

(2010) 09 GUJ CK 0087
In the Gujarat High Court
Case No : Second Appeal No. 153 of 1986

Chhaganbhai Jinabhai Rathod and Another	APPELLANT
Vs	
Dalabhai Sakabhai Rathod	RESPONDENT

Date of Decision : 13-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2010) 09 GUJ CK 0087

Hon'ble Judges : M.D. Shah, J

Bench : Single Bench

Advocate : Aditiya, for S.N. Soparkar, for the Appellant; B.B. Naik, for the Respondent

Final Decision : Dismissed

Judgement

M.D. Shah, J.—This Second Appeal u/s 100 of the CPC has been preferred by the appellants herein - original defendant challenging judgment and order dated 29.09.1984 passed by the learned Civil Judge (J.D.), Navsari in Regular Civil Suit No. 19 of 1982 by which learned Trial Court allowed the Suit filed by the defendant herein - original plaintiff, which came to be confirmed by the learned Appellate Court vide judgment and order dated 07.04.1986 passed in Regular Civil Appeal No. 59 of 1985.

2. Respondent herein - original plaintiff instituted Regular Civil Suit No. 19 of 1982 in the Court of learned Civil Judge (JD), Navsari for obtaining possession of property bearing Municipal No. 153/27/2 on the ground that the said property belongs to the plaintiff and that it had been given to the appellants herein - original defendants as licensees and the appellants herein have not vacated the same inspite of the request made by the plaintiff. The original plaintiff is brother-in-law of defendant No. 1 and real brother of defendant No. 2. According to the plaintiff he had allowed his sister and brother in law to stay in the aforesaid property till the time they got their own house constructed in a plot of land purchased by them. On the other hand the defendants filed Written Statement

vide Exh.19 denying contentions of the plaintiffs and stated that they have become owners of the suit property by virtue of adverse possession since last 20 years and that the plaintiff had nothing to do with the said premises. Considering oral and documentary evidence on record, learned Trial Court allowed the suit preferred by the original plaintiff. Being aggrieved and dissatisfied with judgment and order dated 29.09.1984 passed by the learned Civil Judge (J.D.), Navsari in Regular Civil Suit No. 19 of 1982, the appellants herein - original defendants preferred appeal being Regular Civil Appeal No. 59 of 1985 before the learned Appellate Court. The learned Appellate Court vide judgment and order dated 07.04.1986 passed in Regular Civil Appeal No. 59 of 1985 confirmed the order passed by the learned Trial Court, hence, present appellants - original defendants have preferred present Second Appeal.

3. Learned Advocate for the appellants herein - original defendants submitted that while admitting this Appeal this Court raised following substantial question of law:

Whether in the facts and circumstances of the case, the appellants have failed to prove that they have become owners of the suit premises on the ground of adverse possession?.

3.1. Learned Advocate for the appellants herein submitted that both the Courts below have erred in not appreciating that the appellants herein had become the owner of the suit premises on the ground of adverse possession. Learned Advocate further submitted that both the Courts below have erred in not appreciating that the original plaintiff had failed to prove that he is the owner of the suit premises. Making above submissions, it is requested to allow present Appeal.

4. Heard learned Advocate for the appellants.

5. This Court has gone through the judgment and order passed by both the Courts below. Both the Courts below have held that appellants herein have failed to prove that they have become owner of the suit premises on the ground of adverse possession. In the written statement vide Exh.19 original defendants have raised contention that by way of plea of adverse possession, they have become owner and therefore, the plaintiff is not entitled to get decree of eviction. However, in evidence, it is stated by the defendants that they have purchased the disputed property and they have become owner of the said property. On perusing the documents, the learned Trial Court held that defendants have failed to prove plea of adverse possession as well as ownership over the property in question and therefore, original plaintiff is entitled to get decree of eviction.

6. There are concurrent findings given by both the Courts below on appreciation of evidence documentary as well as oral, which are not required to be interfered with by this Court in exercise of powers u/s 100 of the Code of Civil Procedure. High Court cannot interfere with such finding of fact even by examining or reappreciating the evidence from the aspect of sufficiency of proof. Learned

Advocate for the appellants herein has failed to establish that both the Courts below have committed any error.

7. This Appeal is u/s 100 of the CPC and unless any substantial question of law arise to be considered by this Court, present Second Appeal is not required to be entertained and admitted.

8. At this stage decision of the Hon''ble Supreme Court in the case of Rur Singh (D) th. LRS. and Others Vs. Bachan Kaur, is required to be referred to. In para 13 of the said judgment the Hon''ble Supreme Court has observed as under:

13. The High Court while exercising its jurisdiction u/s 100 of the CPC exercise a limited jurisdiction. It may interfere with a finding of fact arrived at by the trial Court and/or of the first appellate court only in the event, a substantial question of law arises for its consideration.

9. As stated above, learned Advocate for the appellants has failed to show any substantial question of law having arisen in the present Second Appeal.

10. In view of above and settled principles of law by the Hon''ble Supreme Court and as no substantial question of law having arisen in this appeal, this Court would not like to interfere with the concurrent findings of learned Trial Court as also of the learned Appellate Court. There is no substance in the present Second Appeal, which deserves to be dismissed and accordingly it is dismissed. Interim relief, if any, stands vacated forthwith.