
(2015) 07 UK CK 0035
In the Uttarakhand High Court
Case No : Second Appeal No. 35 of 2015

Pratap Singh Mewal

APPELLANT

Vs

Ragunath Singh and Others

RESPONDENT

Date of Decision : 06-07-2015

Acts Referred:

Citation : (2015) 112 ALR 548

Hon'ble Judges : Umesh Chandra Dhyani, J.

Bench : Single Bench

Advocate : R.P. Nautiyal and Prashant Khanna, for the Appellant; J.P. Joshi and Sushil Vashistha, for the Respondent

Final Decision : Dismissed

Judgement

Umesh Chandra Dhyani, J.—By means of present Second Appeal, the appellant has challenged the judgment and decree dated 9.12.2014 passed by the District Judge, Rudraprayag in Civil Appeal No. 13/2013, whereby the said civil appeal was dismissed and the order dated 31.10.2013 passed by the Civil Judge (J.D.), Rudraprayag (Trial Court) in Civil Suit No. 20/2012 was affirmed. A civil suit was instituted against the State of Uttarakhand through the Collector, Rudraprayag and 5 others by Raghunath Singh-plaintiff (respondent herein) in the capacity of Pradhan Gram Panchayat/President, Revenue Village Committee, Kunda Daankot. The suit was instituted against the defendant for realization of Rs. 72,375/- alongwith interest and cost of the suit. The said suit was decreed only against the present appellant (Pratap Singh Mewal), who was the Pradhan, Gram Panchayat/President, Revenue Village Committee, Kunda, Daankot. Defendant No. 2 (appellant herein) was directed to make payment of Rs. 72,375/- alongwith interest @ 12 % per annum within a month, vide judgment and order dated 31.10.2013 passed by the Civil Judge (J.D.), Rudraprayag.

2. Aggrieved against the said judgment and decree passed by the Trial Court, a civil appeal was preferred before the District Judge, Rudraprayag. Vide judgment and order dated 9.12.2014, the District Judge, Rudraprayag dismissed the said

civil appeal and affirmed the judgment of the Trial Court. Aggrieved against the same, present Second Appeal has been preferred by the defendant No. 2 (appellant herein).

3. The Civil Judge (J.D.), Rudraprayag in its judgment narrated the plaint story and the averments made on behalf of the defendant Nos. 2 and 3 in the written statement, and framed the following issues:

"(i) Whether the work of cement concrete (C.C.) Road Side Erosion Naula-Khala was completed under the supervision of Gram Panchayat, Kunda, Daankot before September, 2008, for which, the balance payment of Rs. 72,375/- was not made by the defendant No. 2 to the plaintiff?

(ii) To what relief, if any, is the plaintiff entitled?"

4. P.W. 1 Raghunath Singh, P.W. 2 Sobat Singh, P.W. 3 Jeet Pal Lal, P.W. 4 Manawar Singh, P.W. 5 Jeet Lal, P.W. 6 Narendra Singh, P.W. 7 Virendra Singh, P.W. 8 Manoj Kumar Tiwari and P.W. 9 Sandeep Singh were examined on behalf of the plaintiff. Documentary evidence was also filed by the plaintiff in support of his case, a list of which, has been mentioned by the Trial Court at internal pages 6 and 7 of its judgment dated 31.10.2013. D.W. 1 Satya Pal Singh Rawat and D.W. 2 Pratap Singh were examined on behalf of the defendant Nos. 1, 4, 5, 6 and 7. Some photocopies of the documents were also filed on behalf of the defendant Nos. 1, 4, 5 and 6, which were not admissible in evidence.

5. After considering the evidence on record, the Trial Court came to the conclusion that the work of C.C. road Side Erosion Naula-Khala was completed before September, 2008 when the plaintiff was the President, Revenue Village Committee, Kunda, Daankot. The balance payment of Rs. 72,375/- was not paid by defendant No. 2 to the plaintiff, and therefore, the suit was decreed against the defendant No. 2 (appellant herein). A direction was given to defendant No. 2 to pay the balance sum of Rs. 72,375/- alongwith interest @ 12% per annum within one month.

6. When the civil appeal was filed against the judgment of the Trial Court, the same was dismissed. The lower Appellate Court in para No. 22 and 23 of the impugned judgment has affirmed the findings given by the Trial Court and held that no interference is called for in the judgment of the Trial Court.

7. Defendant No. 2 (appellant herein) proposed the following issues while filing the present Second Appeal:

"(a) Whether the work carried out by the plaintiff/respondent was in consonance with the terms and conditions of the contract/agreement entered between the parties?

(b) Whether the Trial Court had framed the issues against the pleadings of the parties?

(c) Whether the learned Courts below have misread the evidence on record and

also against the evidence on record and also against the provisions of law?

(d) Whether learned Courts below were justified in decreeing the suit without any proper evidence against the committee/society?"

8. On a careful scrutiny of the pleading of the parties, as also the judgments of the Courts below, this Court is of the view that none of the substantial questions of law as proposed above can be framed in the instant case, inasmuch as, there is ample evidence on record as is clear from the narration of the plaint story and the averments made in the written statements that certain work was carried out when the plaintiff was the President of the Revenue Village Committee, Kunda, Daankot. The work was completed but since the budget was not released during the plaintiff's tenure, therefore, the payment was not made. A part payment was made by the defendant No. 2 when he became the President of the Revenue Village Committee, which fell short of Rs. 72,375/-. Even on a bare perusal of the judgments of the Courts below and scrutiny of other documents brought on record, without calling upon the Lower Court record, this Court is of the opinion that the Second Appeal is not liable to be admitted and the same is liable to be dismissed. There is no perversity in the judgments of the Courts below.

9. The Second Appeal is, therefore, dismissed at the admission stage itself.

10. Now, at this stage of dictation, learned Senior Counsel for the appellant suggested that the following substantial question of law should be framed:

"1. Whether the Trial Court and the Lower Appellate Court have wrongly and illegally passed the decree against the appellant in his capacity as Gram Pradhan?

2. Whether the judgment and decree passed against the appellant is liable to be quashed, as the decree should have been passed against the individual capacity of the Pradhan under whose supervision the work was carried out?"

Learned Senior Counsel for the appellant argued that a direction ought to have been given by the Trial Court as well as by the Lower Appellate Court to realize the balance amount from defendant No. 2 (appellant herein) in the capacity of President of the Revenue Village Committee. The appellant was arrayed as defendant No. 2 in the capacity of the President, Revenue Village Committee, Kunda, Daankot. The order itself does not indicate that the money was to be realized from the appellant in his individual capacity. It only directs the defendant No. 2 Pratap Singh Mewal, Village Pradhan/President, Revenue Village Committee, Kunda, Daankot to pay a sum of Rs. 72,375/- along-with interest @ 12% per annum. Moreover, it was not the case of either of the parties before the Trial Court that the defendant No. 2 (appellant herein) was liable to pay the aforesaid amount in his personal/individual capacity. Since it was not the case of the plaintiff, therefore, the defendant No. 2 has not said anything in this regard in his written statement. On account of this fact, this Court refuses to frame the aforesaid additional substantial questions of law while deciding present Second Appeal. The appellant may take appropriate objections, if any, as may be advised

to him at the time of execution of decree.