
(2011) 10 AHC CK 0144
In the Allahabad High Court
Case No : Second Appeal No. 712 of 2011

Sadar Bazar Vyapar Samiti (Registered) And Others	APPELLANT
Vs	
Smt. Sabitri Devi and Others	RESPONDENT

Date of Decision : 17-10-2011

Acts Referred:

Cantonments Act, 1924 — Section 184, 185, 274
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11

Citation : (2011) 10 AHC CK 0144

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. Heard Sri P.K. Jain, learned senior counsel for the appellants and Sri K.K. Arora, learned counsel for some of the appellants and Sri R.N. Singh, learned senior counsel for respondent No. 1 and Sri C.B. Gupta, learned counsel for Cantonment Board and its authorities, respondents No. 2, 3 & 4 at the admission stage.

2. This appeal has been filed by 56 appellants. Appellant No. 1 claims to be a registered society formed for looking after interests of appellants No. 2 to 56, who are shop-keepers of different shops situate in Bungalow No. 61, Gwalior Road, Agra, which is a cantonment area. There are 58 or 59 shops on the western side of the said Bungalow abutting Gwalior Road. Cantonment Board gave notices on 07.01.1993 to all the shop keepers under Sections 184 & 185 of Cantonment Act, 1924 stating therein that appellants No. 2 to 56 had illegally erected/ re-erected the shops without getting any sanction for the same from the Cantonment Board. Appellants filed appeals u/s 274 of the Cantonment Act, which were dismissed. Thereafter they filed the suit for permanent prohibitory injunction giving rise to the instant second appeal (O.S. No. 1264 of 1994). The suit was dismissed by IV A.C.J., Junior Division, Agra through judgment and decree dated 31.03.2009. Against the said judgment and decree appellants filed

Civil Appeal No. 52 of 2009, which was dismissed by A.D.J. Court No. 17, Agra on 08.08.2011, hence this second appeal.

3. The defendants respondents had questioned the maintainability of the suit and the jurisdiction of the civil court, however the said points were decided against them and suit was held to be maintainable.

4. Defendant respondent No. 1, the occupier/ lessee of the bungalow neither filed any written statement nor participated in the proceedings before the trial court.

5. The case of the appellants was that they were tenants of the shops and each appellant was paying Rs.12/-per month rent to the defendant No. 1. Question as to whether they were tenants is wholly irrelevant as notices were given to them on the ground that they had made constructions without sanction of the Cantonment Board. Even if they were tenants and made constructions with or without the consent of the defendant respondent No. 1 or even if defendant respondent No. 1 had made the constructions, the constructions were liable to be demolished if they had been made without sanctioned map.

6. Plaintiffs admitted that in November/ December, 1992, civil authorities while conducting drive for removing encroachments on the Gwalior Road directed removal of the front portions of the shops of the plaintiffs and consequently the plaintiffs removed the pharh (extended portion of the shop on the road side patri). Thereafter, it was mentioned by the plaintiffs that with the permission of the civil authorities plaintiffs effected light repairs, plastering, white-wash etc. and replaced wooden doors with shutters which did not amount to reconstruction under Sections 184 & 185 of Cantonment Act. Both the courts below after analysing the oral evidence of the parties, particularly of the plaintiffs, recorded the finding that after removal of the encroachments which were in the nature wooden constructions etc. by the civil authorities plaintiffs constructed virtually altogether new shops.

7. The Cantonment Board and its authorities further contended that due to non-compliance of the notice and after dismissal of the appeal they were entitled to demolish the constructions.

8. Courts below mentioned that plaintiffs' witness Chandra Bhan, PW-1 (appellant No. 39) stated that the plaintiffs had taken the shops 40-45 years before, that extended portions/ pharhs of the shops were removed on the direction of the A.D.M. and when shops were being repaired by the plaintiffs, money had been taken by lessee/ occupier of the bungalow defendant No. 1, Savitri Devi for the purpose that in case Cantonment Board took any action she would take care of that and would see that no steps for demolition were taken and she would get the residential user changed into commercial. He further stated that he was not aware as to whether maps of the shops when they were constructed in 1947, according to him, were got passed or not? He further stated that initially there were 25-30 shops, which were afterwards partitioned/

converted into 58 shops, and that partition was done with the consent of Smt. Savitri Devi, however he was not aware as to whether Savitri Devi had obtained permission of the Cantonment Board for the same or not?

9. PW-3, Kuldeep Singh (appellant No. 4) also stated that in 1992, tin-sheds which were there in front of every shop were removed on the direction of A.D.M. and at the same time at the place of wooden doors, iron shutters were placed and the roofs which were of wooden sleepers were replaced by iron guarders and stone slabs. This clearly amounted to admission of altogether new construction. He also stated that entire market was not constructed at one go at the same time and as and when government allotted land, shops were constructed. He further stated that he was paying the rent of his shop to Smt. Savitri Devi for the reason that some part of his shop was within bungalow No. 61 and some part was on the government land. He further stated that at the time of constructing the shop he got the map passed from the Cantonment Board which was filed as Paper No. 410-ka. However he admitted that the said permission was only for wooden stalls (lakari ka khokha).

10. PW-4, Gowardhan Lal also stated that initially the shops were in the shape of wooden stalls or of kuchcha construction, however he stated that he was unable to say as to which shop was kuchcha construction and which was wooden stall. He stated that the shops were constructed adjacent to the boundary of the bungalow No. 61 but they were not situate within the land of the bungalow. He admitted that there were tin-sheds in front of the shops, which were demolished by Cantonment Board.

11. The trial court concluded that PW-1 & PW-4 had admitted that initially shops were wooden stalls and without getting the maps passed by the Cantonment Board pucca shops were constructed.

12. Lower appellate court also recorded the same finding after reconsidering the entire evidence. Lower appellate court further held that Smt. Savitri Devi had given an application on 04.12.1992 seeking permission to construct shop in his bungalow which was refused on 07.12.1992 on the ground that unless Union of India granted such permission, construction could not be made. The lower appellate court further held that PW-1 had admitted that Savitri Devi had taken money from the shop-keepers for protecting them from any action, which could be taken by the Cantonment Board, which clearly amounted to admission that constructions were illegal. All the constructions were made in December, 1992, i.e. just after demolition of unauthorised tin-sheds etc.

13. I do not find least error in the impugned findings, which are also findings of fact. Entire evidence available on record has been taken into consideration which mainly consisted of oral statement of witnesses of the plaintiffs.

14. The argument of learned counsel for the appellants that constructions had been made more than a year before 07.01.1993 when notice u/s 185 of Cantonment Act was given hence no action could be taken is utterly

misconceived. It has categorically been held by the courts below that constructions were made in December, 1992, i.e. within few days before issuance of the notice.

15. It is clear that after demolition of illegal tin-sheds etc. on the road side patri by the appellants, they could not carry on their businesses, hence they made pucca shops wholly or partly inside the Bungalow, with or without permission of Savitri Devi but without getting any map sanctioned from Cantonment Board.

16. Accordingly, there is no merit in the second appeal. It does not involve any substantial question of law. It is therefore dismissed under Order XLI Rule 11, C.P.C.