
(1984) 02 RAJ CK 0005
In the Rajasthan High Court
Case No : C.S.A. No. 297 of 1971

Phool Chand

APPELLANT

Vs

Ghisi Lal and Others

RESPONDENT

Date of Decision : 14-02-1984

Acts Referred:

Citation : (1984) WLN 110

Hon'ble Judges : M.C. Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.C. Jain, J.—This is an appeal by the defendant against the judgment and decree dated 27-2-1971, passed by the Civil Judge District, Jaipur, affirming the judgment and decree dated 31-10-1967 passed by the Munsif, Jaipur District Jaipur, whereby the plaintiff respondents' suit for permanent injunction was decreed.

2. I need not go into the averments and contents raised by the parties in the case. The plaintiffs Ghisilal, Raghunath and Chitarmal instituted a suit for permanent injunction praying that the defendant-appellant Phool Chand may be restrained from making any construction or encroachment on their land ABCD shown in the site plan Rx. 1 more particularly the portion covered by red dotted line. It was also prayed by them that the defendant may be restrained from obstructing the passing and clearance of the Gali "H". After trial, the learned Munsif decreed the suit and ordered issuance of permanent injunction against the defendant restraining him from making any construction or encroachment on the land ABCD or part thereof, more particularly on the land DEFG and from obstructing the clearance of the Gali. The learned Munsif also decreed and ordered that the "Doli" built by the defendant in Gali H, shall be demolished.

3. The defendant went in appeal, but was unsuccessful and the decree of the trial court was affirmed by the appellate court in the first appeal. During the

pendency of this appeal, the plaintiff-respondent No. 2 died on 17-10-1972 leaving behind his widow Smt. Sundri Devi, sons, Narain Sahi and Radhey Shyam and a married daughter Smt. Prem Devi. On behalf of the defendant-appellant, an application to bring the legal representatives of the deceased-respondent Raghunath on record was filed on 25-1-1982 and a further application is filed for setting aside the abatement of the appeal as well as for condonation of delay in applying for bringing the legal representatives of the deceased-respondent Raghunath on record. The applications were resisted by respondents No. 1 and 3. It was alleged that the fact of respondent No. 2 Raghunath was known to the defendant, in as much as, the defendant joined the funeral ceremony of the deceased. Raghunath died on 17-10-1972. It was also averred by the contesting respondents that the defendant and the deceased-respondent were the residents of village Bassi and their residence and houses were in the vicinity. The defendant had knowledge of the death of respondent No. 2. The application for bringing the legal representatives on record, is grossly barred by time, as the same has been moved after more than nine years.

4. On behalf of the defendant-appellant a rejoinder has been filed denying the averments of the respondents No. 1 and 3, that on 17-10-1972 the appellant was in village Bassi and that he was present at the funeral ceremony. It was stated that throughout the month of October 1972, the appellant was not in village Bassi. He had come to Jaipur in connection with his treatment. It was averred that the appellant had no knowledge of the death of respondent No- 2 Raghunath and that he came to know of his death only on 13-1--1982, when that fact was intimated by the counsel for the respondents in Court. In support of their respective pleadings in this regard, the parties have filed their affidavits.

5. It may be pointed out that the matter can be disposed of on the basis of the affidavits placed on record by the parties and I do not feel inclined that the parties may be called upon to adduce any evidence. Admittedly the deceased-respondent Raghunath was the resident of village Bassi and he was a close neighbor of the appellant, Even if it be taken, as stated by the appellant, that he was not present in village Bassi on 17-10-1972 and that he did not join the funeral ceremony of the deceased and that throughout the month of October 1972 he remained at Jaipur for his treatment, still the question arises whether for such a long period, the fact of the death of respondent No. 2 Raghunath did not come to the notice of the appellant. It cannot be believed that for such a long period the appellant had no knowledge of the death of Raghunath. It is inconceivable that a neighbor does not know about the death, more particularly, when litigation is going on between them. Bassi is a small village and the deceased was residing in the neighborhood of the appellant. These circumstances, in my opinion, are sufficient to discredit the version given by the appellant. The appeal stood abated as against respondent No. 2 when the application was not moved within time and the appellant has not been able to make out a case for condonation of delay, as factually it has not been found that he was not aware of the death of the respondent Raghunath. Thus, there are no

sufficient grounds for condoning the delay in moving the application for setting aside the abatement. The appeal, thus stands abated against, respondent No. 2 Raghunath.

6. The question arises whether the appeal shall stand abated as a whole or not or the appeal can be proceeded against respondents No. 1 and 3. In his connection suffice it say that there was a joint decree for permanent injunction in favour of all the respondents. In case the appeal succeeds against the respondents No 1 and 3, inconsistent and contradictory decrees will arise. A decree for permanent injunction would remain valid and subsisting in favour of the the legal representatives of the deceased-respondent No. 2. In such a situation, the appeal cannot proceed against the respondents No. 1 and 3. It will abate as a whole. Reference in this connection may be made to be a decision of the Supreme Court in *The State of Punjab Vs. Nathu Ram*, .

7. In the above view of the matter, the appeal abates as a whole and the same is hereby dismissed with no order as to costs.