

(2010) 07 GUJ CK 0048
In the Gujarat High Court
Case No : Second Appeal No. 231 of 1983

Rahemanbhai Kasambhai Vanora	APPELLANT
Vs	
Manibhai Ramabhai and Others	RESPONDENT

Date of Decision : 30-07-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2010) 07 GUJ CK 0048

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : Jitendra M. Patel, for the Appellant; P.F. Makwana, for Defendants 1 - 4, for the Respondent

Final Decision : Allowed

Judgement

K.A. Puj, J.—The appellant - Ori. plaintiff has filed this Second Appeal u/s 100 of the CPC challenging the order passed by the learned Second Extra Assistant Judge, Vadodara in Regular Civil Appeal No. 70 of 1982 allowing the said Appeal and setting aside the judgment and decree passed by the learned Civil Judge (J.D.) Karjan in Regular Civil Suit No. 5 of 1979.

2. The Second Appeal was admitted by the Court and following substantial question of law was formulated for determination and consideration of this Court.

Whether in the face of the Sale Deed Ex.52 and other documentary evidence on record the lower Appellate Court was justified in reaching the conclusion that the plaintiff was not in possession of the property, even though the defendants had not led any evidence (except oral evidence) to controvert prima facie inference arising from the said documents?

3. The brief facts of the case are that the plaintiff had purchased the suit house bearing No. 96 under registered Sale Deed Ex.52 executed by Chhitabhai Valjibhai and he was put to possession on the basis of said Sale Deed. The plaintiff's name was also got registered as an owner and occupant of the said

house under the records of Gram Panchayat, Hadod. The plaintiff also used to pay panchayat taxes. It is also the case of the plaintiff that the defendants without any sufficient cause obstructed his possession on 31.12.1978 and hence the plaintiff had filed suit praying for the relief of permanent injunction. The said suit was resisted by the defendants by filing Written Statement Ex.15. It was inter alia contended by the defendants that the Sale Deed was got up as its executant was not a person at Hadod Village owning the suit house in his name and that the defendants are in possession of the suit house since their forefather. It is further contended that the plaintiff was never put to possession of suit house as alleged by him and, therefore, the suit deserves to be dismissed.

4. The learned trial Judge after framing the issues and after considering the evidence oral as well as documentary, came to the conclusion that on perusal of the Sale Deed Ex.52 the plaintiff became the owner and occupant of the suit premises and there was no doubt about the possession of the suit house with the plaintiff as an owner of it. The learned trial Judge has, therefore, passed the decree and judgment in favour of the plaintiff and the defendants were permanently restrained from disturbing the possession of the plaintiff in respect of the suit house.

5. Being aggrieved by the said judgment and decree of the learned trial Judge, the defendants have filed Regular Civil Appeal No. 70 of 1982 before the lower Appellate Court. The lower Appellate Court has framed the following points for determination:

(1) Whether the lower Court erred in holding that the plaintiff was in possession as the owner of the suit house?

(2) Whether the lower Court erred in holding that the defendant obstructed in respect of the enjoyment of the physical possession of the suit property?

(3) Whether the lower Court erred in holding that the defendants were not in peaceful possession of the house as the owners thereof which was the ancestral property belonging to Punjabhai Keshavbhai?

(4) Whether the lower Court erred in not appointing the guardian ad-item of defendant No. 3, if he was found to be the minor on the date of the suit?

(5) What order?

6. The lower Appellate Court after considering the rival submissions and appreciating the documents produced before it had come to the conclusion that the learned trial Judge has not appreciated the evidence on record correctly and simply relied upon the Sale Deed. It is further observed by the lower Appellate Court that if the Sale Deed is registered one and when it is duly proved then it was not necessary to examine the executor of the Sale Deed or attesting witnesses, but when the circumstances of a particular case are such as it is doubtful, then it was necessary to examine him. The lower Appellate Court has, therefore, come to the conclusion that simply on the basis of Sale Deed it cannot

be said that the plaintiff became the owner of the suit property. He, therefore, reversed the judgment and decree passed by the trial Court and allowed the said Appeal.

7. It is this order of the lower Appellate Court which is under challenge in this Second Appeal.

8. Mr. Jitendra M. Patel, learned advocate appearing for the appellant - ori. plaintiff has submitted that the lower Appellate Court has not properly considered the Sale Deed Ex.52 and hence the order passed is erroneous and deserves to be quashed and set aside. He has further submitted that the lower Appellate Court has failed to consider the aspect that the appellant was in possession of suit house since long time and it has further relied upon version of the defendants regarding possession. He has further submitted that the lower Appellate Court has discarded the oral as well as documentary evidence produced by the plaintiff. He has further submitted that the Sale Deed Ex.52, village panchayat record and oral evidence of the witnesses clearly prove and establish the ownership and possession of the suit house by the appellant - plaintiff. As against this the defendants have not produced any documentary evidence and merely proceeded the entire case on presumption. He has, therefore, submitted that the impugned order passed by the lower Appellate Court deserves to be quashed and set aside.

9. Despite service of notice, nobody appears on behalf of the respondents. Mr. P.F. Makwana, learned advocate had filed appearance on behalf of respondent Nos. 1 to 4. However, on none of the occasions he remained present. Despite service of notice nobody appears on behalf of the respondent No. 5.

10. It is an admitted position that when the Second Appeal was admitted, stay was granted by this Court staying operation and execution of the order passed by the lower Appellate Court. The appellant is in possession of the suit house all throughout. The Sale Deed Ex.52 clearly indicates that the appellant has purchased the suit house with consideration and it is duly registered and signed by the executant in presence of the witnesses. The executant of the Sale Deed as well as witnesses were duly identified at the time of registration of the document. The Sale Deed was not cancelled nor any proceedings to that effect were initiated by the defendants. It is the settled position that unless and until the document on which the title is acquired by a person is cancelled is lawfully considered to be the owner of the property. The defendants have not taken any action with regard to cancellation of the Sale Deed nor they have sought any relief asking for possession of the suit house. It is only when the appellant's possession was sought to be disturbed by the defendants the appellant has filed present suit seeking injunction against the defendants from disturbing his possession. In the suit proceeding, reliance was placed by the appellant on the document Ex.52. Despite this knowledge, no efforts were made by the defendants for challenging the said document.

11. Considering the entire facts and circumstances of the case and the evidence

oral as well as documentary, on record, the Court is of the view that the lower Appellate Court has committed an error in reversing the judgment and decree passed by the trial Court. In this view of the matter, the order and judgment passed by the lower Appellate Court is hereby set aside and the judgment and decree passed by the trial Court is restored.

12. This Second Appeal is accordingly allowed. Parties shall bear their own cost.