

(1997) 01 AHC CK 0096
In the Allahabad High Court

Case No : Second Appeal No. 2095 1989; connected with Second Appeal No. 416 of 1990

Asharfi and Ors.

APPELLANT

Vs

Mukat Lal & Ors.

RESPONDENT

Date of Decision : 17-01-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (1997) 01 AHC CK 0096

Hon'ble Judges : A.P.Singh, J

Final Decision : Disposed Of

Judgement

A.P. Singh, J.—These two appeals arise from the same suit being suit No. 398 of 1982. In the suit, appellants of Second Appeal No. 2095 of 1989, namely, Smt. Asharfi, Smt. Rameshwari, Satya Dev and Ram Avtar were defendant Nos. 1 to 4, whereas Sohan Lal appellant of Second Appeal No. 416 of 1990 was defendant No. 5. The suit was filed by the plaintiffrespondent, Mukut Lal, claiming injunction against the defendant Nos. 1 to 4 so as to restrain them from demolishing staircase (Zeena) marked by letters "A", "Ba", "Sa" and "Da" and from interfering with his possession over the said Zeena. According to the plaint case of Mukut Lal, Sohan Laldefendant No. 5 was using the Zeena with his permission though he had no right or title in the said Zeena. He was made formal party though no relief was claimed against him. Against the decree passed by the trial Court, appeal was filed by defendant Nos. 1 to 4, which is Appeal No. 206 of 1983. The appeal of defendant Nos. 1 to 4 was dismissed. However, while dismissing the appeal, the first appellate Court also set aside the finding which was recorded by the trial Court in favour of Sohan Lal, his brother. Because of setting aside of the finding about the joint ownership of Zeena by him and Mukut Lal, Sohan Laldefendant No. 5 has filed Second Appeal No. 416 of 1990. Since common questions for fact and law are involved in both the appeals, they are being decided by a common judgment. Facts of the case so far as it is necessary for deciding the appeals are concerned, are as follows:

2. Mukut Lal, plaintiff claimed to be the owner in possession of the Zeena, which according to him, he with his brother purchased from Smt. Rameshwari Devi and Smt. Asharfi Devi by sale deed dated 1.2.1964 along with land shown in the map. Sohan Lal used the zeena with his permission though he too had no concern with it. He very recently came to know that the defendant Nos. 1 to 4 had filed some case against Sohan Lal claiming title in the zeena and in that connection want to demolish it. Sohan Lal claimed that defendant Nos. 1 to 4 were not the owners of the whole of the zeena in which they had only half share; hence they could only sell their half share in the zeena. It was also claimed that as per the trial court's decree passed in suit No. 184/74, he too became owner of half share in the zeena. It was claimed that plaintiff Mukut Lal was fully aware of the litigation between defendant Nos. 1 and 2 and defendant no. 5, hence he is estopped from taking any objection against it. Defendant nos. 1 to 4 filed their separate written statement and denied the plaint case. They stated that the zeena in question was never sold to the plaintiff by them and what was sold was only land measuring 61" x 21"3". There was Abchak land behind the zeena in straight line which was called a Aarazi Zeena", it was for this reason that the words Aarazi Zeena", were used in the sale deed. The word thus related to the land lying behind the zeena and not to the zeena. It was also stated that the dispute about the zeena subjectmatter of suit No. 184/74 which was finally decided between them and Sohan Lal hence the plaintiff had no concern with the zeena in suit.

3. Trial Court decreed the suit on the finding that the defendant Nos. 1 to 4 had no concern with the zeena which was purchased by plaintiff and defendant No. 5 vide sale deed dated 1.2.1964 and it has become the joint property of plaintiff and defendant No. 5. First appeal was filed by the appellant challenging the decree passed in favour of the plaintiff and it was maintained by the appellants that Mukut Lal was wrongly held owner of the zeena with which he had no concern. Mukut Lal too without filing any appeal or cross objection challenged in the appellate court Munsif's finding that he was the joint owner of the zeena with Sohan Lal. The plaintiff maintained that Sohan Lal had no concern with the zeena which belonged exclusively to him and the Munsif had wrongly held Sohan Lal as its joint owner along with the plaintiff. An objection was also raised on Sohan Lal's behalf in the first appellate court on the ground that since neither appeal nor cross objection had been filed by Mukut Lal, the plaintiff, against the finding recorded by the Munsif, therefore, findings which had been recorded in his favour could not be legally questioned in the appeal filed by defendant Nos. 1 to 4 against the plaintiff.

4. The first appellate court, however, placing reliance on B. D. Agarwal v. Smt. Radha Devi, AIR 1989 Allahabad 133, held that without there being any cross objection or appeal from the plaintiffrespondent, he can question trial court's findings which may have recorded against him. The first appellate court was also of the view that since no relief was claimed by Mukut Lal against Sohan Lal hence Mukut Lal was not required to file either cross objection or appeal against Sohan Lal. Objection raised on behalf of Sohan Lal that the one respondent of an appeal

cannot file crossobjection against another respondent of that appeal as laid down by the Supreme Court in Mahant Dhangiri v. Madan Mohan, AIR 1988 SC 54 was distinguished by the first appellate court on the ground that since Mukut Lal had not filed a cross objection, the dictum of the Supreme Court was not applicable.

