
(2021) 02 RAJ CK 0073

In the Rajasthan High Court

Case No : Civil Second Appeal No. 64, 143 Of 2019

Bashir Mohd. And Ors

APPELLANT

Vs

Regional Manager And Ors

RESPONDENT

Date of Decision : 15-02-2021

Acts Referred:

Code Of Civil Procedure, 1908 — Section 151, Order 8 Rule 6A,

Citation : (2021) 02 RAJ CK 0073

Hon'ble Judges : Goverdhan Bardhar, J

Bench : Single Bench

Advocate : Rajendra Prasad, Madhusudan, R.K. Agrawal, Mamun Khalid

Final Decision : Dismissed

Judgement

Since both the second appeals arise out of common judgments and decrees passed by the Courts below, hence same are being decided by a common Judgment.

The plaintiffs appellants by filing second Appeal No. 64/2019 have challenged the impugned judgment and decree dated 08.01.2019 passed by the

Court of Additional District Judge No.1 Bundi (Raj.) [for short 'the First Appellate Court'] in civil Appeal No. 02/2011 (CIS No. 59/2014) whereby the

first appellate court dismissed the appeal filed by the plaintiffs appellants and partly maintained the judgment and decree dated 20.11.2006 passed by

the Court of Additional Civil Judge (Jr. Division) No. 2, Bundi [for short 'the trial Court'] in Civil Suit No. 21/2000 (19/1989) and quashed the judgment

and decree passed by the trial court qua issue No.2(a).

By filing Civil Second Appeal No. 143/2019 the plaintiffs appellants have challenged the judgment and decree dated 08.01.2019 passed by the Court of

Additional District Judge No. 1, Bundi (Raj.) [for short 'the First Appellate Court'] in Civil Appeal No. 02/2011 (CIS No. 59/2014) whereby the First

Appellate Court while allowing the cross appeal No. 30/2001 filed by the respondent No. 5 against the judgment & decree dated 20.11.2006 passed by

the Court of Additional Civil Judge (Jr. Division) No.2, Bundi with regard to issue No. 2(a) and 6 directed the present appellants to handover the

possession of the plot within a period of one month and also to make payment of Rs. 2,000/- as compensation to the defendant No.5.

Facts of the case in nutshell are that the plaintiff filed a civil suit on 04.02.1989 before the Additional Civil Judge No. 2 which was registered at No.

21/2000 (19/1989) against the defendants No.1 to 4-RIICO and defendant No.5-Mr. Narendra Gupta for declaration as well as permanent and

mandatory injunction with the averments that he was allotted a plot bearing No. 26 by the RIICO on 08.07.1975 in Industrial Area, Bypass Road,

Bundi ad-measuring 2975.6 sq. meters; the lease deed was executed by the RIICO in his favour on 27.09.1975 and the possession of the said plot was

taken by him on 29.09.1975. After the allotment of the said plot, he carried out construction on the plot and started the mechanical work on it. The

plaintiff built a tin shed over the said plot and the other tools of the plaintiff were also lying on the said plot for the purpose of carrying out the

mechanical work. The cause of action for the present suit arose when defendant No. 5 Narendra Gupta came to the plot of the plaintiff and started

interfering with the possession of the plaintiff on the basis that the said plot had been allotted to the defendant No.5. The plaintiff further averred in the

suit that the plot No. 26 was never cancelled by the RIICO nor any show cause notice for cancellation of the said plot was given to him by the RIICO

and that RIICO never took possession of the said plot from him. Therefore, the defendant No.5 had no right to interfere the plaintiff from carrying out

the work over the said plot. Accordingly, the plaintiff sought a declaration to declare him as the leaseholder of the said plot No. 26 and in case the

defendant Nos. 1 to 4 have cancelled the allotment then the same may be set aside and any allotment made in favour of the defendant No.5 may also

be set aside.

