71. The trial Court dismissed the suit of the plaintiff and plaintiff preferred appeal, which was allowed by the appellate Court vide judgment and decree dated 4-8-84 as the appellate Court allowed the plaintiff's application for

amendment of the plaint and remanded the matter to the trial Court for deciding the sit afresh. After the amendment of the pleadings, the issue No. 7 was framed, which is relating to the plaintiff's right over the property by prescription. The trial Court again dismissed the suit of the plaintiff vide judgment and decree dated 10th July, 1986. Therefore, the plaintiff preferred appeal. The appellate Court after holding that the plaintiff failed to prove title of the property in dispute, decreed the suit for relief of injunction for the property which was in possession of the plaintiff whereas dismissed the suit for injunction with respect to the property which was found to be in possession of the defendants. The plaintiff, therefore, preferred this second appeal against the judgment and decree of the first appellate Court dated 20-1-89.

4. According to learned counsel for the appellant, the first appellate Court committed serious error of law in not considering the sale deed which was executed in favor of Dalchand in the Samwat year 2012. According to learned counsel for the appellant the said document was though not admissible in evidence, but the said document should have been considered as collateral evidence for the purpose of finding the possession of the plaintiff over the property in dispute. According to learned counsel for the appellant when the first appellate Court decreed the suit for the part of the land then the first appellate Court should not have dismissed the suit for part of the land.

5. The following substantial question of law were framed by this Court while admitting the appeal:

(i) Whether in the circumstance of the case the document of sale of S. Y. 2012 is admissible in evidence to prove the collateral transaction?

(ii) Whether in the circumstances of the case when the plaintiff had come to the Court as owner of the disputed plot of land, refusal to grant permanent injunction on the ground that since suit is only for the permanent injunction, whether the learned lower appellate Court was right in disallowing injunction on the Eastern part of the plot?

6. I considered the submissions of learned counsel for the appellant and perused the record. It is clear from the facts of the case that first appellate Court in detail considered the alleged sale deed executed by Ranjeet Singh in favor of his brother Dalchand in the Samwat year 2012 and found that the document cannot be relied upon because it contains several discrepancies. The first appellate Court held that the sale deed of the Samvat Year 2012 cannot have any relation with the property in dispute. Therefore, the alleged sale deed was considered by the first appellate Court for finding whether plaintiff's possession is proved from the said document and the first appellate

Court decided the issue against the plaintiff. At the same time, the first appellate Court considered this aspect of the matter that the plaintiff is in possession of the part of the property and, therefore, on the basis of only possession, decreed the suit of the plaintiff to the extent of the land, which was found in possession of the plaintiff. Therefore, it cannot be said that the first appellate Court has not considered the sale deed of the Samvat Year 2012 for finding out the possession of the plaintiff. In view of the above, in fact, the substantial question of law No. 1 does not arise in this appeal because the sale deed of the Samvat Year 2012 was considered by the first appellate Court as collateral evidence.

7. So far as substantial question No. 2 is concerned it is clear that the suit was for mere injunction and the plaintiff failed to prove his right to take possession from the defendant for the property, which was in possession of the defendant, therefore, the first appellate Court was right in not decreeing the suit of the plaintiff for injunction in mandatory form directing defendant to remove his possession from the land in question. The person in possession can be dispossessed by a person having better title or having right to take possession from the defendant. In this case since the plaintiff failed to prove his title over the property in dispute, therefore, the plaintiff could have been granted the relief of injunction to the extent of land, which is in his possession. Therefore, the substantial question of law No. 2 is decided against appellant.

8. In view of the above, I do not find any merit in this appeal and the same is hereby dismissed.

Appeal dismissed.