

(2014) 05 RAJ CK 0246
In the Rajasthan High Court
Case No : Civil Second Appeal No. 347/2012

Gopiram and Others

APPELLANT

Vs

Late Shri Ramkaran and Others

RESPONDENT

Date of Decision : 09-05-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, 100

Citation : (2014) 05 RAJ CK 0246

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : S.K. Poonia, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Arun Bhansali, J.—This second appeal u/s 100 CPC is directed against judgment and decree dated 30.08.2012 passed by Additional District Judge, Rajgarh, District Churu, whereby, the appeal filed by the appellants against judgment and decree dated 21.03.2006 passed by Civil Judge (Junior Division), Rajgarh, District Churu has been dismissed.

2. The facts in brief may be noticed thus: the respondents-plaintiffs filed a suit for eviction against the appellants with the averments that the plot in question was purchased in public auction by them on 07.07.1985 and a Patta was issued and the defendants had trespassed on the land about three months before filing of the suit, therefore, it was prayed that the defendants be evicted and the possession of the suit plot be handed over to the plaintiffs.

3. A written statement was filed disputing the averments made in the plaint; it was claimed that the defendants were in possession since 1968; several notices were issued by the Gram Panchayat, however, they are in possession thereof not as trespassers, but as owners of the plot; it was prayed that the suit be dismissed.

4. The trial court framed four issues; on behalf of the plaintiffs three witnesses

were examined; on behalf of the defendants also three witnesses were examined.

5. After hearing the parties, trial court came to the conclusion that the defendants have trespassed on the land belonging to the plaintiffs and were liable to be evicted on that count; the pleas raised by the defendants regarding adverse possession and for cancellation of the Patta issued in favour of the plaintiffs were rejected; ultimately, the suit filed by the plaintiffs was decreed.

6. Feeling aggrieved, first appeal was filed by the appellants, which also came to be rejected by the first appellate court while upholding the judgment passed by the trial court.

7. It is submitted by learned counsel for the appellants that an application under Order XLI, Rule 27 CPC has been filed in the present appeal; alongwith the said application a response given by the Gram Panchayat to the application filed by the appellants under Right to Information Act ("RTI Act") has been attached, wherein, the Gram Panchayat has indicated that the record regarding the meetings etc. of the Gram Panchayat and issuance of Patta to the plaintiffs was not available; on the strength of the said document, it was submitted that from the above document, it is apparent that both the courts below fell in error in coming to the conclusion that the Patta issued in favour of the plaintiffs was valid and, therefore, the appeal deserves to be admitted.

8. Having perused the judgments passed by both the courts below, the averments made in the application under Order XLI, Rule 27 CPC and the document sought to be produced as additional evidence, this Court is of the firm opinion that the appeal has no substance.

9. A bare reading of the response of Gram Panchayat to the RTI Application reveals that the Gram Panchayat has responded that for the period 01st January, 1983 to 31st December, 1985 it was not in possession of the documents. To indicate that the Gram Panchayat is not in possession of certain documents and to say that such documents do not exist, are two different things; the reply given by the Gram Panchayat regarding non-availability of the documents does not mean that the documents in fact did not exist as one of the documents, which was said to be not available, is the minutes book of the Panchayat meetings for the period 01st January, 1983 to 31st December, 1985, regarding which, it cannot be said that for a period of three years no meeting was held.

10. Both the courts below have concurrently found that the appellants are mere trespassers and the Patta issued in favour of the plaintiffs was valid and the claim of the appellants regarding adverse possession was baseless; the findings being findings of fact, no substantial question of law arises for consideration in this second appeal.

11. Consequently, the second appeal alongwith application under Order XLI, Rule 27 CPC are dismissed. No costs.