

(2018) 10 RAJ CK 0029

In the Rajasthan High Court

Case No : Civil Second Appeal No. 288 of 2014

Municipal Board @APPELLANT@Hash Temple Narsingh Ji Khatedar

Date of Decision : 06-10-2018

Acts Referred:

Code of Civil Procedure, 1908 — Section 100
Indian Evidence Act, 1872 — Section 101

Citation : (2018) 10 RAJ CK 0029

Hon'ble Judges : P.K. Lohra, J

Bench : Single Bench

Advocate : Pratishta Dave, A.K. Babel

Final Decision : Dismissed

Judgement

Appellant-plaintiff has laid this second appeal under Section 100 CPC to assail judgment dated 20th of May 2014 passed by District Judge, Chittorgarh

(for short, â??learned first appellate Courtâ??), whereby learned first appellate Court has affirmed judgment dated 31st of August, 2013 rendered by

Addl. Civil Judge (Sr.Div.) No.1, Chittorgarh (for short, â??learned trial Courtâ??) dismissing the suit of the appellant for declaration and perpetual

injunction.

The facts in brief, giving rise to this appeal are that appellant-plaintiff instituted a suit against respondent-defendant for declaration and perpetual

injunction, inter-alia, alleging therein that an agricultural land of Khasra No.1597 admeasuring 0.07 hectare, entered as Khatedari land in the revenue

records, belonging to Narsinghjee Temple was acquired by the appellant-plaintiff for construction of road and in lieu thereof alternative commercial

land was allotted to the respondent-defendant. As per averments in the plaint, respondent-defendant was allotted Plot No.10-A, Old Bus-stand,

Chittorgarh, having total area of 375 Sq.ft. and lease deed was executed on 27th

of April 2006 in its favour. It so happened that while executing lease deed by the appellant, as per its version, mistakenly Pujari of the temple Kishan Das was shown as lessee, and therefore, apprehending misuse of the land by Pujari, a decision is taken by the Municipal Board to launch litigation in the matter. Thus, the suit in question came into offing with the prayer for declaration and perpetual injunction at the behest of appellant. In the form of declaration, in the suit, declaratory decree was sought to delete name of Pujari of the temple as lessee with a further prayer for perpetual injunction to protect the interest of the temple land. Appellant craved for perpetual injunction against the respondent-defendant to hand over the land to a committee headed by Naib Tehsildar.

The suit is contested by the respondent. In the written statement, it was inter-alia averred by the respondent-defendant that land, which was taken over by the Municipal Board for construction of road was not Khatedari land of the temple and in fact it was entered in the revenue record as Khatedari land of the respondent-defendant. It is also pleaded in the written statement that no agricultural land in the revenue record is available in the name of temple as Khatedar. The respondent-defendant has further pleaded in the written statement that before issuance of lease deed, licence was issued in his name and subsequently lease deed was also executed in his favour. A specific plea was taken in the written statement that alternative land was allotted and lease deed was issued in favour of respondent-defendant upon consideration of a very vital fact that the land, which was taken over for construction of road by the Municipal Board was Khatedari land of his ancestors as per revenue records.

The respondent-defendant has also pleaded that although for years togetehr land was shown in the name of his ancestors depicting them Khatedars but later on due to inadvertent error of the revenue officials their name was omitted and thereupon he filed a revenue suit which was decreed by the competent revenue Court facilitating re-entry of his name as Khatedar in the revenue records. Relying on the decision of the revenue Court, it is also pleaded by the respondent-defendant that the said decision of the revenue Court was not challenged before any appellate forum and therefore by afflux of time it has attained finality. With all these averments, respondent-defendant craved for rejection of the suit filed by appellant. Learned trial

Court, on the basis of pleadings of rival parties, framed four issues for determination. On behalf of appellant-plaintiff, PW1 Premchand Sharma

appeared in the witness box and two documents were produced which were exhibited. For substantiating his defence, respondent himself appeared in

the witness box and produced licence issued by the Municipal Board as well as decision of the revenue Court which were exhibited.

