
(2009) 08 RAJ CK 0035
In the Rajasthan High Court

Radhey Shyam

APPELLANT

Vs

The Union of India (UOI)

RESPONDENT

Date of Decision : 11-08-2009

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 10, 15

Citation : (2009) 3 WLN 606

Hon'ble Judges : J.R. Goyal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

J.R. Goyal, J.—This is plaintiff's second appeal filed against the judgment and decree dt. 30.11.1995 passed by Additional District Judge, Gangapurcity in Appeal No. 5/1989 whereby he dismissed the appeal and affirmed the judgment and decree dt. 28.01.1989 passed by Munsif, Gangapurcity in Civil Suit No. 66/1977 by which the suit of plaintiff has been dismissed.

2. The controversy involved in the present matter relates to jurisdiction in regard to maintainability of the suit which was filed by the plaintiff in relation to the disputed land. According to the plaintiff, he deposited "nazrana" amount for the disputed land to the Municipal Board, Gangapurcity, obtained "patta" and raised construction over some part of the disputed land and the remaining part was kept un-constructed by the plaintiff for the use as Chabutara on account of lack of funds but the defendants want to grab the disputed land and demolish the construction over the disputed land and to this effect the plaintiff submitted an application before the concerned revenue authorities and on scrutiny it was found that the said disputed land is recorded in Khasra No. 17/3 situated in Mahukala and therefore the defendant has no relation whatsoever with the disputed land, while as per the defendant Union of India, the plaintiff is in unauthorized occupation of the disputed land which is railways land and the estate officer has initiated proceedings for evicting the plaintiff from the unauthorized occupation of the land in dispute and therefore the civil Court has no jurisdiction to entertain

such suit in view of the bar provided u/s 10 and 15 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter shall be referred as the Act of 1971).

3. The trial Court framed the issues and after recording the evidence and hearing the parties dismissed the suit of the plaintiff on the ground of lack of jurisdiction and thereafter the appeal filed by the plaintiff-appellant against that judgment and decree was also dismissed by the first appellate Court. Hence, this second appeal.

4. Heard learned Counsel for the parties and perused the judgments of the Courts below and other material placed during the course of arguments.

5. The only substantial question of law which has been formulated is in regard to the maintainability of the suit in view of Sections 10 and 15 of the Act of 1971.

6. Learned Counsel for the appellant submitted that suit land is away from the railway boundary, therefore bar provided u/s 10 and 15 of the Act of 1971 is not applicable.

7. Learned Counsel for the respondent submitted that in regard to the same piece of land estate officer under the Act of 1971 has initiated the proceedings against the plaintiff-appellant for removal of his unauthorized occupation, therefore suit is not maintainable in view of the bar provided u/s 10 and 15 of the Act of 1971.

8. I have considered the rival submissions. It is not disputed that proceedings under the Act of 1971 have already been initiated by the estate officer in regard to the same property. Section 10 of the Act of 1971 clearly provides that no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act. Further Section 15 of the Act of 1971 mandates that no Court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person who is in unauthorised occupation of any public premises or the recovery of the arrears of rent payable.... Keeping in view the specific bar created by Sections 10 and 15 of the Act of 1971 the findings of both the Courts below do not appear to be illegal or perverse. In view of the above, I do not find any substance in this appeal.

9. Consequently, this second appeal along with stay application is dismissed. However, appellant-plaintiff shall be at liberty to raise all pleas available to him in the matter pending before estate officer.