

**(2006) 05 AHC CK 0216**  
**In the Allahabad High Court**  
**Case No : Second Appeal No. 342 of 2006**

Lal Veer and Others

APPELLANT

Vs

Harswaroop, Smt. Shila, Sunil Kumar and Muqaddar

RESPONDENT

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**Date of Decision :** 08-05-2006

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 100

**Citation :** (2006) 3 ARC 3034 : (2006) 3 AWC 3034 : (2006) 2 RD 113

**Hon'ble Judges :** Umeshwar Pandey, J

**Bench :** Single Bench

**Advocate :** Arvind Srivastava and R.K. Singh, for the Appellant;

**Final Decision :** Dismissed

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## Judgement

Umeshwar Pandey, J.—Heard the learned Counsel for the appellants.

2. This second appeal arises out of the judgment and decree dated 30.3.2006 passed by the lower appellate court whereby after reversing the findings recorded by the trial court, the appellants' suit for permanent injunction has been dismissed.

3. The plaintiffs-appellants filed a suit for the relief of permanent injunction to restrain the respondents-defendants from carving out any Rasta or otherwise interfering into their possession over plot No. 653. The suit was contested by the respondents-defendants stating that the plaintiffs-appellants are though the owners of plot No. 653, had encroached upon the Chak road land of plot No. 652 and since that land is public pathway, they are not entitled to any permanent injunction.

4. The trial court, on the pleadings of the parties, framed several issues and recorded its findings regarding ownership of the appellants-plaintiffs over plot No. 653. The trial court has also found that since plot No. 653 is the exclusive property of the appellants-plaintiffs, they have a right for a decree of permanent injunction. Accordingly the suit was decreed. Against these findings, the lower

appellate court had adverted to the pleadings of the parties which show that there was absolutely no dispute as to the claim of appellants-plaintiffs" title over plot No. 653. The question which squarely arose for adjudication between the parties was with regard to the existence of a public pathway (Plot No. 652) in between the two plots No. 651 and 653. The appellants-plaintiffs" witness admits before the trial court in its evidence that plot No, 652 is a Chak Road left for the use of general public of the village. The existence of that Rasta of plot No. 652 has nowhere been pleaded by the plaintiffs nor It has been stated in their pleadings that the same has been encroached upon by the people of the allottees of plot No. 651. This Rasta has also not been located in the appended plaint map with their pleadings. The appellants have simply explained the existence of this Rasta in their evidence led before the trial court. They have also admitted in the evidence that this Rasta is located in between the plot No. 651 and 653. Therefore, there is definitely a Rasta in between these two plots and if as according to the plaintiffs-appellants as they so explain in their evidence, the same has been encroached by the allottees of plot No. 651, this fact should have been pleaded by them and only then they could be able to establish that the land of plot No. 652 was encroached by the allottees of plot No. 653 and not by them. An otherwise finding so recorded by the trial court has actually been substituted by the appellate court on the basis of the evidence and pleadings of the parties and this factual aspect if has been elaborately discussed by the appellate court, the argument of the learned Counsel for the appellants that the appellate court has not assigned reasoning of its finding after closely scrutinizing the judgment given by the trial court, does not appear to be justifiable. In fact, the findings recorded by the appellate court are actually In substitution to the findings recorded by the trial court and if in this manner the trial court's findings have been reversed, the case law of Santosh Hazari Vs. Purushottam Tiwai (Dead) by Lrs., as relied upon by the learned Counsel for the appellants will not help out the appellants for the admission of this appeal.

5. The learned Counsel for the appellants has also argued that the burden of proving the existence of Chak road of plot No. 652 was initially upon the defendants-respondents and if they had not obtained any survey of that plot, the presumption recorded by the trial Court that the encroachment has been done upon Chak road by the allottees of plot No. 651 shall be taken to be a correct finding and should not have been reversed by the appellate court. I do not agree with this submission of the learned Counsel because the contention of the defendants that the land of plot No. 652 has been encroached upon by the appellants-plaintiffs and has been included in their plot No. 653 is such a pleading which in part stands established from plaintiffs evidence as discussed by the appellate court. One of the plaintiffs" witness admits the nature of plot No. 652 being a Chak road and it is also admitted that this Chak road is located in between plot No. 651 and 653. Therefore, if there is such a plot which is a public passage, there was no justification on the part of the plaintiffs to have concealed its location in their pleadings or in their map appended to the pleadings. It was

rather a real burden on the plaintiffs themselves to prove as to where the Rasta of Chak road is actually located. In order to prove that the plaintiffs are in possession only to the extent of area which is the land of plot No. 653, the initial burden lay upon them to get the exact extent of plot No. 653, 652 and 651 all duly surveyed and shown by survey expert on a map on the record. Therefore, the evidence available on the record if has been considered and discussed thread bare by the appellate court for recording its findings, it cannot be said that the said court has not come into close quarters with the reasoning assigned by the trial court for the purposes to assign its own reasoning for arriving at a different finding. The appellate court has very elaborately discussed that the only thing which has weighed upon the mind of the trial court is the ownership of the plaintiffs-appellants over plot No. 653, thus leading the court to decree the suit. It is also found that the trial court has without any basis arrived at the conclusion that the Chak road of plot No, 652 has been encroached upon by the allottees of plot No. 651 and not by the plaintiffs. The reasons recorded after discussing the evidence on the factual controversies arising in the suit/appeal, as given by the appellate court, are wholly sound and this Court as a second appellate Court is not supposed within the four comers of Section 100 C.P.C. to interfere into the pure findings of facts recorded by the first appellate court. Such findings are immune for challenge in the second appeal. In this context the case law of *Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar and Others*, *Rajeshwari Vs. Puran Indoria*, 54 Indian Appeals 126, Deputy Commr., Hardoi, in charge Court of Wards, *Bharawan Estate Vs. Rama Krishna Narain and Others*, and *Sir Chunilal V. Mehta and Sons, Ltd. Vs. The Century Spinning and Manufacturing Co., Ltd.*, are relevant for reference.

6. From the aforesaid facts and circumstances, it appears more than evident that the first appellate court while reversing the judgment of the trial court has purely confined its findings relating to the factual controversies raised by the parties and that part is not to be made a subject matter for consideration before a second appellate Court. Even the erroneous findings of facts, rather the findings of law are not vulnerable for challenge before this Court. The jurisdiction of the High Court by the new scheme of Section 100 C.P.C. has now been ceased to be available to correct the errors of law or the erroneous findings of the first appellate court even on questions of law unless such question of law be a substantial one. Thus, no substantial question of law has arisen in this second appeal for consideration before this Court.

7. I do not find any justification to admit this appeal. It is hereby dismissed at the admission stage.