
(2015) 02 RAJ CK 0188
In the Rajasthan High Court
Case No : Civil Second Appeal No. 216 of 2008

Roshan Lal

APPELLANT

Vs

Manoj Kumar and Others

RESPONDENT

Date of Decision : 20-02-2015

Acts Referred:

Transfer of Property Act, 1882 — Section 11, 40

Citation : AIR 2015 Raj 71 : (2015) 4 CDR 1728 : (2015) 4 RLW 2781 : (2016) 1 WLN 68

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : M.S. Purohit and B.S. Bhalasaria, for the Appellant; Sanjay Nahar and Shyam Sunder Ladrecha, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Dr. Vineet Kothari, J.—This second appeal is arising out of the judgment and decree dated 31-10-2007 passed by the learned Additional District Judge No. 1, Bikaner in Civil Appeal (Decree) No. 49/2007 Manoj Kumar S/o. Sohan Lal and Smt. Bhikhi Devi W/o. Sohan Lal v. Roshan Lal S/o. Jeevraj Sethia and Anr. who allowed the appeal filed by the present respondents-defendants and set aside the judgment and decree dated 19-11-2003 passed by the learned Additional Civil Judge (Senior Division) No. 4, Bikaner in Civil Case No. 93/2001 Roshan Lal S/o. Jeevraj Sethia v. Manoj Kumar S/o. Sohan Lal Pugalia and Smt. Bhikhi Devi W/o. Sohan Lal Pugalia and Anr. by which, the learned Additional Civil Judge (Senior Division) had decreed the suit filed by the appellant-plain-tiff-Roshan Lal seeking perpetual and mandatory injunction in relation to the disputed piece of land, which is a common chowk between the residential houses of the parties, situated at Bhinasar, Sethia Chowk, Bikaner. The present second appeal has been filed by the appellant, who was the plaintiff before the learned trial Court against the reversal of the judgment of the learned trial Court by the learned First Appellate Court.

2. The learned counsel Mr. M.S. Purohit and Mr. B.S. Bhalasria appearing for the appellant-plaintiff-Roshan Lal submitted that the defendants-Manoj Kumar S/o. Sohan Lal Pugalia had purchased the property in question with the condition stipulated in the sale deed in favour of their predecessor-in-title that the disputed portion (common chowk) of the property purchased by them would be kept open for common use for marriages and bereavements and meetings etc. even if the plaintiff-Roshan Lal purchased the half portion of the plot of land in question from the different predecessor-in-title, the defendants were bound by that condition stipulated in the sale deed and, therefore, they cannot be allowed to use the disputed portion of the land, which is a common open chowk, for their private purposes and the same was meant to be used for common use between the parties. The learned counsel Mr. M.S. Purohit further submitted that since no written statement was filed by the defendants and no evidence was led by them, therefore, the learned trial Court was justified in decreeing the suit filed by the plaintiff-Roshan Lal which has been reversed by the learned First Appellate Court on the anvil of S. 11 of the Transfer of Property Act, 1882, therefore, a substantial question of law arises for consideration by this Court in the present second appeal filed by the plaintiff-Roshan Lal.

3. On the other hand, the learned counsel Mr. Sanjay Nahar appearing for the respondents-defendants-Manoj Kumar S/o. Sohan Lal Pugalia submitted that S. 11 of the Transfer of Property Act, 1882 was clearly applicable in the present case and since the defendants had purchased the suit property from the predecessor-in-title, different from the predecessors through whom, the plaintiff had purchased a portion of the suit property, therefore, the restriction imposed about common use of the open space could not be invoked by the present plaintiff and applied on the defendants. He also submitted that the plaintiff had a passage and access to the road from the other side of the plot and not through the common space, as claimed by the plaintiff and, therefore, the defendants were free to use the questioned piece of land of the chowk which was purchased by them free from encumbrances and that condition, as sought to be invoked by the plaintiff is not applicable to the defendants as barred by S. 11 of the Transfer of Property Act, 1882. In this view of the matter, the learned counsel Mr. Sanjay Nahar submitted that the learned First Appellate Court has rightly reversed the judgment and decree of the learned trial Court and has rightly dismissed by the suit of the plaintiff on the anvil of S. 11 of the Transfer of Property Act, 1882. The learned counsel Mr. Sanjay Nahar relied upon a decision of the Hon'ble Allahabad High Court in the case of Bhagwat Prasad Vs. Damodar Das and Others, AIR 1976 All 411 in which, the Hon'ble Allahabad High Court held as under:--

