

(2006) 09 AHC CK 0159
In the Allahabad High Court
Case No : Second Appeal No. 954 of 2006

Ram Gopal and Anr.

APPELLANT

Vs

Kewal Prasad & Ors.

RESPONDENT

Date of Decision : 21-09-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Easements Act, 1882 — Section 4

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 7(aa)

Citation : (2006) 09 AHC CK 0159

Hon'ble Judges : Umeshwar Pandey, J

Final Decision : Dismissed

Judgement

Umeshwar Pandey, J.—Heard learned Counsel for the parties.

2. This appeal arises out of the judgment and decree dated 49 2006 passed by the lower appellate Court whereby the appellants plaintiffs" appeal has been partly accepted and partly dismissed.

3. The appellants filed a suit for permanent injunction to restrain the defendantsrespondents from interfering into their possession over the disputed land of plot No. 35 a "Khalihan" and also the disputed 15 feet vide "Rasta". The plaintiffs came with the case that the disputed plot No. 35 is a "Khalihan" land duly left for that purpose during consolidation operation. The disputed "Rasta" is a public Rasta of plot No. 34 meant for use by the villagers. Since the defendants were trying to encroach upon the said properties, the occasion arose for filing the suit. The defendantsrespondents contested the suit and filed their pleadings stating that the land in dispute is their property and that the entry of plot No. 35 as "Khalihan" was wrongly recorded during consolidation operation.

4. The trial Court, after having considered the entire evidence led from both the parties and other materials available on record, was of the view that the plaintiffsappellants did not have justification for filing the suit and as such no relief was granted and the suit was dismissed. In appeal against this judgment of

the trial Court, it has been held by the lower appellate Court that so far as the relief of permanent injunction with regard to disputed "Rasta" is concerned, the plaintiffs did have a right to claim the relief with regard thereto but they did not have right of filing the suit for permanent injunction with regard to plot No. 35, which is admittedly a property of "Khalihan" belonging to the Gaon Sabha. The connected suit of Gaon Sabha, which had also come in appeal, now stood dismissed as the same had been withdrawn. Accordingly, finding the plaintiffsappellants as not competent to get any relief with regard to plot No. 35 (Khalihan), this was dismissed and the relief with regard to plot No. 34, which is "Rasta" was granted and the appeal was partly allowed.

5. Learned Counsel for the appellants has tried to emphasise that since the land of plot No. 35 has been earmarked for "Khalihan" to be used by the villagers, the implication of Section 7 (aa) of U.P. Zamindari Abolition and Land Reforms Act, would come for plaintiffs" rescue even though, the property does not belong to them. They do have some vested right therein.

6. A perusal of the pleadings the parties, the judgments of the courts below and other materials available on record, makes it quite obvious that the plaintiffs are admittedly not the owners of the plots. The right to have "Khalihan" over a particular piece of land given to the villagers by the Gaon Sabha, is not an easementary right. The present right of "Khalihan", in the disputed plot No. 35, as has been claimed, does not have any dominant heritage for enjoyment of which the right is claimed. In the definition of easement, as given in Section 4 of the Indian Easements Act, there are certain illustrations. Illustration (e) is squarely applicable to such property in which the right of "Khalihan" is claimed as easement This illustration (e) excludes such rights being an easementary right. If a property is given by the Gaon Sabha to the public for keeping their "Khalihan" for some days in a year, this right is not an easement. Therefore, it is not possible to bring the implication of Section 7 (aa) of the aforesaid Act in the present matter. It is wholly misconceived interpretation of the very provision itself. The Courts below have found the possession of the defendants over some part of this plot No. 35. If there was any grievance against this possession of the defendants, the is with regard thereto, could be filed only the Gaon Sabha and none else. In the present case, the Gaon sabha had also field a suit against the defendants but as per the observation made in the impugned judgment, the same has stood dismissed by withdrawal of the appeal by the Gaon Sabha. Accordingly, the plaintiffsappellants in the present case have been rightly not found entitled to the relief of permanent injunction against the defendantsrespondents in respect of property of plot No. 35 and the appeal for that part has been correctly dismissed.

7. There is no substance or merits in the present appeal, which fails and is hereby dismissed at the admission stage