
(2015) 03 RAJ CK 0124
In the Rajasthan High Court
Case No : Civil Second Appeal No. 352/2012

Mool Chand and Others

APPELLANT

Vs

Sita and Others

RESPONDENT

Date of Decision : 20-03-2015

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2015) 03 RAJ CK 0124

Hon'ble Judges : Vineet Kothari, J.

Bench : Single Bench

Advocate : Abhinav Jain, Advocates for the Respondent

Judgement

Dr. Vineet Kothari, J.—Nobody is present for the appellants-plaintiffs. On the earlier occasions also, nobody had appeared for the appellants-plaintiffs though the name of Mr. Farzand Ali is shown in the cause list. For the first time, the matter was listed before the Court on 19.08.2013 and even on this date, nobody was present for the appellants but the Court had issued the notices. On 22.04.2014, nobody was again present for the appellants but the Court had granted two weeks' time to do the needful and the Court had recorded that in the event of failure, this appeal shall stand dismissed without reference to the Court. Thereafter, the matter is listed before the Court today only after service of notices issued on the application under Section 5 Limitation Act.

2. This second appeal filed by the plaintiffs is arising out of the judgment and decree dated 08.08.2012 passed by the learned Additional District Judge, Nimbahera Camp Badi Sadri in Civil Appeal No. 22/2011 "Mool Chand S/o. Bheru Lal and Ors. Vs. Smt. Sita @ Kashi W/o. Lachchhi Ram and Anr." who dismissed the appeal filed by the plaintiffs and affirmed the judgment and decree dated 28.07.2011 passed by the learned Civil Judge (Senior Division), Badi Sardi, District Chittorgarh in Civil Suit No. 17/1998 "Mool Chand S/o. Bheru Lal and Ors. Vs. Smt. Sita @ Kashi W/o. Lachchhi Ram and Anr." by which, the learned Civil Judge (Senior Division) had dismissed the suit filed by the plaintiffs seeking

declaration and permanent injunction in relation to the dispute of "way" between the parties.

3. The present second appeal has been filed by the appellants, who were the plaintiffs, against the concurrent rejection of their claim as regards "way" or passage through the land of the defendants.

4. The present second appeal been filed, admittedly, with the delay of 23 days and an application under Section 5 of the Limitation Act seeking condonation of delay has been filed.

5. Having regard to the facts and circumstances of the case, the short delay of 23 days in filing the present second appeal is condoned.

6. On 19.08.2013, a co-ordinate bench of this Court had ordered issuance of the notices on the application filed under Section 5 Limitation Act when the learned counsel for the appellants-plaintiffs was not present before the Court. On 22.04.2014, however, the learned counsels Mr. S.L. Jain and Mr. Abhinav Jain put in appearance on behalf of respondents-defendants in response to the notices issued on the application filed under Section 5 Limitation Act.

7. Today again, nobody is present on behalf of the appellants-plaintiffs to argue the case for condonation of delay and admission. However, in the interest of justice on the basis of reasons given in the application and the supporting affidavit, the delay of 23 days is condoned, as aforesaid.

8. The learned counsel Mr. Abhinav Jain appearing for the respondents-defendants submitted that the appellants-plaintiffs have an alternative way available to them and, therefore, they could not claim any injunction for the particular way through the land of the defendants.

9. After framing of the relevant issues arising out of the plaint and written statement and after recording of the evidence, the learned Trial Court in its judgment and decree dated 28.07.2011 observed as under:-

10. Being aggrieved by the judgment and decree dated 28.07.2011 passed by the learned Trial Court, the plaintiffs preferred an appeal before the First Appellate Court of learned Additional District Judge, Nimbahera Camp Badi Sadri namely, Civil Appeal No. 22/2011 "Mool Chand S/o. Bheru Lal and Ors. Vs. Smt. Sita @ Kashi W/o. Lachchhi Ram" which was also dismissed by the learned First Appellate Court on 08.08.2012. The relevant portion of the discussion made by the learned First Appellate Court and the final order passed by it is quoted herein below for ready reference:-

11. Having heard the learned counsel for the respondents-defendants-Smt. Sita @ Kashi W/o. Lachchhi Ram and Anr. and upon perusal of the impugned judgments and decree of the both Courts below, this Court is satisfied that no substantial question of law arises for consideration by this Court in the present second appeal filed by the appellants-plaintiffs-Mool Chand S/o. Bheru Lal and

Ors. In the circumstances of the case, the findings of facts arrived at by both the Courts below, that the plaintiffs have an alternative available with them and, therefore, the claim for "way" through the land of defendants is not reasonable, cannot be said to be perverse, in any manner, and the said order does not give rise to any substantial question of law in this second appeal and this second appeal of the appellants-plaintiffs-Mool Chand S/o. Bheru Lal and Ors. deserves to be dismissed being devoid of any merit. The findings of facts arrived by both the Courts below are based on relevant and cogent evidence led by the parties before the Courts below. This Court finds no force in the present second appeal of the plaintiffs-Mool Chand S/o. Bheru Lal and Ors.

12. Accordingly, the present second appeal filed by the appellants-plaintiffs-Mool Chand S/o. Bheru Lal and Ors. is dismissed. No costs. A copy of this order be sent to both the Courts below and the parties concerned forthwith.