
(2015) 02 RAJ CK 0274

In the Rajasthan High Court

Case No : Civil Second Appeal No. 357/2004 and Civil Cross-Objection No. 17 of 2009

Murti Mandir Shri Kalyan Ji Maharaj

APPELLANT

Vs

Bhawani Shankar Shukla

RESPONDENT

Date of Decision : 04-02-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2015) 3 WLN 143

Hon'ble Judges : Nisha Gupta, J

Bench : Single Bench

Advocate : Akhil Simlote and Prakash Yadav, for the Appellant; S.C. Gupta, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Nisha Gupta, J—The second appeal under Sec. 100 CPC has been filed against the judgment and decree dt. 17.9.2003 passed by Additional District Judge, Jhunjhunu in Civil Appeal No. 20/2003 (old No. 27/99) partly allowing the appeal against the judgment and decree dt. 31.3.99 passed by Addl. Civil Judge (Senior Division), Jhunjhunu in Civil Suit No. 44/88, 84/89. The respondent has also filed cross-objection against the finding of the trial Court with regard to ownership of land marked "X". Since cross-objection has been filed in the same second appeal, they are also decided by this common judgment. The short facts of the case are that plaintiff appellant filed a suit for declaration and permanent injunction and for demolition of the construction with the averment that there is temple situated in Mohalla Choumal commonly known as Shri Kalyan Ji Maharaj Temple which is an old temple. A site plan has also been annexed with the plaint which shows the position of temple and house of the temple and has been shown as A, B, C, D, E, F. There is also an open land along with temple marked as "X" and "Y" which are the land of the temple. When the appellant and respondent No. 2 were not in the village, respondent No. 1 has raised construction and open

the door in the Chowk of the temple hence suit has been filed and further contention of the appellant was that the land belongs to temple and respondent wants to grab it hence it may be declared land of the temple. Possession of the land be allotted to them and relief of permanent injunction has also been sought. The respondent has denied the allegations levelled in the plaint and it has been submitted that it is not the property of the temple. The learned trial Court has dismissed the suit in totality. Appeal has been preferred and appellate Court has decreed the suit for the land shown as "X" hence this second appeal with the contention that they have been restrained from raising any construction whereas respondents have not been restricted, hence the judgment of the appellate Court be set aside as it is per verse.

Per contra, the contention of the respondent is that there is not an iota of evidence to show that the disputed land "X" or "Y" is in possession or ownership of the temple and suit as regards "Y" property has rightly been dismissed. Cross-objections have also been filed and it has been contended in cross-objection that land marked "X" is not in possession or ownership of the plaintiff. No documentary evidence or any substantial evidence has been submitted in spite of this, the suit has been decreed only on the ground that the defendant has not proved that it is the public land or land of the Municipal Board. The proposition of law is that the plaintiff has to prove its own case and he cannot rely upon the weakness of the defendant hence the cross-objection be allowed and decree of the appellate Court be set aside.

2. Heard the learned counsel for the parties and perused the judgments and decree under appeal as well as original record of the case.

3. The cross-objection has been admitted on the following substantial question of law:

"Whether it is absolutely illegal and perverse to the evidence on record to hold that the land marked "X" belongs to the plaintiff when there is no documentary evidence to show title of the plaintiff nor any other substantial evidence?

4. The Court below has categorically held that the plaintiff came with a case that land "X" and "Y" belongs to him and he is in ownership and possession whereas respondent has pleaded that he is the owner of the land "Y" and "X" is the property of Nagar Palika. On behalf of respondent patta dt. 15.9.70 has been submitted which shows that he has purchased 15 feet 8 land and thereafter with the permission he has constructed over the land. No document or other evidence has been submitted to show the possession or ownership of the plaintiff and both the Courts below have held that the land "Y" has not been proved in the ownership or possession of the temple. Documentary evidence has also been considered by the Courts below and it has rightly been concluded that the land "Y" is not in ownership of the appellant but at the same time, the appellate Court has held that the land "X" is in ownership of the plaintiff whereas it was categorical pleading of the respondent that it is in the ownership of the

Municipality. No documentary or any other evidence has been submitted to support the contention of the appellant as regards the land "X". The appellate Court has perversely held that there are Gubaria on the land which are of plaintiff whereas no such evidence has been submitted on behalf of the plaintiff. The appellate Court has not considered the evidence on record and the fact that no evidence has been submitted by the appellant to show his possession or ownership on "X" land and only on the conjunctures and surmises the land "X" has been held in the ownership of the appellant on the fact that land could be used only by the plaintiff. It was the duty of the appellant to prove his case that land belongs to him but the appellate Court has based all its finding on the ground that defendant could not prove the fact that land belongs to Municipality and it is also pertinent to mention here that when there is specific pleading of the respondent that land belongs to Municipality in spite of this, the Municipality has not been made party by the appellant. The contention of the appellant that respondent be restrained from raising any construction over the "X" land is without any basis as the land is not in possession or ownership of the appellant, hence no decree for permanent injunction could be granted in his favour and decree passed by the appellate Court is per verse and liable to be set aside and substantial question is answered in favour of respondent and in view of the above, the cross-objection deserves to be sustained and judgment of the appellate Court is liable to be quashed and set aside.

Consequently, the appeal is dismissed and cross-objection is allowed and judgment and decree dt. 17.9.2003 passed by Additional District Judge, Jhunjhunu in Civil Appeal No. 20/2003 (old No. 27/99) is quashed and set aside.