
(2004) 02 RAJ CK 0027

In the Rajasthan High Court

Case No : Civil Second Appeal No. 276 of 1999

Mohammed Ibrahim

APPELLANT

Vs

Radhey Lal and Another

RESPONDENT

Date of Decision : 26-02-2004

Acts Referred:

Citation : (2004) 3 RLW 1855 : (2004) 3 WLC 71

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : H.C. Ganeshia, for the Appellant; Mahesh Gupta, for Respondent Nos. 1 and 2 and Jagdish Singh, for the Respondent

Judgement

S.K. Keshote, J.—The matter is placed on the application filed by the respondent No. 1 praying therein for early listing of the appeal. The appeal is not admitted. The appeal is taken up for admission.

2. The suit has been filed by the plaintiff appellant for declaration and permanent injunction against the defendant respondents in the trial court.

3. The facts of the case are that the plaintiff appellant purchased a "kachcha" house on land measuring 40" x 40" on 23.12.1987 from Sultan and Madan Harijan of Village Atru, through a registered sale deed and thereafter he got constructed "pucca" house thereon.

4. The Sarpanch, Gram Panchayat Atru, allotted land of public way measuring 13" x 27" to the defendant respondents No. 1 and 2 and they started construction work on the land 40" x 10" in North of plaintiff's house encroaching upon the land of public way. The result thereof would be the closure of the gates of the rooms of the house of the plaintiff appellant towards the northern side.

5. The learned trial court issued summons of the suit which were served on the defendant respondents. It is not in dispute that the defendant respondent No. 3 has not contested the suit meaning thereby nobody put appearance on its behalf

in the suit. The learned trial court passed the order to proceed ex parte against it. The suit has only been contested by the defendant respondent No. 1 and 2.

6. On the basis of the pleadings of the parties, the learned trial court framed thereon as many as five issues. The issue No. 4 is relevant for the decision of this appeal, which reads as under,

"AAYA GRAM PANCHAYAT KO VIDHIWAT NOTICE DIYE JAANE SE VAAD NIRASTNIYA HAI."

7. On behalf of the plaintiff appellant two witnesses were examined. The defendant respondents No. 1 has produced evidence in the suit. The learned trial court decided the suit on 28th of August, 1990. All the issues including the Issue No. 4 have been decided in favour of the plaintiff appellant.

8. The defendant respondent No. 3, the Gram Panchayat, Atru, has not challenged the judgment of the learned trial court. The defendant respondents No. 1 and 2 filed appeal. Before the appellate court they made challenge only to the finding of the learned trial court on Issue No. 4 meaning thereby they accepted the findings recorded by the learned trial court on other issues. Thus, it is no more in dispute that the land in dispute was allotted by the Gram Panchayat to the defendant respondents No. 1 and 2 which is part of the public way.

9. The learned counsel for the plaintiff appellant contended that the provision for giving the notice to the Gram Panchayat is a provision of no value, force, effect and concerned. The legislature incorporated this provision in the Act, the purpose behind it is to let know the Gram Panchayat what is the grievance of the litigant/citizen against it and may have time to consider and decide the same. The learned counsel for the appellant submits that seldom any notice is responded by the Gram Panchayat and thus it is a provision in futility.

10. It has next been contended that this provision has been made for the benefit of the Gram Panchayat and not for the private defendant respondents No. 1 and 2. The Gram Panchayat has not made any grievance and thus on the plea raised by the defendant respondents No. 1 and 2 and prayer made for dismissal of the suit on the ground of non-giving of the notice before filing of the same to the Gram Panchayat, the suit could not have been dismissed.

11. On the other hand the learned counsel for the defendant respondents supported the judgment of the learned appellate court.

12. Having heard the learned counsel for the parties I am satisfied that following substantial question of law does arise for consideration of this Court.

"Whether the suit of a litigant/citizen therein a Gram Panchayat is party can be dismissed for not giving notice to it, before filing the same, though the Gram Panchayat has not even chosen to contest the suit and the land of which patta has been granted to the private defendant respondents is the part of public way?

13. It is not an appropriate case and stage where this larger issue needs decision, raised by the learned counsel for the plaintiff appellant that the provision of giving notice to the Gram Panchayat in the Act is a provision in futility and the suit may not be dismissed only on this ground but, prima facie, there appears merits therein.

14. It is not in dispute that after service of summons of the suit the defendant respondent Gram Panchayat, Atru, has not chosen to contest the suit. The learned trial court passed order to proceed ex parte against it. Thus, the Gram Panchayat has not raised the issue of non-maintainability of the suit for want of notice to it before filing thereof. This provision is incorporated in the Act for the benefit of the Gram Panchayat and not for the defendant respondents No. 1 and 2.

15. That apart I have my own reservation whether this plea is available to the defendant respondents No. 1 and 2. Under the Panchayat Act there is no provision to give any notice to them by the plaintiff before filing of the suit. This defence taken by the respondents No. 1 and 2 is not available to them. That apart when the land in dispute is a part of the public way the sale thereof in favour of the defendant respondents No. 1 and 2 is void ab initio. Non giving of notice to the Gram Panchayat in the facts of this case, cannot be taken fatal and that too to the extent where the suit is to be dismissed only on this ground. This plea taken by the defendant respondent is a dishonest plea in the facts of this case. The suit has been dismissed by the court below on the plea which was not available to the defendant respondent No. 1 and 2. Dismissal of the suit on this plea results in maintaining ,by the Judicial court a void-ab-initio decision taken by the Gram Panchayat. That apart it will be against the public interest also.

16. Thus, taking into consideration all the facts and circumstances of this case, the appeal succeeds and the same is allowed. The judgment dated 8.3.1999 of the learned Additional District Judge, Chhabra, District Baran, in Civil Regular Appeal No. 26/92 (Old No. 21/90; 33/91) is quashed and set aside. The Civil Regular Appeal No. 26/92, aforesaid, is dismissed with costs in favour of the plaintiff appellant and against the defendant respondents No. 1 and 2.

17. In view of this order, the stay application filed with the second appeal also stands disposed of.