
(2012) 05 RAJ CK 0084
In the Rajasthan High Court
Case No : Civil Writ Petition No. 8920 of 2005

Mangtu Ram

APPELLANT

Vs

The Additional District Judge, No. 2, Deeg, Bharatpur and
Others

RESPONDENT

Date of Decision : 22-05-2012

Acts Referred:

Constitution of India, 1950 — Article 227
Penal Code, 1860 (IPC) — Section 100

Citation : (2012) 3 WLN 61

Hon'ble Judges : Mahesh Bhagwati, J

Bench : Single Bench

Advocate : Digvijay Mantri, for the Appellant; Syed Zakawat Ali, Dy.
Government Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Mahesh Bhagwati, J.—By way of the instant writ petition, the petitioner has beseeched to quash and set aside the orders dt 09.05.2005 and 08.09.2005 passed by the learned Civil Judge (Jr. Division), Nagar, District Bharatpur and the learned Additional District Judge, No. 2, Deeg, Bharatpur, respectively, whereby the learned trial Court dismissed the temporary injunction application of the petitioner plaintiff, which stood affirmed in appeal. Shorn of unnecessary details, the facts of the case, in nub, are that the petitioner-plaintiff filed a suit for permanent injunction in respect of land bearing khasra Nos. 1059 and 1060, new numbers of which are 1654, 1655, 1656 and 1657 against the respondents-defendants together with an application of temporary injunction under Order 39 Rule 1 and 2 of CPC. During the pendency of the suit, the learned trial Court having heard both the parties did not find a prima facie case in favour of the petitioner-plaintiff and thus, dismissed the temporary injunction application on 09.05.2005. Aggrieved with the said order, the petitioner-plaintiff preferred an appeal and the Appellate Court of Additional District Judge, No. 2, Deeg, Bharatpur, also dismissed the appeal and affirmed the order dt. 09.05.2005

passed by the learned trial Court. Thus, there has been a concurrent finding of fact of both the Courts below.

2. The Full Bench of the Hon''ble Apex Court in the case of Kshitish Chandra Bose vs. Commissioner of Ranchi reported in AIR 1981 SC 707 (1) categorically observed that the Patna High Court clearly exceeded its jurisdiction in reversing the pure concurrent findings of fact given by the trial Court and the then appellate Court.

3. In the case of Mst. Kharbuja Kuer Vs. Jangbahadur Rai, the Hon''ble Apex Court held that the High Court had no jurisdiction to entertain second appeal on findings of fact even if it was erroneous. In this connection, the Apex Court observed as follows:

It is settled law that the High Court has no jurisdiction to entertain a second appeal on the ground of erroneous finding of fact.

As the two Courts, approached the evidence from a correct perspective and gave a concurrent finding of fact, the High Court had no jurisdiction to interfere with the said finding.

4. To the same effect is another decision of the Hon''ble Apex Court in the case of R. Ramachandran Ayyar Vs. Ramalingam Chettiar, where the Court observed as follows:

But the High Court cannot interfere with the conclusions of fact recorded by the lower Appellate Court, however erroneous the said conclusions may appear to be to the High Court, because as the Privy Council observed, however, gross or inexcusably the error may seem to be there is no jurisdiction under Sec. 100 to correct that error.

5. The same view was taken by the Hon''ble Apex Court in the case of D. Pattabhiramaswamy vs. Hanymayya reported in AIR 1959 SC 57 and Raruha Singh vs. Achal Singh reported in AIR 1961 SC 1097.

6. Adverting to the facts of the instant case, it is noticed that the learned Civil Judge (Jr. Division), Nagar, found that there was a dispute between the parties with regard to agricultural land bearing khasra Nos. 1059 and 1060, new numbers of which are 1654, 1655, 1656 and 1657. It is alleged by the petitioner-plaintiff that the respondent No. 3 to 6 endeavoured to make an encroachment over the land of petitioner-plaintiff and raised construction thereon, whereas they had no right to raise any construction in the said land. Learned Civil Judge found that since the land in dispute was agricultural and Siwai Chuk land, hence the revenue Court had the jurisdiction to hear the matter and decide the same. The learned Additional District Judge also concurred with the view of the learned Civil Judge and dismissed the appeal on the same ground of jurisdiction.

7. During the pendency of the instant writ petition, this Court is found to have passed an order on 07.11.2006 directing the Settlement Commissioner to inspect

the site and submit the report in detail. Mr. Umesh Purohit was appointed as the Commissioner to inspect the local site.

8. Learned counsel for the petitioner took me through the report of the Commissioner as also the report prepared by Tehsildar, Nagar, and contended that from the report of the Commissioner, it is tangible that the land of the petitioner was allotted for the purpose of raising a building of Police Station.

9. I do not find any substance in the submission made by the learned counsel for the petitioner, as such. A bare perusal of the inspection report reveals that khasra Nos. 1059 and 1060 are said to be the disputed plots. It was disclosed on spot that building of electricity department was constructed on Siwai Chuk land. There was also a dispute related to agricultural and Siwai Chuk land. In view of all these facts emerging on record, the learned Civil Judge is found to have rightly observed that since the dispute was related to the agricultural and Siwai Chuk land, the civil Court had no jurisdiction to try the suit, hence, on account the suit being barred by jurisdiction, it was ordered to be returned to the petitioner-plaintiff for filing the same before the competent Court. The impugned orders passed by both the Courts below are found to be just and proper and suffers from no infirmity. The learned counsel for the petitioner has utterly failed to convince me to take a view contrary to that of the view already taken by two Courts below.

10. It is relevant to note that the scope of Article 227 of the Constitution is very limited. The Hon''ble Apex Court has consistently held in plethora of cases that the extra-ordinary jurisdiction under Art. 227 of the Constitution can be invoked by the High Court only when the impugned order is found to be perverse, contrary to material or it results in manifesting injustice. It has also been repeatedly held by the Hon''ble Apex Court that the High Court while exercising extra-ordinary jurisdiction should escape from interfering with the impugned orders of the Courts below and such power should be exercised sparingly and not in routine. It is also a settled law that the High Court should be very slow in upsetting the pure finding of facts. Since, there has been a concurrent finding of two Courts below, I do not find any ground, so as to interfere with the impugned orders and the writ petition being devoid of substance, in view of the above facts and circumstances, deserves to be dismissed. For these reasons, the writ petition fails and the same being bereft of any merit stands dismissed.