Defendants-respondents No.1 to 4 did not file any written statement of denial. However, the defendant No.5 filed written statement of denial alleging

therein that the allotment of the plot made in favour of the plaintiff was cancelled by the RIICO in the year 1979 as the plaintiff allegedly could not fulfill the terms and conditions of the lease. After the cancellation of the said plot, the same was allotted to the defendant No.5 by the RIICO on 20.12.1988 and the possession of the said plot was stated to be with the defendant No.5. The defendant No.5 further alleged that the plaintiff constructed a small room just before filing of the civil suit. In the written statement, the defendant No.5 additionally submitted that the valuation of the said plot has not been done properly and the required Court fee was not paid by the plaintiff.

On the basis of pleadings of both the parties, the Court below framed seven issues.

The plaintiff to support his case examined four witnesses and got exhibited four documents. The defendant No.5 to prove his case got recorded statements of five witnesses and exhibited ten documents. The Court below vide its judgment and decree dated 08.09.2000 dismissed the suit filed by the plaintiff by awarding compensation of Rs. 2,000/- to the defendant No.5. The plaintiff aggrieved and dissatisfied with the judgment and decree dated 08.09.2000 passed by the court below preferred an appeal before the First Appellate Court. The First Appellate Court while allowing the appeal vide its judgment and decree dated 05.08.2006 remanded the matter to the trial Court for deciding issues No. (i) and (ii) afresh after hearing both the parties.

After remand by the First Appellate Court, the trial Court further on the basis of pleadings of both the parties framed issues No. 1(a) and 2(a). The trial Court vide its judgment and decree dated 20.11.2006 dismissed the suit filed by the plaintiff.

After dismissal of the suit by the trial Court, sole plaintiff appellant Bashir Mohd. died and his legal heirs were taken on record who filed first appeal

No. 2/2011 before the First Appellate Court. The First Appellate Court vide its impugned judgment and decree dated 08.01.2019 dismissed the first appeal filed by the plaintiffs affirming the judgment and decree passed by the trial Court. The plaintiffs/appellants aggrieved with the findings recorded by the first appellate court preferred two separate appeals before this Court.

Arguments in Appeal No.64/2019:

Learned Senior counsel for the plaintiffs/ appellants argued that both the Courts below committed an error in deciding issue No. 2 against the

plaintiffs. The cancellation of the plot of the plaintiff was absolutely contrary to the principle of natural justice. Admittedly, before cancellation, neither

any show cause notice was issued to the plaintiff nor an opportunity of hearing was afforded to the plaintiff by the RIICO. It is a settled law that the

instrumentality of State is required to act in a just and fair manner. In the present case, the RIICO straight away passed an order of cancellation of the

lease deed behind the back of the plaintiff in violation of the principle of natural justice and the cancellation order was also not served upon the

plaintiff. Thus, the order of cancellation of the lease deed is absolutely contrary to the principle of natural justice and the same is illegal and arbitrary.

Learned counsel further argued that both the Courts below have committed an error in considering the fact that the show cause notice/cancellation

order was never served upon the plaintiff. The presumption of service upon the plaintiff in the present case is absolutely contrary to law. Both the

Courts below failed to consider that the possession of the said plot was handed over to the plaintiff at the time of execution of the lease deed dated

29.09.1975. The First Appellate Court in its impugned order has wrongly observed that the Court under Section 151 CPC can issue such directions.

The finding of the First Appellate Court that the possession can be directed to be handed over to the defendant No.5 under Section 151 CPC even

without there being any counter claim by the defendant No.5, is contrary to law. Both the Courts below committed an error in considering the

statement of PW-5, Mr. K.R. Gupta. Both the Courts below erred in drawing wrong inference of the letter (Ex. A-6) written by plaintiff to the

RIICO. The First Appellate Court committed gross error of law in overlooking the objection raised by the plaintiff and also in holding that the

cancellation of allotment was rightly made by the RIICO, as the plaintiff was not able to carry out the required construction. Therefore, there was no

occasion for the Courts below to draw an inference that the defendant No. 5 was having the possession and he was dispossessed by the plaintiff

illegally.

