
(2012) 02 AHC CK 0272
In the Allahabad High Court
Case No : Second Appeal No. - 134 of 2012

Ganga Ram Diwakar

APPELLANT

Vs

Qunwar Pal Jatav And Others

RESPONDENT

Date of Decision : 03-02-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11
Criminal Procedure Code, 1973 (CrPC) — Section 133
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 117, 6, 9

Citation : (2012) 02 AHC CK 0272

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon'ble Sibghat Ullah Khan, J.—Heard learned counsel for the appellant. This is plaintiff's Second Appeal arising out of Original Suit No.270 of 1993 which was dismissed by Civil Judge (Junior Division), Firozabad on 9.10.2006. Against the said judgment and decree plaintiff filed Civil Appeal No.17 of 2006 which was dismissed by Additional District Judge, Court No.9, Firozabad on 12.1.2012. Cross objections which had been filed by defendants-respondents were also rejected. Plaintiff has preferred this Second Appeal from the decree of Lower Appellate Court.

2. The relief claimed in the suit was for permanent prohibitory injunction seeking to restrain the defendants from interfering in the possession of the plaintiff over the land lying adjacent to the plaintiff's house towards North shown by letters Aa, Ba, Sa, Da in the plaint map.

3. However in the copy of the plaint annexed as Annexure- 1 to the affidavit filed in support of the stay application in this appeal letters are not written on the mp. Land lies in between road (kharanja) and plaintiff's house. It is situated towards North of plaintiff's house and towards West of defendants' house. Amin was also appointed to inspect the spot who submitted his report and map after inspection

copy of which is Annexure-2 to the affidavit filed in support of stay application. The land in dispute appears to be seven or eight times more than the house of the plaintiff in area. Part of the disputed land is shown in the form of Chabootra. House of the plaintiff appears to be about 20 feet x 20 feet. The length of the land in dispute is about 75 feet and width of the land towards North side is 17.5 feet and towards southern side is more than double i.e. 38 feet 6 inches. Defendants pleaded that in between chabootra and house of the plaintiff a public rasta intervened on which plaintiff had forcibly encroached and the disputed land except the rasta belonged to the defendants.

4. Earlier in respect of alleged rasta immediately towards North of the plaintiff's house proceedings u/s 133 Cr.P.C. were initiated and spot was inspected by Tehsildar and Kanoongo. The said report alongwith map was filed in the suit apart from Amin's report. In the report of Tehsildar and Kanoongo it was mentioned that there was a rasta which had been blocked by the plaintiff by storing bricks and people of the locality were feeling great difficulty in using the same as rasta.

5. In the map, just after chabootra, a 5 feet wide portion was shown which was stated by the defendant to be a gali. However, plaintiff stated that it was part of his land. The trial court held that plaintiff completely failed to prove that the land in dispute was his ancestral land. Trial court held that the portion of land immediately towards North of plaintiff's house shown by letters E,F,C,D in the Amin's map belonged to the plaintiff and not the land beyond that. Trial Court also found that plaintiff was not in possession of the land beyond E F C D.

6. Lower appellate court framed an additional issue to the fact as to whether over the property in dispute defendants had attempted to install a statue of Dr. Ambedkar on 28.9.1993. The lower appellate court directed the trial court to decide the said issue through order dated 9.10.2006. Trial Court decided the said issue on 20.8.2009 holding that plaintiff had been able to prove that during pendency of suit abortive attempt was made by the defendants to install the statue of Dr. Ambedkar. However, the trial court held that the said decision did not warrant reversal of his judgment. The appellant placed great reliance upon Amin's report before lower appellate court and on the finding of the trial court on the issue which had been remitted by the lower appellate court. It was also argued before lower appellate court that house of the plaintiff and property in dispute were quite separate and distinct.

7. Even though the discussion of the evidence by lower appellate court is not very satisfactory however it is a judgment of affirmance hence it does not deserve to be reversed on this ground.

8. The area of the land is seven or eight times more than the house of the plaintiff. Firstly unlimited area of land cannot be settled with the owner of the adjoining house under Section- 9 of U.P.Z.A.&L.R. Act. Secondly before lower appellate court learned counsel for the appellant himself argued that house of

the plaintiff and property in dispute were quite separate. Plaintiff could not prove that he was owner or in possession of the land in dispute. The trial court after taking into account entire material and evidence on record has held that plaintiff was neither owner nor in possession of the land in dispute. The findings are findings of fact.

9. Learned counsel for the appellant has not argued settlement of land with the plaintiff under Section- 9 of U.P.Z.A.&L.R. Act. He has argued that land was abadi land which belonged to the plaintiff since long. Under Section- 6 and 117 of U.P.Z.A. & L.R. Act at the time of Zamindari Abolition all abadi sites vested in State and thereafter in Gaon Sabha. Only constructed houses and land appurtenant thereto remained with the owners of the houses by virtue of Section- 9 of U.P.Z.A.&L.R. Act. Accordingly, if at the time of Zamindari Abolition it was merely a site then even if plaintiff had any right it came to an end and the land vested in Gaon Sabha.

10. The mere fact that defendants attempted to install the statue of Dr. Ambedkar but they could not succeed does not mean that plaintiff was in possession. As litigation was going on hence dispute could be raised by any party. Accordingly, Second Appeal is concluded by findings of fact involving no substantial question of law. It is therefore dismissed under Order 41 Rule 11 C.P.C.