
(2015) 02 RAJ CK 0096
In the Rajasthan High Court
Case No : Civil Second Appeal No. 94/1996

Dev Raj Mehta

APPELLANT

Vs

Municipal Corporation

RESPONDENT

Date of Decision : 11-02-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2015) 02 RAJ CK 0096

Hon'ble Judges : Vineet Kothari, J.

Bench : Single Bench

Advocate : K.C. Samdariya, for the Appellant; B.R. Mehta, Advocates for the Respondent

Final Decision : Allowed

Judgement

Dr. Vineet Kothari, J.—The present second appeal filed by Dev Raj Mehta since expired on 02.06.2003 during pendency of this appeal and now represented by his legal representatives Smt. Raj Kumari Mehta and others, arises out of the judgment and decree of the first Appellate Court of Additional District Judge No. 3, Jodhpur dated 15.04.1996 allowing the appeal of the respondent Municipal Corporation, Jodhpur namely Appeal No. 8/1996: Municipal Corporation, Jodhpur Vs. Dev Raj s/o Daulat Raj in the present suit for injunction filed by plaintiff Dev Raj Mehta, which suit No. 444/1993: Dev Raj s/o Daulat Raj vs. Municipal Corporation, Jodhpur was decreed by the learned trial Court of Additional Civil Judge (Jr. Division) and Judicial Magistrate, First Class, No. 1 Jodhpur on 15.12.1995.

2. The facts leading to the present second appeal under Section 100 CPC in a nutshell are as under:-

There was a pattasud land of 3840 sq.yards of one Jailal Pancholi which was purchased by the plaintiff Dev Raj Mehta under the registered sale deed on 17.02.1946. Out of the said 3840 sq.yards of land situated at Sardarpura,

Jodhpur, 324 sq.yards of land was given by way of gift in favour of Mst. Soni Bai by the plaintiff. From the remaining 3516 sq.yards of land, the State Government in the year 1948 took and used 829 sq.yards of land for constructing a "Nalla" (drain) for drainage of rainy water and in lieu of said 829 sq.yards of land used by the State for constructing said Nalla, in exchange the State Government allotted 650 sq.yards of land on 25.06.1949 and 163.3 sq.yards of land on 23.12.1964 in favour of the plaintiff and thus, the plaintiff came to own and in possession of 3500.3 sq.yards of land $[3516 - 829 = 2687 + 813.3 (650 + 163.3) = 3500.3 \text{ sq.yards of land}]$. 3. When the Municipal Corporation, Jodhpur after its incorporation under Rajasthan Municipalities Act, 1959 sought to interfere with the peaceful possession of the plaintiff on the said 91 sq.yards of land $[920 - 829 = 91]$, which land was not used by the State Government for construction of "Nalla", the plaintiff filed the present suit for injunction, and the defendant Municipal Corporation, Jodhpur though filed a written statement, did not adduce any evidence before the Trial Court.

4. The learned trial Court decreed the suit on 15.12.1995 by returning the following findings of facts which are quoted below for ready reference:-

5. The Municipal Corporation, Jodhpur filed the first appeal before the first Appellate Court which was allowed on 15.04.1996 in the following manner by the learned Additional District Judge No. 3 Jodhpur:-

6. Being aggrieved by the judgment and decree dated 15.04.1996, the plaintiff filed this second appeal which was admitted by a co-ordinate Bench of this Court by the order dated 13.07.2000 while framing the substantial questions of law. The entire of the order dated 13.07.2000 is extracted below:-

"S.B. CIVIL SECOND APPEAL No. 94/96

13.7.2000

HON"BLE MR. N.P. Gupta, J.

Appellant present in person

Mr. Prakash Tatia for the respondent

Heard the appellant in person and Mr. Prakash Tatia, learned counsel for the respondent

The present appeal involves following substantial questions of law:-

(i) Whether Exhibit-6 tantamounts to giving of 91 Yards of land to the appellant and if not, what is its effect?

(ii) When even according to the plaintiff 920 Yards of land was taken for construction of "Nala" in the year 1948, simply because 829 yards of land was actually used in construction of Nala and 91 yards of land remained unused which continued to be in occupation of the plaintiff on which he was allowed to construct Boundary Wall, can it be said that 91 Yards of land belongs to the

plaintiff so as to entitle him to have injunction against the defendants?