Arguments in appeal No. 143/2019:

Learned Senior counsel for the plaintiff appellants argued that both the Courts

below have failed to consider that no counter claim was filed by the defendant No.5 in the present case. The defendant No.5 in the suit filed by the plaintiff cannot seek dispossession of the plaintiff from the plot without there being any counter claim filed by the defendant No.5. Thus, the First Appellate Court committed an error in directing the plaintiff to handover the possession. The First Appellate Court committed an error in reversing the finding of the trial Court qua issue No.2(a). The powers under Section 151 CPC cannot be exercised by the Court for passing an order or direction, which is absolutely contrary to the provisions of CPC. The plaintiff cannot be directed to be dispossessed from the plot in question in the suit filed by the plaintiff himself. The finding of the First Appellate Court that the possession can be directed to be handed over to the defendant No.5 under Section 151 CPC even without there being any counter claim by the defendant No.5, is contrary to law. The First Appellate Court committed an error in allowing the cross appeal filed by the defendant No.5. Both the Courts below committed an error in considering the evidence of PW-5, Mr. K.R.Gupta. The First Appellate Court failed to consider that the cancellation of the registered lease deed by the defendants No. 1 to 4 was illegal, as the registered lease deed could only be cancelled by the decree of competent Civil Court.

In support of his submissions, learned Senior counsel has placed reliance upon following judgments:-

1. Anukampa Avas Vikas Pvt. Ltd. and Ors. vs. State of Rajasthan and Ors. Reported in RLW 2009 (3) Raj. 2295;
2. ITC Ltd. vs. State of Uttar Pradesh and Ors. Reported in AIR2012 SC 1820;
3. Pradeep Chimanajirao Rane vs. Chandrakant Raghunath More reported in 2013 SCC OnLine Bom 1719;
4. Nanasaheb S/o Sakharam Bhalekar vs. Dattu S/o Dhondiba Bhalekar and Ors. Reported in 1990 SCC OnLine Bom 370;
5. M/s. Karm Bhoomi Estates v. Raj. State Industrial Development & Investment Corporation Ltd., decided on February 3, 2015; and
6. S.B. Civil Writ Petition No. 3413/2014, K.K. Velusamy vs. N. Palanisamy reported in (2011) 11 SCC 275.

Learned Senior counsel for the defendants / respondents opposed the submissions advanced by the learned counsel for the plaintiffs/ appellants and

supported the judgment and decree passed by the first appellate court. In support of his submissions, learned counsel has placed reliance upon

following judgments:-

1. South Eastern Coalfields Ltd. vs. State of M.P. and Ors. Reported in (2003) 8 SCC 648;
2. Amarjeet Singh vs. Devi Ratan reported in (2010) 1 SCC 417; and
3. S.B. Civil First Appeal No. 86/1979, Pt. Bansidhar Sharma Devagya (since deceased) through LRs Vijay Kumar Sharma & Ors. vs. The State of Rajasthan and Ors. Decided on 20.04.2018.

I have heard learned counsel appearing for the respective parties, perused the impugned judgments passed by the courts below and carefully scanned and scrutinized the entire material made available to the Court.

Both the courts below decided issue Nos. 1 & 2 against the appellant/plaintiff and held that the allotment of the plot had been cancelled by the RIICO

in the year 1979. With regard to issue No.3, both the courts below held that the plaintiff had possession on the said plot just before filing of the suit.

Initially, the trial court in exercise of its powers under section 151 CPC directed to remove the construction of the said plot within a period of one

month from the date of the order. The trial court vide its judgment and decree dated 08.09.2000 dismissed the suit filed by the plaintiff and awarded a

compensation of Rs.2,000/- to the defendant No.5. It is not in dispute that the plaintiff filed a civil regular civil first appeal against the aforesaid

judgment and decree dated 8.9.2000. The First Appellate Court vide its order dated 05.08.2006 allowed the appeal filed by the plaintiff and held that

the trial court ought to have framed the following issues, which are ad-infra:-

1. Whether the plaintiff was entitled to get declaration from the court being a lease-holder of the said plot; ?
2. Whether the defendant No.5 could get the possession of the said plot from the plaintiff in exercise of powers under section 151 CPC ?