5. In appeal No. 2095 of 1989, which has been filed under Section 100 of the Code of Civil Procedure, 1908 defendants 1 to 4 have taken exception to the view which has been expressed by the courts below on issue No. 1 that the saledeed executed by them on 1.2.1964 in favour of the plaintiff also included the disputed zeena apart from the land admeasuring 61" x 21" 3". It was contended by the learned counsel on behalf of appellants that the courts below have illegally read/interpreted the sale deed dated 1.2.1964 (Ex. 1) so as to illegally include in it a property which was not at all its subjectmatter; according to the learned counsel what sold was specifically described in the map which had been appended to the sale deed (Ex. 1) and also by giving its boundaries and measurements in the sale deed and nothing else was sold. On the other hand, on behalf of the plaintiff Mukut Lal it was asserted by his learned counsel that the zeena in dispute was specifically described in the sale deed as the property sold along with the land admeasuring 61" x 21" 3". It was emphasised that the measurement which was given in the sale deed was only of the land which was sold in the saledeed along with the zeena. The measurement and the boundaries was not in respect of all the properties which were sold by the appellants.

6. Upon hearing the arguments of the learned counsel for plaintiff Mukut Lal and defendants 1 to 4 the scope of this appeal (No. 2093 of 1989), which has been filed by defendan! Nos. 1 to 4 and the controversy involved in it is confined to the answers of the question as to what was the property which was sold to the plaintiff vide sale deed dated 1.2.1964 (Ex. 1) by the appellants ; whether the zeena in dispute in the suit too as sold through that sale deed ?

7. Saledeed, (Ex. 1) is in Urdu language, its Hindi translation was placed on the record from the trial stage. None of the parties have questioned its correctness. Plaintiff has based his title on the sale deed to claim ownership over zeena with the contention that he had purchased it from Smt. Asharfi Devi and Smt. Rameshwari Devi, the appellants. Reliance for their above contentio i has been placed on the following description of the properties sold which has been given in the sale deed (Ex. 1):

On the other hand, the appellants want the full description of the property to be taken into account which was subjectmatter of transfer by them in favour of the plaintiff in that saledeed to be read. According to them in the main body of the saledeed as well as in the map appended with it the correct measurement of the property which was sold through the saledeed was duly given but they complain that the courts below have erred in ignoring the rest of the description of the property and want to take advantage of the use of the word "zeena" in the sale deed which was used in relation to an Abchajc land which was lying behind the zeena (staircase) in dispute. The appellant want the description of the property

sold through the sale deed (Ex. 1) to be read as follows:

8. In the map which has been appended with the sale deed (Ex. 1) description of the property sold has been given along with measurements and its boundary. It is as follows:

9. Placement of the staircase (zeena) on the north eastern side of the land sold has been shown in the map. It is the Zeena which is under dispute between the parties. It has been shown in the map outside the measurement of the land sold and is designated to identify the properties sold. In the map the zeena has been described as the joint property of both the purchaser and the vendor. This description has been explained by both the courts below saying that it related to the position which prevailed prior to its transfer by the vendors to the vendee. Emphasis was given more on the use of words "Aaraji Mai Zeena? far rather than on the exact area with boundaries of the demised land given in the main body of the sale deed and in appended map.

10. Property demised in a deed of transfer has to be identified from the description of that property in the deed itself. Use of surplus words for giving better introduction and identification of the property demised have to be understood and interpreted in the context of the scientific description of the property transferred. Property transferred through a sale deed etc., is normally described in a scientific way by giving its area with boundaries and in some cases a map of the property is also appended for removal of doubts, if any, about the property which has been sold through the deed. No one can stick to a particular word or phrase which may have been used in the deed of transfer so as to stake his claim of title to a property if that property is not included either in the measurements and the map and boundaries of the property which is sought to be transferred by that deed of transfer. Sometimes certain words are used by the vendor for describing the property under transfer in his own colloquial language but use of such words will be of no aid for a purchaser's claim of having purchased some other property apart from the property which has been scientifically described by the vendor in the deed of transfer as the property sold by him through that deed. In the present case, the plaintiff is unreasonably sticking to the word "Aaraji Mai Zeena? so as to stake his claim of ownership of the zeena in dispute on the basis of the sale deed (Ex. 1). These words cannot be read in isolation of the better particulars which the appellants have given in the sale deed for identifying the property which they had transferred to the plaintiff. The property which was subject matter of transfer by the appellants in favour of the plaintiff through the sale deed (Ex. 1) has, fortunately for the appellants been described in a most scientific way by words with boundaries and measurements and by with boundaries and measurements. No doubt has been left about the position of the Zeena (staircase) in the map appended to the sale deed which has been shown outside the measurements and the boundary of the property sold and has been described as the joint property of plaintiff and appellants both which was, however, disregarded by the trial Court as well as by

