

(2011) 08 RAJ CK 0062

In the Rajasthan High Court

Case No : Civil Second Appeal No. 363 of 2011

Mandir Shri Sitaram Ji Maharaj

APPELLANT

Vs

Jagdeesh and Others

RESPONDENT

Date of Decision : 04-08-2011

Acts Referred:

Civil Procedure Code Amendment Act, 1976 — Section 100

Citation : (2011) 08 RAJ CK 0062

Hon'ble Judges : Narendra Kumar Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Narendra Kumar Jain, J.—Heard learned Counsel for the Appellant.

2. Plaintiff-Appellant's suit for permanent injunction has been dismissed by both the courts below. Hence, the Plaintiff has preferred this second appeal.

3. Issue No. 1 was the main issue in the present case, i.e., whether Shyam Lal was Pujari of Plaintiff-Mandir Shri Sitaram Ji Maharaj and Issue No. 2 was whether the Plaintiff is entitled to a decree of permanent injunction against the Defendants. Trial court as well as first appellate court both, after considering evidence available on record in detail, have decided both the issues against the Plaintiff and in favour of the Defendants. Both the issues involved in the present case are relating to questions of facts and there is concurrent finding of facts by both the courts below. Learned Counsel for the Appellant is unable to point out any illegality or perversity in the impugned judgments, so as to interfere with the concurrent finding of facts recorded by both the courts below.

4. Second appeal can be entertained only on substantial question of law, which, in my view, is not involved in the present second appeal.

5. A three-Judges-Bench of the Hon'ble Supreme Court in Bholaram Vs. Ameerchand, considered the effect of amendment made in Section 100 of the

CPC in 1976, and held as under:

... The High Court, however, seems to have justified its interference in second appeal mainly on the ground that the judgments of the courts below were perverse and were given in utter disregard of the important materials on the record particularly misconstruction of the rent note. Even if we accept the main reason given by the High Court the utmost that could be said was that the findings of fact by the courts below were wrong or grossly inexcusable but that by itself would not entitle the High Court to interfere in the absence of a clear error of law.

6. The Hon''ble Supreme Court, in Ramaswamy Kalingaryar Vs. Mathayan Padayachi, while considering the scope of Section 100 CPC, held as under:

... Suggested shortcomings in the findings of fact recorded by the Courts below would not alter the situation that those were findings of facts, unquestionable, under the provisions of Section 100, C.P.C., which defines the contours of the power of the High Court in second appeal. ...

7. The Hon''ble Supreme Court in Gurdev Kaur and Others Vs. Kaki and Others, considered the true import, scope and ambit of Section 100 CPC by referring the Section 100 CPC, before and after amendment of 1976, various declarations of law by Privy Council and Supreme Court, Legislative background in the 54th Report of the Law Commission of India submitted in 1973, Historical perspective, Rational behind permitting second appeal on substantial question of law, and held as under:

81. Despite repeated declarations of law by the judgments of this Court and the Privy Council for over a century, still the scope of Section 100 has not been correctly appreciated and applied by the High Courts in a large number of cases. In the facts and circumstances of this case the High Court interfered with the pure findings of fact even after the amendment of Section 100 CPC in 1976. The High Court would not have been justified in interfering with the concurrent findings of fact in this case even prior to the amendment of Section 100 CPC. The judgment of the High Court is clearly against the provisions of Section 100 and in no uncertain terms clearly violates the legislative intention.

82. In view of the clear legislative mandate crystallized by a series of judgments of the Privy Council and this Court ranging from 1890 to 2006, the High Court in law could not have interfered with pure findings of facts arrived at by the courts below. Consequently, the impugned judgment is set aside and this appeal is allowed with costs.

8. Since no substantial question of law is involved in this second, hence, it is dismissed in limine.