
(2020) 09 RAJ CK 0051

In the Rajasthan High Court

Case No : Civil Second Appeal No. 553 Of 2011

Municipal Board, Kuchamancity And

APPELLANT

Vs

Madan Singh And Ors

RESPONDENT

Date of Decision : 02-09-2020

Acts Referred:

Citation : (2020) 09 RAJ CK 0051

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Yashwant Mehta, Ranjeet Joshi

Judgement

This second appeal is directed against the judgment & decree dated 23/4/2010 passed by the Addl. District Judge (Fast Track), Parbatsar, Camp Makrana, District Nagaur, whereby, the first appeal filed by the respondent-plaintiff against the judgment & decree dated 1/4/2008 passed by the Civil Judge (Jr. Div.), Kuchaman City, District Nagaur, whereby, the suit filed by the plaintiffs was dismissed, has been allowed.

The respondents filed a suit for grant of permanent injunction against the defendant - Municipal Board alleging that the plaintiffs were in peaceful possession of a Patta Sud land since long and towards the northern side of the land there existed a 'Neem' tree and on account of said getting uprooted, when the plaintiffs started construction of shops on the said land, the defendant objected and threatened to demolish the same and, therefore, they be restrained.

The suit was resisted by the Municipal Board by filing written statement, whereby, the contentions raised in the plaint were denied and it was alleged that the plaintiffs were mere encroachers and, therefore, the suit was liable to be dismissed.

The trial court framed 09 issues and on behalf of the plaintiffs four witnesses were examined and on behalf of defendant three witnesses were examined. After hearing the parties, the trial court came to the conclusion that the plaintiffs were

neither having ownership nor having possession of the land in question and, therefore, they were not entitled to any relief. The various pleas raised by the appellant-defendant were not pressed and based on its findings regarding title and possession, the trial court dismissed the suit.

Feeling aggrieved, the plaintiffs filed first appeal. The first appellate court by its impugned judgment, though reiterated the findings pertaining to title of the plaintiffs, however, it came to the conclusion that the plaintiffs were in possession of the land in question as they have constructed shops on the land and as such they could not be evicted without undertaking due process and consequently partly allowed the appeal.

Learned counsel for the appellant made submissions that the first appellate court was not justified in accepting the appeal and upsetting the judgment passed by the trial court. Submissions were made that the plaintiffs have failed to prove their possession over the land in question and, therefore, reversal of the said finding and then granting relief pertaining to their removal after undertaking due process of law is not justified and, therefore, the judgment of the appellate court gives rise to substantial question of law.

Learned counsel for the respondents with reference to the averments made in the plaint made submissions that it was the specific case of the plaintiffs that there exist shops and from the notice which was issued by the Municipal Board (Ex.A-2) it was apparent that the plaintiffs were in possession of the land in question and, therefore, they could not be evicted without due process of law and, therefore, the direction of the appellate court does not call for any interference.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

The judgment of the trial court was essentially based on its finding that the plaintiffs were neither have title nor possession over the land in question, however, the finding pertaining to lack of possession was apparently incorrect inasmuch as it was the specific case of the plaintiffs in the plaint that they have constructed shops over the land in question and even the notice issued by the appellant (Ex.A/2) also indicated plaintiffs' possession.

The appellate court by its impugned judgment on finding that the plaintiffs were in possession of the land, though upheld the finding pertaining to the title, directed as under:

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The directions issued by the appellate court based on the fact that plaintiffs were

in possession of the land in question, cannot be faulted on any count.

In view thereof, the appeal does not give rise to any substantial question of law. There is no substance in the appeal and the same is, therefore, dismissed.