"4. It was next argued that the transferor could impose a condition in respect of another land belonging to any body else. But this does not appear to be the correct position as will appear from the latter part of this exception. I need not repeat that only the transferor has been given a right to enforce such a direction and he alone will have a remedy in respect of breach thereof. The purpose of the

law is that for the beneficial enjoyment of his other property, the transferor can impose such a condition. I do not think it will be permissible for the transferor to impose a condition for the benefit of another property which he is transferring or is intending to transfer to another person on the same day. If such a condition has been imposed by the transferor for his own benefit, he may no doubt transfer that benefit to another person if the land for the benefit of which such a condition has been imposed is subsequently transferred. But he cannot impose a condition for the benefit of another person. Because in the instant case, the various portions of the property were transferred on the same date, it could not be said that the transferor had imposed a condition and had transferred the same for the benefit of the plaintiff-appellant giving him a right to have a remedy in respect of its breach. The appellant has of course not based his right on any easement or tort. The claim is based only on contract and because the plaintiff-appellant was not a party to that contract between defendant No. 4 and respondents 1 and 2, he cannot have a right to bring a suit for breach of that condition. I was also referred to S. 40 of the Transfer of Property Act. In any opinion this section has no application to the present case, because this section only deals with the rights of a transferee of some land which is burdened with any restrictive covenant. The view of law taken by the Courts below thus appears to be correct and, the appeal must fail."

4. The relevant S. 11 of the Transfer of Property Act, 1882 is reproduced herein below for ready reference:--

"11. Restriction repugnant to interest created.--Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

(Where any such direction has been made in respect of one piece of immovable property for the purpose of securing the beneficial, enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof.)"

5. The relevant portion of the discussion made by the learned First Appellate Court while reversing the judgment and decree of the learned trial Court and while dismissing the suit of the plaintiff-Roshan Lal is reproduced herein below for ready reference:--

6. Having heard the learned counsel for the parties and upon perusal of the record of the case, including the impugned judgment and decree of the learned First Appellate Court, this Court is satisfied that the learned First Appellate Court has rightly allowed the appeal of defendant-Manoj Kumar S/o. Sohan Lal Pugalia and dismissed the suit of the plaintiff-Roshan Lal S/o. Jeevraj Sethia as barred by S. 11 of the Transfer of Property Act, 1882. It is noticed that the plaintiff-Roshan

Lal had purchased the property in question from some other person, in which, the restriction about common use of the open chowk was stipulated in the sale deed but the respondents-defendants had purchased the land in question from some other different persons and, therefore, the restriction about the common use of the chowk in favour of defendants' predecessor cannot be said to be operative against the present defendants. This second part or the exception to the main provision of S. 11 of the Transfer of Property Act is not applicable to the facts of the present case, since the sale deeds were not by the common seller and no such restriction could be so stipulated in the sale deed of the defendants in violation of S. 11 of the Transfer of Property Act, 1882 and, therefore, the learned First Appellate Court was justified in reversing the judgment and decree of the learned trial Court and in dismissing the suit of the plaintiff-Roshan Lal S/o. Jeevraj Sethia as hit by S. 11 of the Transfer of Property Act, 1882. In this view of the matter, the finding of the learned First Appellate Court in the impugned judgment dated 31-10-2007, that the plaintiff-Roshan Lal, who is a neighbour of the property in question, had no right to enforce such a condition by filing the suit seeking mandatory injunction against the defendants, appears to be just and correct and no substantial question of law arises for consideration by this Court in the present second appeal filed by the plaintiff-Roshan Lal and the second appeal is thus liable to be dismissed being devoid of any merit. Accordingly and in view of the discussion foregoing, the present second appeal filed by the appellant-plaintiff-Roshan Lal S/o. Jeevraj Sethia is dismissed. No costs. A copy of this order be sent to both the Courts below and the parties concerned forthwith.