

(2018) 02 RAJ CK 0010
In the Rajasthan High Court
Case No : 276 of 2016

Ahmed Sultan

APPELLANT

Vs

Bhanwar Singh & Ors

RESPONDENT

Date of Decision : 02-02-2018

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 100](#) - Second appeal

Citation : (2018) 02 RAJ CK 0010

Hon'ble Judges : Dinesh Mehta

Bench : Single Bench

Advocate : Manoj Bhandari, RK Thanvi Senior, Narendra Thanvi

Judgement

1. The present appeal under Section 100 of the Code of Civil Procedure has been filed by the appellant, laying challenge to the order dated

13.10.2016 passed by the learned Additional District Judge, Jaisalmer in Appeal No.39/2016, whereby the judgment dated 17.12.2015 passed

by the learned Civil Judge(Senior Division), Bikaner has been affirmed.

2. Mr. Bhandri, learned counsel for the appellant, narrating the facts in brief apropos for the present appeal submitted that the appellant - plaintiff

had filed a suit for mandatory injunction against the defendants, inter alia, seeking an order of restraint so that they should not interfere with the

peaceful possession, the plaintiff had been enjoying for a long period.

3. Learned counsel for the appellant contended that the appellant was having title and possession of the subject plot pursuant to the patta dated

06.09.1957 and his possession was evident in light of a certificate dated 25.09.2003 issued by the Gram Panchayat, Nachna filed as Exhibit-2,

which depicted the possession of plaintiff and his grand-father.

4. Learned counsel for the appellant submitted that the learned Courts below have erred in recording the finding that the appellant - plaintiff was

not in possession of the contentious plot admeasuring 150X100 Sq. feet. In this regard, he submitted that the plaintiff has produced documentary

as well as oral evidence to prove that he has been enjoying the possession of the disputed plot.

5. It has been argued on behalf of the appellant that as the appellant has been enjoying the possession of the subject plot and the defendants have

also not been able to prove their title or possession on such plot, learned courts below were not justified in rejecting the suit, so filed by the

appellant. In support of his arguments, Mr. Bhandari relied upon a judgment of Hon''ble Supreme Court in case of Rame Gowda vs. M.

Varadappa Naidu, reported in AIR 2004 SC 4069 and contended that in light of the law laid down by Hon''ble Supreme Court appellant -

plaintiff was entitled to injunction, restraining the defendants from interfering with their possession.

6. Mr. RK Thanvi, Senior Advocate assisted by Mr. Narendra Thanvi appearing on behalf of the respondents - defendants submitted that both the

courts below have concurrently held that the plaintiff has failed to prove his possession. He submitted that the courts below have aptly dealt with

the evidence led by the parties and held that merely because of the assertions of the plaintiff that his bajri/sand, stones slabs etc. lying on the plot,

are not sufficient to prove possession of any of the parties.

7. Learned counsel for the respondents pointed out that the learned Trial court as well as Appellate Court have found that these articles bajri,

stones etc. were also not owned by the plaintiff as he had accepted the fact that the bajri and stones etc. were not purchased by him nor he could

produce any receipt or bill etc. during the course of his cross-examination.

8. Concluding his arguments, Mr. Thanvi submitted that the finding of possession is a finding of fact which has been held against the plaintiff by both

the Courts below and no substantial question of law worth consideration of this Court, arises in the present appeal.

9. I have heard learned counsel for the parties and perused the material available on record.

10. In considered opinion of this Court, the finding of possession is a finding of

fact, based on appraisal of the evidence on record. The arguments of Mr. Bhandari based on a certificate dated 25.09.2003 (Ex.-2) to demonstrate that the appellant was having possession, is not palatable, in the present factual backdrop as the author of the certificate namely Sarpanch, Gram Panchayat, Nachna has not appeared in the witness box to prove it. Apart from this, the certificate, much reliance whereupon has been placed by Mr. Bhandari, also does not show conclusively that the plot in question has been in possession of the plaintiff.

11. Besides this, the patta dated 06.09.1957 relied upon by the plaintiff has rightly been discarded by the courts below as after promulgation of the Rajasthan Land Reforms Resumption of Jagirs Act, 1952, the patta issued by erstwhile Jagirdar has no legal sanctity.

12. The judgment relied upon by the learned counsel for the appellant is of little assistance to him as in the case cited by Mr. Bhandari, Hon"ble

Supreme Court has held that when title of either party was not proved and plaintiff was found to be in settled possession, he would be entitled to

injunction; whereas in the present case, plea of possession of the plaintiff has been negated by both the courts. In other words plaintiff's possession

over the contentious plot has not been proved.

13. In view of the concurrent findings noticed above, no question of law, much less substantial question arises for consideration of this Court, for

which the appeal fails.