

(2016) 05 J&K CK 0012

In the Jammu And Kashmir High Court

Case No : C2A No. 07 of 2014 and MP. No. 306 of 2014

Mushtaq Ahmad Purra

APPELLANT

Vs

Gh. Qadir Lone

RESPONDENT

Date of Decision : 09-05-2016

Acts Referred:

Specific Relief Act, 1963 — Section 37, Section 38

Citation : (2016) 4 JKJ 24

Hon'ble Judges : Mr. Muzaffar Hussain Attar, J.

Bench : Single Bench

Advocate : Mr. Zubair Ahmad, Advocate, for the Respondent; Mr. Nisar Ahmad, Advocate, for the Appellant/Petitioner

Final Decision : Disposed off

Judgement

Mr. Muzaffar Hussain Attar, J. (Oral) - This Civil 2nd Appeal is admitted to hearing on the following substantial questions of law:-

a) Whether a decree for permanent injunction can be passed by the Civil Court when the suit property is not described in the plaint, more so, when

the survey number comprises of more land than that to have been claimed to be in possession of the plaintiffs/respondents.

b) Whether a decree for permanent injunction can be granted when there is no evidence to show that any interference is caused in the possession

of the plaintiffs/ respondents.

2. Notice.

3. Notice accepted by Mr. Zubair Ahmad.

4. At request of learned counsel for the parties, this Civil 2nd Appeal is taken up for final disposal.

5. Heard learned counsel for the parties at great length.

6. The plaintiffs/respondents instituted civil original suit which landed in the court of 2nd Subordinate Civil Judge (Passenger Tax), Srinagar against the appellants. It is pleaded in the plaint that the respondents are joint owners in possession of land measuring 2 kanals 17 marlas comprising under Khasra No. 199/100 situated at Mouza Devipora Zakoora, Srinagar. It is also pleaded in the plaint that the appellants/ defendants, who have allegedly purchased the land adjacent to the land of the plaintiffs, are unnecessarily causing obstruction and interference with their peaceful possession of the land. It is for this reason that prayer was made for grant of decree of permanent injunction in favour of the plaintiffs and against the defendants restraining them permanently from causing any obstruction/ interference with plaintiffs' peaceful possession over the land measuring two kanals 17 marlas comprising under khasra No. 199/100 min situated at Mouza Devipora, Zakoora Srinagar. It was also prayed that defendants, their agents and servants be restrained from causing any damage to the barbed wire fencing of the plaintiffs around their land.

7. The appellants, in their written statement filed before the trial court, have stated that plaintiff no. 1 (Gh. Qadir Lone) was landlord owning more than 20 kanals of land up to year 1991. It is also pleaded that out of this estate he sold land to different persons by different transactions. It is also pleaded that after selling the land he fell short of some land and accordingly approached the revenue authorities for fresh measurement/demarcation of his erstwhile estate. It is also pleaded that after demarcation it was found by the revenue authorities that some vendors of the plaintiff No. 1 were in excess possession of land than what they had purchased. The details are also given about excess possession of land. It is also pleaded that the plaintiff No. 1 sold 3 kanals of land to one Gh. Rasool, who in turn sold the same to Abdul Samad Khan and his brothers by virtue of sale deed executed on 30th August, 2001 which land was thereafter sold by the said purchasers in favour of the defendants 1 and 2 by virtue of sale deed executed on 28th November, 2005 which stands duly registered. It is pleaded in the written statement that the plaintiffs/respondents have fenced their land, which is adjacent to that land of defendants/appellant. It is also pleaded that some portion of the land of the plaintiffs has come under the

road. It is specifically pleaded that defendants are only in possession of their own land which is supported by the revenue records. It is also

pleaded that defendants have laid foundation of plinth around their land after due permission from the Municipal Authorities and they are not

causing any kind of interference to the possession of plaintiffs' in respect of suit land. The learned trial court after concluding the trial of the suit

dismissed the same.

8. The 1st Appellate Court after setting aside the decree and judgment of the trial court allowed the suit of the plaintiffs and passed decree of

permanent injunction in favour of the plaintiffs and against the appellants/respondents.

9. The plaintiffs have not identified their land in the plaint by giving appropriate description thereof. It is admitted that the survey no. comprised of

more than the land which the plaintiffs are claiming to be in their possession in the plaint. From this survey no. land has/been sold to many persons.

Until such time the suit property is properly described and is capable of being identified, no decree, for permanent injunction can be passed, even if

it is passed, it cannot be executed on spot. This is fact situation in this case. The decree, thus, could not be passed in favour of the plaintiffs.

10. The 1st Appellate Court had no reason in fact in law to set-aside the decree of dismissal passed by the trial court, inasmuch as, the

respondents did not provide topography of the land when standing in the witness box during the trial of the suit. None of the plaintiffs have stated

anything about the interference by the defendants, whereas other witnesses have made/vague statements that interference is being caused.

11. In view of the aforesaid discussions, the substantial questions of law framed are answered in favour of the defendants and against the plaintiffs.

12. For the above stated reasons this Civil 2nd Appeal is disposed of in the following manner:-

The decree and judgment passed by the 1st Appellate Court is set-aside and the decree and judgment of the trial court, where under the suit of the

plaintiffs stands dismissed is maintained.

13. Record be send back.