

(2019) 03 RAJ CK 0153

In the Rajasthan High Court

Case No : Civil Second Appeal No. 52 Of 2019

Lrs Of Karnel Singh And Ors

APPELLANT

Vs

Ramnarayan And Ors

RESPONDENT

Date of Decision : 14-03-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 100

Citation : (2019) 03 RAJ CK 0153

Hon'ble Judges : P.K. Lohra, J

Bench : Single Bench

Advocate : Bheemkant Vyas

Final Decision : Dismissed

Judgement

Appellant-plaintiffs have preferred this second appeal against impugned judgment & decree dated 19th of February, 2019, passed by Addl. District Judge, Anoopgarh, District Sri Ganganagar (for short, 'learned first appellate Court'), whereby the learned first appellate Court dismissed their appeal to affirm judgment and decree dated 20th March 2015, passed by Civil Judge, Anoopgarh, District Sri Ganganagar (for short, 'learned trial Court'). The learned trial Court, by the aforesaid judgment rejected suit filed by the appellant-plaintiffs but decreed the counter claim filed by respondent-defendants.

The brief facts of the case are that the plaintiffs, Karnel Singh (husband of appellant No.1/1 and father of appellants No.1/2 & 1/3) and Narvindra Singh filed a suit against respondent-defendants for permanent injunction stating therein that Patta for their shop ad-measuring 8 X 25 ft. situated in Tehbazari, Anoopgarh was issued by Nagarpalika, Anoopgarh. It is averred that there was a lane of 8 X 31 ft. behind the shop but one Navratan got issued patta of the land admeasuring 8 X 23 ft. in his favour in connivance with the officials of the Nagarpalika. Thereafter he and one Raju constructed a shop (showroom) thereon and sold the same to one Ramnarayan through registered sale-deed. It is also averred that defendant No.1 want to grab the land of lane, which is used by the

plaintiffs and threatened the plaintiffs on 02.06.2011 as such they moved an application before the Nagarpalika for restraining defendant No.1 from raising illegal construction on the land in question. With these averments, the plaintiffs sought injunction against defendant not to raise construction on 8 X 8 ft. land situated behind plaintiff's shop.

Respondent-defendant No.1 filed written statement and denied the averments of the plaintiff. In the return, it is averred that there no street lies behind the shop of plaintiffs and others viz., Biharilal and Navratan and the shop purchased by him from Navratan was never used as a street. According to him, in fact, the shop ad-measuring 8 X 23 ft. situated behind the shop of plaintiffs so also Biharilal and Navratan was of Navratan and for that Patta was issued in his favour by the Nagarpalika, which was later on sold to him by registered sale-deed and since then it is in his use and occupation. It is also averred that out of the total land of 8 X 23 ft., 8 X 15 ft. is constructed area and remaining 8 X 8 ft. is lying vacant. It is further averred that the plaintiffs in order to grab some part of the shop purchased by him have filed the present suit with false and concocted averments whereas no vacant land lies behind the shop of plaintiffs. It is also averred in the return that in the night of 14th of May, 2011, the plaintiffs broke wall of their shop and opened a window towards his shop and on resisting, plaintiff No.1 threatened him and his son that they would take possession of 8 X 8 ft. vacant land. With these averments, defendant No.1 prayed for rejection of the suit.

Defendant No.2 also filed separate written statement and stated that a commercial plot ad-measuring 8 X 23 ft. was given to Navratan on lease for 99 years. Behind the shop, there is vacant land of 8 X 8 ft. is of Nagarpalika and thus the plaintiffs have no right to open a gate. In additional pleas, it is averred that Nagarpalika is an autonomous body and it is mandatory that before filing a suit against it, notice is to be given. It is further averred that Nagarpalika is free and competent to remove encroachments from the land of Nagarpalika. With these averments prayer was made to reject the suit.

Defendant No.1 also filed counter-claim by reiterating the averments made in the written statement and stated that the land ad-measuring 8 X 8 ft. is vacant land of Nagarpalika and Karnel Singh and Navindra Singh want to encroach over it whereas they have no right to open a window towards his vacant land and interfere in his rightful possession. With these averments, it is prayed that Karnel Singh and Navindra Singh may be restrained from interfering with his vacant land.

The original plaintiffs Karnel Singh and Navindra Singh filed their return to the counter claim filed by Ramnarayan and prayed for its rejection. The respondent Nagarpalika also filed written statement to the counter-claim filed by Ramnarayan.

Learned trial Court, on the basis of pleadings of rival parties, framed issues for determination. Thereafter, parties led their oral as well as documentary evidence.

After conclusion of the evidence, the learned trial Court rejected the suit filed by Karnel Singh and Navindra Singh and decreed the counter-claim filed by Ramnarayan vide judgment and decree dated 20th of March, 2015.

Being disdained by the judgment and decree of learned trial Court, appellant-plaintiffs preferred appeal before learned first appellate Court. The learned first appellate Court, vide its judgment and decree dated 19th of February, 2019, upheld the judgment and decree passed by learned trial Court. The learned first appellate Court, appreciated the evidence afresh and recorded its concurrence with the findings and conclusions of learned trial Court on all the issues and dismissed the appeal of the appellant-defendants.

I have heard the learned counsel for the appellants and perused the impugned judgments of both the Courts below.

On thorough examination of the impugned judgments, it is crystal clear that the learned trial court has recorded a finding of fact by marshalling the evidence and the learned appellate Court while fully concurring with the said finding of fact has affirmed the same. The learned first appellate Court, while examining the evidence de novo, has fully concurred with the findings and conclusions of the learned trial Court, based on sound appreciation of evidence. On the face of it, the concurrent finding of both the Courts below is based on sound reasonings, which cannot be faulted and as such no question of law much less substantial question of law is forthcoming in the instant appeal. Therefore, obviously, there is no reason for this Court to upset the said finding of fact in the second appeal.

A second appeal is entertainable only when there is substantial question of law involved in the matter but the present appeal is bereft of any substantial question of law rather the substantial questions of law proposed by the appellants are pure and simple question of facts and this Court in second appeal is not obliged to enter into factual arena.

The unison findings of fact, recorded by both the Courts below, upon evaluation of evidence and other materials available on record, sufficiently demonstrate that afflictions of the appellants are wholly untenable. As a matter of fact, concurrent finding of fact recorded by both the Courts below is in consonance and in conformity with evidence and other materials available on record. Legal position is no more res integra that in exercise of powers under Section 100 CPC, it would be unwise and imprudent to enlarge the scope of judicial review so as to treat even an erroneous decision of a final Court of law and facts, i.e., first appellate Court, vulnerable. In other words, jurisdiction of this Court in second appeal is not available to correct the errors of law or erroneous findings recorded by first appellate Court vis-à-vis questions of law, unless such question of law be a substantial one. Upon close scrutiny of the impugned concurring judgments, in my view, no substantial question of law is forthcoming requiring adjudication in this appeal.

In view of foregoing discussion, the instant appeal is bereft of any merit and

devoid of any force, and therefore, same is hereby rejected summarily.
The stay petition is also rejected.