

(2019) 01 RAJ CK 0046
In the Rajasthan High Court
Case No : Civil Writ No. 13445 Of 2018

Ram Briksh

APPELLANT

Vs

Kishan Lal Suwalka And Ors

RESPONDENT

Date of Decision : 04-01-2019

Acts Referred:

Constitution Of India, 1950 — Article 227

Citation : (2019) 01 RAJ CK 0046

Hon'ble Judges : Dinesh Mehta, J

Bench : Single Bench

Advocate : NK Rastogi

Final Decision : Dismissed

Judgement

The present writ petition has been preferred against the order dated 29.1.2018, passed by the learned Addl. District Judge No.2, Bhilwara (hereinafter referred to as the appellate court), whereby the appeal filed by the petitioner against the order dated 2.9.2013 passed by the Addl. Civil Judge (Jr.Div.) & Judicial Magistrate No.2, Bhilwara (hereinafter referred to as the executing court) has been rejected.

Briefly stated the facts relevant for the present petition are that the petitioner-plaintiff had filed a suit for permanent injunction against the defendant, (respondent no.1 herein) with the prayer that the defendant be restrained from interfering in his right of way on the 9' wide road and from raising construction thereupon. The said suit filed by the plaintiff came to be decreed vide judgment and order dated 3.12.2004 by the trial court with the following stipulation:

"8. ???? ?? ??? ????? ?????????? ?????? ?? ??? ?? ??? ?????????? ?? ?????? ?
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Subsequent thereto, the petitioner - plaintiff filed execution application and

prayed that the extension/balcony (Toddi) constructed by the defendant be removed. The executing court rejected the said application filed by the petitioner while observing that the judgment and decree was to the effect of not raising any construction on the 9' wide road and there was no stipulation regarding removal of the balcony said to have been constructed by the defendant.

Feeling aggrieved of the order dated 2.9.2013, the petitioner preferred an appeal, which was registered as appeal No.45/2013 and came to be dismissed by the appellate court vide its order dated 29.1.2018. While rejecting the appeal, the learned appellate court has held that neither there is any obstruction in the petitioner's right of way nor was there any stipulation regarding removal of the balcony/Rosh etc. in the judgment and decree passed by the trial court.

Challenging the aforesaid order dated 2.9.2013 passed by the executing court as well as the order dated 29.1.2018 passed by the appellate court, the petitioner has invoked supervisory jurisdiction of this court vested under Article 227 of the Constitution of India.

Mr. Rastogi, learned counsel for the petitioner vehemently submitted that the land on which 9' road is existing is covered by his ownership/title and as such, the defendant cannot raise construction thereupon. On Court's query regarding evidence/finding regarding land being owned by the petitioner, Mr. Rastogi read contents of para no.6 of the judgment and decree dated 3.12.2014. He further contended that by construction of balcony (Toddi/Rosh) the defendant has violated the injunction granted by the trial court, which deserve to be demolished.

I have heard learned counsel for the petitioner and perused the material available on record.

As far as petitioner's contention that the contentious land on which the road exists is owned by him, is totally baseless. What has been zealously read by Mr. Rastogi is the argument advanced on behalf of the plaintiff and not a finding recorded by the Court. Even the plaintiff's pleadings shows that he had only asserted the right of way on disputed way of 9' width and has not indicated that the same is his owned land, much less proving it.

Be that as it may, by way of the decree passed by the trial court, the defendant was simply restrained from raising any construction on the way. In guise of the decree passed by the trial court, the petitioner cannot seek removal of Toddi/Rosh purportedly constructed by the defendant in violation of the judgment and decree. It is also not clear from the record as to whether the offending construction has been raised after passing of the decree or the same was already existing on site. The execution proceedings can't traverse beyond the terms of the decree, is a settled position of law.

This Court does not find any infirmity or perversity in the orders passed by the courts below. The writ petition filed by the petitioner is therefore, dismissed.