
(1974) 02 RAJ CK 0010

In the Rajasthan High Court

Case No : Civil Second Appeal No. 327 of 1971

Ram Niwas and Others

APPELLANT

Vs

Shiksha Prasar Samiti Ratangarh

RESPONDENT

Date of Decision : 11-02-1974

Acts Referred:

Citation : (1974) WLN 292

Hon'ble Judges : C.M. Lodha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

C.M. Lodha, J.—This is a defendants' second appeal arising out of a suit for issue of perpetual injunction against the defendants from interfering with the plaintiffs' possession over a Nohara situated in the town of Ratangarh.

2. The plaintiff-respondent No. 1 is a society called Shiksha Prasar Samiti formed in Ratangarh for the purpose of promoting education in the town. The other plaintiffs are its office bearers. The plaintiffs' case is that the "Nohara" in dispute was gifted to the Society by one Smt. Jamna Devi, and the defendant no Ramniwas had been asked to look after the "Nohara" on behalf of the plaintiff as he has been doing so previously as a servant of the donor Smt Jamna Devi. The other defendants are his brothers. Defendant Ramniwas has got his house very near to the "Nohara, in dispute, and the plaintiffs' case is that for the sake of convenience he was allowed to connect the "Nohara" with his house by a passage. It was alleged that the defendants were denying the plaintiffs, ownership to the "Nohara" and were further interfering with the Society's possession over it. It was, therefore, prayed that the defendants may be restrained by a perpetual injunction from interfering with the plaintiffs' possession over the "Nohara" and the passage connecting the "Nohara" with the defendant Ramniwas's house may be ordered to be closed.

3. The defendants denied the plaintiffs, title to the "Nohara" in dispute and

pleaded their own. In the alternative, they also asserted their adverse possession for more than 40 years. The other allegations made by the plaintiffs were also denied.

4. After recording the evidence produced by the parties the learned Munsiff, Ratangarh decreed the Plaintiffs' suit. Aggrieved by the judgment, and decree by the trial court the defendants filed appeal which was dismissed by the Additional District Judge, Churu by his judgment dated 20.5.1971. Hence this appeal.

5. learned Counsel for the appellants has urged that the main point involved in the case is whether the plaintiffs have succeeded in proving their title to the "Nohara" in dispute, which was emphatically denied by the defendants. It is submitted that apart from the oral evidence, both the parties produced a number of documents in support of their respective cases, but the learned Additional District Judge did not deal with the documentary evidence at all.

6. After having heard learned Counsel for both the parties, I have come to the conclusion that the contention raised on behalf of the appellants is not without force. Issue No. 1 is whether the disputed Nohara belonged to Smt. Jamna Devi, and she had gifted the same to the plaintiffs. After referring to the evidence of the witnesses produced by the parties the learned Additional District Judge, abruptly came to the conclusion that the finding of the learned Munsiff-Magistrate that the Nohara belongs to Poddars and not to defendants is fully justified. It is remarkable that while coming to this conclusion the learned Additional District Judge has not referred to a single document. Then again, the finding arrived at by him is most vague and not at all to the point. The question for decision was whether the alleged donor of the "Nohara" in question viz Jamna Devi owned it and to case her title to the "Nohara" was proved whether she had gifted he same to the plaintiffs and then the next question to be decided was whether the defendants had acquired title to it by adverse possession? None of these points have been dealt with after a proper discussion of oral and documentary evidence. Even the discussion of the oral evidence by the learned Additional District Judge is far from satisfactory. In this view of the matter, the finding arrived at by the learned Additional District Judge cannot be sustained, and his judgment and decree must be set aside

7. Accordingly, I allow this appeal in part, set aside the judgment and decree by the learned Additional District Judge, Churu and send the case back to him for disposal after proper discussion of the oral as well as the documentary evidence with respect to the points at issue and there after decide the appeal afresh in accordance with law. In the circumstances there will be no order as to costs.

8. Let the file of the case be returned to the Additional District Judge, Churu immediately.