Learned trial Court, while deciding issue No.1 made sincere endeavour to scrutinize evidence of the rival parties. The learned trial Court upon

appreciation of evidence of appellant-plaintiff has noticed serious pitfalls inasmuch as it has not been able to establish that the agricultural land which

was taken over by the Municipal Board for construction of road belonged to Narsinghjee temple showing temple as its Khatedar. Taking note of a

very vital fact that appellant-plaintiff has not produced any document to substantiate its plea, while relying on the decision of the revenue Court,

wherein the land was declared to be Khatedari land of respondent-defendant, learned trial Court decided issue No.1 against the appellant-plaintiff and

in favour of respondent-defendant. Issue No.2 & 3 were required to be proved by the respondent-defendant but upon examining the material available

on record, learned trial Court decided both the issues against respondent-defendant. Likewise, issue No.4 in want of any evidence of respondent-

defendant was also decided against him. Finally, the learned trial Court on the strength of findings and conclusions on issue No.1 dismissed the suit.

Being aggrieved by the judgment and decree passed by the learned trial Court, appellant-plaintiff preferred appeal before first appellate Court and the

learned first appellate Court examined the matter afresh. The learned first appellate Court, upon scrutiny of the findings on issue No.1, did not find any

infirmity in appreciation of evidence by the learned trial Court. The learned first appellate Court has also taken note of a very vital fact that appellant-

plaintiff failed to discharge its burden to prove that land which was taken over by it for construction of road was Khatedari land of the temple. As

against it, the learned first appellate Court fully concurred with the findings and conclusions of the learned trial Court which was based on the

judgment rendered by the revenue Court declaring respondent-defendant Khatedar of the aforesaid land. Eventually, while recording its affirmation

about finding on issue No.1, the learned first appellate Court dismissed appeal of the appellant.

I have heard learned counsel for the parties, perused the judgments of first appellate Court as well as learned trial Court. Upon perusal of the judgments rendered by both the Courts below, more particularly finding on issue No.1, in my opinion, both the Courts below have not committed any error much less manifest error in appreciation of evidence. The basic principle of evidence that the burden of proving a fact rests on a party who substantially asserts the affirmative of the issue and not upon the party who denies it; for a negative is usually incapable of proof. Section 101 of the Indian Evidence Act, 1872 under the caption "Burden of proof" clearly postulates the said principle which is based on the rule "Ei incumbit probatio qui dicit, non qui negat". In the instant case, appellant-plaintiff instituted a suit for declaration and perpetual injunction precisely on the ground that land which was taken over by Municipal Board for construction of road belonged to Narsingh temple as its Khatedar, and therefore, issuance of lease deed of the alternative urban land in favour of defendant be declared null & void. This sort of situation clearly suggests affirmative assertion of the appellant-plaintiff about ownership of agricultural land taken over for construction of road that the same belonged to Narsingh temple as Khatedar.

Therefore, its burden to prove this positive assertion ought to have been discharged by the appellant with cogent evidence. In the backdrop of these circumstances, the requisite documents, i.e. revenue records pertaining to the agricultural land, which was crucial, should have been produced by the appellant before the learned trial Court. There remains to quarrel that no such document was produced by the appellant-plaintiff and on the contrary defendant-respondent has produced a concrete proof showing a very vital fact that agricultural land was entered in the name of his ancestors as Khatedar since long and later on a declaratory decree to this effect is also passed in his favour by a competent revenue Court. This finding of fact recorded by learned trial Court, in my considered opinion, is based on sound appreciation of evidence. The learned first appellate Court, while examining the matter de novo in the light of available material, has fully concurred with the evidence and conclusions of the learned trial Court.

Therefore, essentially, the instant case is a case wherein both the Courts below have recorded concurrent finding of fact based on proper appreciation

of evidence.

The legal position is no more res integra that in second appeal normally Court is not expected to interfere with the concurrent finding of fact unless it is

shown that finding is perverse, contrary to evidence available on record, or recorded in ignorance of vital evidence. No such situation is forthcoming in

the instant appeal. This being the position, I am constrained to observe that no question of law much less substantial question of law is forthcoming in

the instant appeal requiring adjudication in exercise of second appellate jurisdiction. In want of any substantial question of law, it would be imprudent

for this Court to enter into factual arena while exercising jurisdiction under Section 100 CPC. In view of foregoing discussion, I find no merit in the

instant appeal, and therefore, the same is accordingly dismissed.