the first appellate Court by giving a frivolous explanation that mention of the words (Joint zeena of the purchasers and sellers) was in respect of the position of that property its transfer in favour of the plaintiff. This explanation has no bearing from any material in the sale deed. If in the main body of sale deed and in the map too the properties which were (sought to be) transferred were identified in clear and unambiguous words in more than one way as the property sold to the vendees then there was no room for the Courts below to presume that the "zeena" was still described in the map of the deed of sale as joint property of vendors and the vendees so as to depict its position prior to its transfer in favour of the vendee. There is no sanction for such a conclusion which has been drawn by the Courts below from the sale deed (Ex. 1). The observations are based more on the flight of the imagination of the courts below.

11. In the main body of the sale deed (Ex. 1) property sold has succinctly been described in more than one way, viz., cenote pewue (The property with zeena which is with the property and admeasures 61" towards east, 61" towards west, 21" 3" towards north and 21" 3" towards south as described in the map). This coupled with the boundary of the property sold which has been given to emphasise the exact property which was sold clearly establishes to the property which was actually transferred by sale deed (Ex. 1). The boundary of the western side of the property which is most important and relevant in this regard is as follows:

"(West) Zeena which has been included in the measurement situate beyond the godown jointly owned (measuring) 61 feet."

12. This description clearly denotes the correct meaning of the word zeena in the sale deed. "Aaraji Mai Zeena? on which the plaintiff has placed reliance to contend that the staircase too was sold to them. It has been found by both the Courts below from evidence that only an area of 61" towards east and west and 21" 3" towards north and south is the area of the land demised in the sale deed in which the staircase is not included. The staircase falls outside the area of 61" towards east and west and 21" 3" towards north and south. This factual position too goes to defeat plaintiffs claim of having purchased the zeena (staircase) vide sale deed (Ex. 1) by taking recourse to the words "Aaraji Mai Zeena? used in that deed, which according to them means property with the staircase. If the staircase was also sold by the appellant Nos. 1 and 2 along with the land, then there was no earthly reason for not showing the staircase by boundaries and by measurements of the properties sold, as has been done in the case of the land. There was no reason also to leave it apart in the map to describe it as the joint property of the vendors and vendees, while at the same time showing the land admeasuring 61" towards east and west 21" towards north and south as the property transferred through the sale deed. It is significant to find mention of the words (shop of the vendor) towards north in the map. Existence of the shop of the appellants by the side of the staircase clearly establishes that the appellants did not dispose of all their properties which they had in the precincts of the

staircase. For an effective use of their shop they kept the staircase to intact for its joint use botnby them and the vendees; it is how the staircase has been described in the map.

13. From the words used and the boundaries given in the body of the sale deed as well froijn the description of the property sold by way of measurements given both in the sale deed and in the map appended to it and also from description of the vendors and the vendees no iota of doubt is left in the sale deed about the property which was actually transferred by it by the appellants in favour of the plaintiff. It clearly gives out in more than one way that land admeasuring 61" towards east and west and 21" 3" towards north and south alone was sold and the staircase was outside the land demised which was shown as the joint property of vendors and the vendees both, lying outside the map of the land sold, the area of the land sold and ihe boundaries of the land sold.

14. The Courts below committed grave error of law in giving importance to the words "Aaraji Mai Zeena? so as to believe that the staircase too was sold and ignoring more important aspects in the saledeed which have been emphasised in this judgment, hereinabbve, which clearly make out that the staircase was not at all the subjectmatter of the saledeed and what was sold was the land Admeasuring 61 1 towards north and south and 21 1 towards east and west.

15. The case set up by the plaintiff was thus, devpid of substance, it got no support from thq sale deed (Ex. 1). Their claim of exclusive ownership of the staircase on the basis of the sale deed, (Ex. 1), was frivolous which deserved to be turned down for its bare making. The Courts below, however, made a mountain out of a mole so as to find out plaintiff's title from the sale deed (Ex. 1) over the staircase which was clearly not there.

16. As a result of the above discussion, Second Appeal No. 2095 of 1989 must succeed. The judgment and decree of the Courts below as against the appellants, namely, Smt. Asharfi, Smt. Rameshwari, Satya Dev and Ram Avtar, are set aside. So far as appellant of Appeal No. 416 of 1990, namely, Sohan Lal is concerned, no one has put in appearance on his behalf despite the list having been revised more than once. Hence, Sohan Lal's Appeal No. 416 of 1990 is dismissed for default of appearance; whereas appeal of defendant Nos. 1 to 4 being Appeal No. 2095 of 1989 is allowed with costs throughout.