The trial court vide its judgment and decree dated 20.11.2006 again dismissed the suit filed by the plaintiff. However, the issue No.2(a) was decided

against the defendant No.5 and held that the defendant No.5 cannot get the possession of the said plot by the order of the Court in exercise of the

power under section 151 CPC. Both- the plaintiff and the defendant No.5 challenged the order of the trial court. The plaintiff filed first appeal and the

defendant No.5 also filed a cross appeal challenging the finding of the trial court on issue No.2(a). The First Appellate court vide its judgment dated

08.01.2019 dismissed the first appeal filed by the plaintiffs and upheld the judgment of the trial court dismissing the suit. The First Appellate Court

allowed the cross-appeal filed by the defendant No.5 and directed the appellants/plaintiffs to hand over the possession of the said plot. Both the courts

below held that the allotment of the plot in question was cancelled by the RIICO as there was breach of the condition of allotment by the plaintiff and

the plaintiff was duly served with the cancellation notice issued by the RIICO. Thus, the concurrent findings recorded by both the courts below are

findings of fact which warrant no interference in both the second appeals, by this Court.

Regarding the order of the Court below passed in exercise of its powers under Section 151 CPC, learned counsel for the appellants/plaintiffs

submitted that the powers under Section 151 CPC cannot be invoked by the Court to pass an order or direction for which there is separate provision

under the CPC. In the present case, there is a provision under Order 8 Rule 6A to 6G to file counter-claim. Therefore, the Court under Section 151

CPC cannot grant a relief which could only be granted under Order 8 Rule 6A to 6G CPC. The powers under Section 151 CPC cannot be exercised

beyond the pleadings of the parties, more-so when the RIICO did not file any written statement.

It is pertinent to note that after remand the trial Court decided issue No.2 (a) which was framed ad-infra:-

Whether the defendant No.5 is entitled to claim possession from the plaintiffs by the order of the Court in exercise of powers under section 151 CPC

?

The First Appellate Court on issue No.2 (a) regarding getting possession of the plot by the defendant No.5 by an order of the Court in exercise of its

powers under Section 151 CPC held that the aforesaid issue has been wrongly decided by the trial court. The First Appellate Court also directed the

plaintiff to remove the construction within a period of one month from the date of the order and give the possession of the said land to the defendant

No.5. Thus, when in the suit plaintiff failed to establish (12 of 13) [CSA-64/2019] lawful possession and declaration, it is not open for the

appellant/plaintiff to raise such objection that the defendants should have filed a separate civil suit or the defendants should have filed a counter claim

seeking dispossession of the appellant/plaintiff from the plot in question at the stage of second appeal, where the appellant/plaintiff failed to establish

lawful possession after cancellation of the allotment on the said plot, the allotment of the said plot made in favour the appellant /plaintiff was cancelled

by the RIICO in the year 1979. The plaintiff also failed to carry out construction on the said plot. After cancellation of the said plot, same was allotted

to the defendant No.5 by the RIICO on 20.12.1988 as per the rules and the lawful possession of the said plot was proved to be with the defendant

No.5.

It is pertinent to note that after cancellation, the RIICO made allotment of the plot in favour of the defendant No.5 and the land was never utilized by

the plaintiff/appellant. The defendant No.5 was found lawful possession holder. If such rights of lawful possession holder are evaded, the relief can be

granted to the aggrieved party by invoking the inherent powers of the Court under section 151 CPC. Thus, it is the duty of the Court to pass a decree

for appropriate relief and the First Appellate Court can modify the decree of the trial court to give proper and appropriate relief as required in the facts

of the case.

In view of above, the plaintiff/appellant failed to get himself declare the lease-holder of the plot No.26, which after cancellation allotted to the

defendant No.5 and the plaintiff/appellant also found out of possession. Thus, no substantial question of law is involved in these second appeals and the

findings of fact recorded by the Court below do not warrant any interference by this Court.

In the result, both the second appeals filed by the appellant/plaintiff are bereft of any merit and accordingly stand dismissed. Parties shall bear their

own costs.