

(2016) 04 AHC CK 0130
In the Allahabad High Court
Case No : Second Appeal No. 221 of 2016

Rajendra Kumar Prajapati

APPELLANT

Vs

Vijay Shanker Singh

RESPONDENT

Date of Decision : 20-04-2016

Acts Referred:

Citation : (2016) 7 ADJ 392 : (2016) 118 ALR 128 : (2017) 1 ARC 300 : (2016) 133 RD 297

Hon'ble Judges : Pramod Kumar Srivastava, J.

Bench : Single Bench

Advocate : Akhilesh Prasad Tripathi, Advocate, for the Appellant; Prashant Pandey, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Pramod Kumar Srivastava, J.— Heard learned counsel for the parties on question of admission of second appeal and perused the records.

2. Original Suit No. 1157/2006, Nakhadu Prajapati v. Vijay Shanker and Others, was filed with averment that owner of disputed land in form of pit was Harihar Singh, who was predecessor in interest of defendant. After his death, defendants became his legal heirs. Plaintiff had purchased disputed 25? x 55? land in form of pit from Harihar Singh on consideration of Rs. 2,400/-. This purchase was made about 30 years back by oral transaction. Plaintiff is residing in this disputed land, but defendants have given application before police for evicting the plaintiff. Therefore cause of action arose and plaintiff had filed suit for permanent injunction.

3. In this O.S. No. 1157/2006, defendants had filed written statement denying the plaintiff's averment and pleaded that they had admitted plaintiff as licensee over disputed land, but plaintiff had filed suit on the basis of incorrect facts, which should be dismissed.

4. Another Original Suit No. 679/2007 was filed by Vijay Shanker and others

(who were defendants of O.S. No. 1157/2006) for eviction of licensee Nakhadu and others (who were plaintiff of O.S. No. 1157/2006) after cancellation of license.

5. Both the Original Suits No. 1157/2006 and 679/2007 related to same, and dispute was between the same parties on same issues, therefore, they were consolidated. After affording opportunity of hearing to parties, the Additional Civil Judge, Senior Division (J.S.C.C.), Varanasi had passed judgment dated 7.10.2013, by which O.S. No. 1157/2006 was dismissed with cost. By this judgment, O.S. No. 679/2007, Vijay Shanker & Others v. Nakhadu Prajapati, was decreed for eviction of defendant Nakhadu from disputed property and for recovery of possession to plaintiff Vijay Shanker and others.

6. Against this judgment of trial court, two appeals were filed by successors in interest of Nakhadu (plaintiff of O.S. No. 1157/2006 and defendant in O.S. No. 679/2007). Civil Appeal No. 215/2013 was preferred against the judgment of dismissal of O.S. No. 1157/2006, whereas Civil Appeal No. 214/2013 was preferred against the decree passed in O.S. No. 679/2007. These two appeals were again consolidated by first appellate court. After affording opportunity of hearing to parties, the Additional District Judge, Court No. 5, Varanasi had passed common judgment dated 8.12.2015 for both the appeals, by which both the appeals were dismissed.

7. Against the judgment dated 8.12.2015 of first appellate court, two second appeals had been preferred. Second Appeal No. 221/2016 is preferred against dismissal of O.S. No. 1157/2006 and Civil Appeal No. 215/2013. Second Appeal No. 222/2016 was preferred against decreeing of O.S. No. 697/2007 and dismissal of Civil Appeal No. 214/2013.

8. Learned counsel for the appellant contended that although no registered sale deed was executed in their favour, but they are in possession of disputed property for about 30 years and have perfected their title by adverse possession, but this fact was not considered by lower courts, so judgment of lower courts are erroneous, and this appeal should be admitted for being allowed.

9. This contention was refuted by counsel for the respondent, who submitted that appellants had failed to prove their adverse possession in this matter and there has been concurrent finding of two lower courts on the basis of evidences that appellants were inducted over disputed property as licensee, whose license has been cancelled and his status is that of trespasser, who cannot get injunction or any relief against the true owner. Therefore, there is no error in judgment of lower courts and this appeal should not be admitted and should be dismissed in limine.

10. A perusal of record reveals that there has been concurrent finding of fact of the trial court as well as first appellate court, which is based on proper appreciation of evidences that appellant has no right, title or interest as owner in disputed property and his status over it is that of trespasser, so he cannot get

relief of injunction against true owner respondent. A perusal of record also reveals that these findings of two lower courts are based on proper appreciation of evidences and findings in that regard appears correct. Such acceptable findings, which cannot be treated as erroneous, should not be interfered by re-appreciation of evidences in second appeal.

11. Apart from it, even if it is accepted for sake of argument that appellant had paid consideration for purchase of disputed property to predecessor of respondents, in that case also plaintiff-appellants' suit cannot be decreed. Admittedly, his right has been claimed on the basis of oral transaction of purchase of disputed property for consideration of Rs. 2,400/-. No right in any immovable property can be transferred on the basis of oral transaction. Unless transaction of sale is registered formally, no such ownership right can be transferred. Therefore, on the basis of alleged oral transaction, plaintiff-appellant cannot be accepted as owner.

12. The alternative ground taken in plaint was that of adverse possession. As discussed above, this ground is not proved on the basis of evidences. Apart from it, the ground of adverse possession may be taken against true owner as defence for bar of grant of relief to true owner. Adverse possession in itself cannot create any right of a trespasser against true owner. No title of a trespasser can be declared against true owner on basis of adverse possession.

13. The only dispute to be determined in this matter was as to whether plaintiff is owner of disputed property or not. This was not a question of law but was a question of fact that could be decided on the basis of evidences, as has been done by the courts below. There appears no illegality or error in finding of both the lower courts.

14. On examination of the reasonings recorded by the trial court, which are affirmed by the learned first appellate court in first appeal, I am of the view that the judgments of the trial court as well as the first appellate court are well reasoned, based upon proper appreciation of the entire evidence on record. No question of law much less a substantial question of law is involved in this case before this Court. No perversity or infirmity is found in the concurrent findings of fact recorded by the trial court that has been affirmed by the first appellate court to warrant interference in this appeal. None of the contentions of the learned counsel for the appellant-plaintiffs can be sustained.

15. In view of the above, this Court finds that no substantial question of law arises in this appeal. The second appeal is dismissed.