

(2017) 01 RAJ CK 0104
In the Rajasthan High Court
Case No : 522 of 2010

Amarlal

APPELLANT

Vs

Nagar Palika

RESPONDENT

Date of Decision : 04-01-2017

Acts Referred:

Citation : (2017) 01 RAJ CK 0104

Hon'ble Judges : Vijay Kumar Vyas

Bench : SINGLE BENCH

Advocate : Hemant Sharma, P.N. Paliwal

Judgement

1. The appeal has arisen out of judgment & decree dated 7.7.2010 passed by learned Additional District Judge (Fast Track), Sawai Madhopur, in Regular Civil Appeal No.202/2009 (76/2003), whereby the appeal was allowed and execution of lease No.165 dated 26.5.1966 was declared void ab-initio and appellant / defendant was restrained by permanent injunction from any construction on the land of the lease deed and also not to interfere in peaceful possession of plaintiff, in any manner. The judgment & decree dated 27.9.2003 passed by learned Civil Judge (Jr. Div.) Sawai Madhopur in Civil Suit No.34/1999 was set aside, wherein the Civil Judge had dismissed the suit filed by the respondent/plaintiff.

2. In brief, facts of the case are that a suit for declaration and permanent injunction was filed by the plaintiff/respondent against the defendant/appellant in the court of Civil Judge (Jr. Div.), Sawai Madhopur on 10.2.1999 with the averments that the State Government has dissolved the Gram Panchayat, Alanpur Jatwada, Sherpur and constituted on 27.9.1965 the Notified Area Committee Mantown which is presently known as Nagar Palika, Sawai Madhopur. The appellant with an intention to grab the costly land, obtained a forged Patta No.165 dated 26.5.1966 from Gram Panchayat Alanpur in conspiracy with Sarpanch. The Patta cannot be recognized and is void ab-initio, had no such right and did not issue any such lease. Amount of Rs.476/- is said to be deposited on 26.5.1966 in the Panchayat but there were no such rules in force. Khasra No.1

wherein the disputed land is situated, was not available for sale to Gram Panchayat Alanpur. Collector, Sawai Madhopur had imposed a ban on sale of the land on 29.5.1963. A notification was published by Notified Committee for submission for examination of lease deeds issued by Erstwhile Panchayat after constitution of Notified Area Committee, but the appellant did not submit the disputed Patta at that time. A prayer in the suit was made to declare the Patta void and to issue permanent injunction against the appellant to not interfere with and to construct on the land relating to the Patta. In the written statement, appellant averred that he obtained the Patta, as per provisions of law, after depositing Nazrana through receipt for an amount of Rs.476/-, which is entered in the record of Gram Panchayat. But, the respondent is concealing the record. No cause of action has arisen to the respondent to file the present suit. The present suit has been filed on deficit court fee. Existence of Patta is in the knowledge of the respondent since 1992. Present suit is barred by limitation. On the basis of pleadings, learned trial court framed following issues: "VERNACULAR MATTER OMITTED"

3. Plaintiff examined Kailash Narain Sharma (PW-1) - the Revenue Inspector and exhibited a sale deed (Ex.P- 1). Defendant examined himself. He did not exhibit any documentary evidence. After hearing both the parties, learned trial court vide judgment & decree dated 27.9.2003 dismissed the suit.

4. Appeal preferred by plaintiff/respondent was allowed by learned appellate court, i.e. Additional District Judge (Fast Track) Sawai Madhopur vide judgment dated 7.7.2010.

5. I have heard both the learned counsels for the parties and perused the material available on record.

6. Plaintiff/respondent has examined only Kailash Narain Sharma (PW-1) - the Revenue Inspector to substantiate the claim. He supported the plaint orally, but no documentary evidence has been produced before the court except a certified copy of lease deed (Ex.1) under question. Kailash Narain Sharma (PW-1) has stated all the facts on the basis of record, but the record has not been exhibited in proof according to law. In cross examination, he has stated that the Municipality is presuming the lease deed in question to be a forged one, because it was not included in the list of 113 lease deeds issued by the Panchayat and submitted before the Municipality. But no such list has been exhibited in the court. He admits that he did not verify the receipt No.2157-P-50 from record of the Municipality. He did not verify the lease deed (Ex.1) from record of the Municipality. He admitted that Amar Lal had filed a suit in the year 1990 against the Municipality and at that time this lease deed had come in the knowledge of Municipality. He further admits that on the land relating to the lease deed, there is no construction of municipality and found no possession of Municipality. On the contrary, Amar Lal (DW-1) defendant has corroborated his written statement.

7. The Municipality has prayed for declaration of the lease deed as void ab initio,

but no documentary evidence has been adduced to support its claim. On perusal of the deposition made by Kailash Narain Sharma before the trial court, it reveals that there may be some documentary evidence available in the record of Municipality, but why the same has been with-held by the Municipality, has remained unexplained. After admission made by Kailash Narain Sharma (PW-1), it is undisputed that the Municipality had come to know in the year 1990 itself about the lease deed under challenge herein. But the present suit has been filed in the year 1999, reasons best known to the Municipality. In view of above situation of evidence, learned trial court rightly rejected the suit. Learned appellate court, without considering the evidence in right perspective, reversed the judgment & decree of the trial court merely on surmises and conjectures. Every fact which is basis of any claim, is necessary to be proved as per law before the court. The court cannot construe the facts on surmises and conjecture. When the facts can be substantiated by way of documentary evidence, a suit cannot be decreed on the basis of only oral evidence, ignoring the documentary evidence. Moreover, the witness rendering oral evidence in the instant matter, is not well conversant with all the facts relating to the case. Thus, the findings recorded by the appellate court are found perverse and against the basic principles of law. Hence, it is necessary for this court to give an indulge and set aside such a finding.

8. Thus, the appeal is allowed. The judgment & decree dated 7.7.2010 passed by learned Additional District Judge (Fast Track), Sawai Madhopur in Regular Civil Appeal No. 202/2009 (76/2003) is quashed and set aside. The suit of the respondent plaintiff is dismissed.