Admit. Issue notice. Mr. Prakash Tatia accepts notice for the respondent, hence notice need not to issue. Put up for hearing in due course.

Sd/- (N.P. GUPTA), J."

7. Learned counsel for the appellant-plaintiff Mr. K.C. Samdariya submitted that the first Appellate Court has clearly fallen into an error in miscalculating the pattasud land in possession of the plaintiff only at 3409.3 sq.yards assuming that 920 sq.yards of land of plaintiff was used for construction of "Nalla" by the State Government in the year 1948 whereas actually only 829 sq.yards of land was so utilised and in exchange of such land utilized, the plaintiff appellant was allotted 813.3 sq.yards of land in two parts - 650 sq.yards of land on 25.06.1949 and 163.3 sq.yards of land on 23.12.1964. The plaintiff was actually in possession of total 3500.3 sq.yards of land of his own pattasud land on which with the due permission of UIT, Jodhpur, he had constructed the boundary wall on the said 3500.3 sq.yards and, therefore, taking this premise that plaintiff was in possession of a lesser area of 3409.3 sq.yards of land only, the first Appellate Court wrongly allowed the appeal filed by the Municipal Corporation, Jodhpur and refused to affirm the injunction in favour of the plaintiff and hence the present second appeal was filed by the plaintiff-appellant.

8. On the other hand, Mr. B.R. Mehta, learned counsel appearing for Municipal Corporation, Jodhpur while could not dispute the factual findings of the learned trial Court, however tried to support the judgment of the first Appellate Court on the basis of the reasons given in the portion of the judgment as quoted above.

9. Having heard learned counsels for the parties and upon perusal of the record and findings of both the courts below, this Court is of the clear opinion that first Appellate Court has clearly fallen into error in assuming that 920 sq.yards of land was taken by the State Government for construction of "Nalla" in the year 1948 out of the total 3516 sq.yards of pattasud land of the plaintiff Dev Raj Mehta.

10. In the absence of any contrary evidence led by the Municipal Corporation, Jodhpur, the stand of the plaintiff that only 829 sq.yards of land was used for construction of Nalla and remaining 91 sq.yards of his own pattasud land remained with the plaintiff and with the due permission of UIT, Jodhpur, they constructed boundary wall on the entire area of 3500.3 sq.yards of land and in exchange of 829 sq.yards of land so used by the State Government for construction of "Nalla", the plaintiff was allotted 813.3 sq.land [650 sq.yards of land on 25.06.1949 and 163.3 sq.yards of land on 23.12.1964 totaling 813.3 sq.yards of land] was clearly a finding of fact, which could not be interfered with by the first Appellate Court.

11. The plaintiff was compensated only for 829 sq.yards of land used by the State Government for construction of "Nalla" in the year 1948, while remaining 91 sq.yards of pattasud land remained with the plaintiff only and a boundary wall

was also constructed on entire 3500.3 sq.yards of land with the due permission of the UIT, Jodhpur which fact was never controverted by the Municipal Corporation, Jodhpur at any point of time and the said 91 sq.yards of land never vested back with the State Government. There was no evidence placed on record by the Municipal Corporation that the said land vested in it or State Government by any means. There was no acquisition proceedings for acquiring any part of the land for construction of "Nalla" and there was no evidence on record before the first Appellate Court to return a finding of fact that 920 sq.yards of land was taken by the State Government for construction of said "Nalla". Thus, the said finding of the first Appellate Court while ignoring the correct findings of fact arrived by the trial Court, that plaintiff was in possession of only 3409.3 sq.yards of land is apparently a perverse finding and based on no evidence at all and, therefore is liable to be reversed and set aside.

12. Thus, the second appeal of the plaintiff deserves to be allowed and the questions framed above deserve to be answered in favour of the appellant plaintiff and they are so answered accordingly.

13. The present second appeal is, therefore, allowed. The judgment and decree of the first Appellate Court dated 15.04.1996 in appeal No. 8/1996 Municipal Corporation Vs. Dev Raj is quashed and set aside and the judgment and decree of the trial Court dated 15.12.1995 in civil suit No. 444/1993 is restored.

14. No order as to costs.

15. Copy of this order be sent to the concerned parties and courts below forthwith and decree be made accordingly.