

(2016) 02 AHC CK 0062
In the Allahabad High Court
Case No : Second Appeal No. 91 of 2016

Matadeen (Since Deceased) And 4 Ors.	APPELLANT
Vs	
Kali Charan (Since Deceased) And 3 Ors.	RESPONDENT

Date of Decision : 19-02-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2016) 5 ADJ 84 : (2016) 162 AIC 958 : (2016) 3 AllWC 2940 :
(2016) 116 ALR 377 : (2016) 1 ARC 697 : (2016) 132 RD 81 : (2016) 1 RJ 839

Hon'ble Judges : Pramod Kumar Srivastava, J.

Bench : Single Bench

Final Decision : Dismissed

Judgement

Pramod Kumar Srivastava, J. - Heard counsel for the appellant on point of admission on second appeal and perused the record.

2. In Original Suit No. 85/2006. Matadeen and another v. Kali Charan and others, plaint case in brief was that plaintiffs are owner in possession of disputed land (55" x 45") as detailed in plaint map by letters "Aa, Ba, Sa, Da". They have been paying house tax of this property to Nagar Panchayat, Kulpahar and were formerly given sanction to construct their house over it. When plaintiffs had collected construction material then defendants had started unauthorized obstructions in plaintiffs user of disputed land and are threatening to takes its forceful possession. Therefore for restraining them the plaintiff had filed suit for permanent injunction.

3. In written-statement filed by defendants the plaint case was denied and it was further pleaded that disputed property is a public open land which is being used by public purposes. The plaintiffs have no concern, right or title over this property. The plaintiff had irregularly got his name entered over this property in house-tax register and are now trying to raise construction over this public property. When this matter was inquired, the administration had stopped plaintiffs from raising any construction over it. The original suit is liable to be

dismissed.

4. After framing issues and accepting the evidence of the parties, Civil Judge (JD), Mahoba had dismissed the original suit by judgment dated 22.8.2009. In this judgment, the trial court had held that although Nagar Palika had passed map of plaintiff for construction over disputed property but when matter was complained and inquired, then sanctioned map of plaintiff was cancelled. After appreciating oral and documentary evidence, the trial court had held that no documentary evidence shows title or ownership of plaintiff over disputed property and they have failed to prove their case of ownership and possession. Therefore their suit is being dismissed.

5. Against the judgment of the trial court Civil Appeal No. 32/2009, Matadeen and others v. Kali Charan and others was preferred by plaintiff of the original suit. First Appellate Court had frame points of determination regarding ownership and possession of plaintiffs-appellants over disputed property and independently appreciated the evidences, circumstances and arguments, after which finding was given that plaint map is incorrect and not proved, no documentary evidence is there to prove plaintiff-appellants' ownership over disputed property, disputed property is in form of vacant land and averment of payment of house-tax is neither believable nor proves the title of plaintiff. With these findings of fact, the first appellate court had held that the plaintiff appellants have failed to prove their case and finding of trial court is confirmed. With these findings the first appellate court had dismissed the first appeal.

6. Aggrieved by the judgment of the trial court as well as first appellate court, plaintiffs have preferred the present second appeal.

7. The contention of the counsel for the appellant was that trial court had ignored documentary evidences relating to payment of house-tax and have not considered other evidences of mortgage of plaintiffs' property. He contended that although plain map was cancelled by Nagar Palika, but later on this was again sanctioned, and lower courts have given incorrect finding on point of identifiability and ownership. He also contended that local body had never raised any objection over appellants' constructions nor file any objection in lower court, but this fact was erroneously not considered. Therefore, this appeal may be admitted for being allowed.

8. This contention of counsel for the appellant is unacceptable that plaintiffs-appellants' right should be accepted because local body/Nagar Palika had never raised objection in lower court. In both the lower courts Nagar Palika or any other local body was not impleaded as party nor notices of the case were sent to them. So there was no occasion for said local body to file any unwarranted objection. This finding of lower court is also acceptable that mere deposition of house-tax is not the proof of appellants' ownership over disputed land. Firstly, the house-tax is paid for house, and the disputed property is in form of open vacant land, as held rightly by lower courts. Secondly, the deposition of any

house-tax of local body is only for collection of revenue for the services extended by local body and this cannot be a proof of ownership. It is admitted that sanctioned map of plaintiff was cancelled by the local body, but no other sanction map was filed by plaintiff in trial court. First appellate court had not formally accepted any new evidence in appeal under Order-41, Rule-27 CPC. Therefore, argument regarding sanctioned map, as placed by counsel for the appellants, are unacceptable.

9. So far identifiability of land is concerned, in this regard, the first appellate court had given detailed and specific finding showing that details of disputed property in plaint is not in consonance with evidences adduced. The finding of lower court on this point is apparently correct and acceptable.

10. In this matter the only disputed to be determined was as to whether the plaintiff-appellants are owner and in possession of disputed property, and are entitled for the relief of permanent injunction on the basis of his possession. These are not questions of law but are that of facts that can be determined on the basis of evidences, as has been done by the lower courts. After appreciating all evidences both the courts below have given concurrent and apparently acceptable findings of fact that plaintiff-appellants have failed to prove their ownership or possession over disputed land. Such findings cannot be interfered in second appeal by re-appreciation of evidences.

11. On examination of the reasonings recorded by the trial court, which are affirmed by the learned first appellate court in first appeal, I am of the view that the judgments of the trial court as well as the first appellate Court are well reasoned and are based upon proper appreciation of the entire evidences on record. No question of law, much less a substantial question of law, was involved in this case before this Court. No perversity or infirmity is found in the concurrent findings of fact recorded by the trial court that has been affirmed by the first appellate court to warrant interference in this appeal. None of the contentions of the learned counsel for the appellant-plaintiffs can be sustained.

12. In view of the above, this Court finds that no substantial question of law arises in this appeal. Therefore the second appeal is dismissed.

13. Let a copy of this order be sent to the court concerned.