

(2013) 05 RAJ CK 0186
In the Rajasthan High Court
Case No : Civil Second Appeal No. 443 of 2008

Sagar Mal

APPELLANT

Vs

Mahavir Prasad Bal Chand Gadia Charitable Trust and Others

RESPONDENT

Date of Decision : 08-05-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, Order 8 Rule 1, 80

Citation : (2013) 3 WLN 203

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Ajay Gupta, for the Appellant; B.L. Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.—This appeal is directed against the judgement of the Additional District Judge No. 2, Sikar dt. 23.10.2008 who while dismissing the appeal filed by the appellant maintained the judgement and decree passed by the Civil Judge (Sr. Division), Dantaramgarh, Sikar dt. 26.10.2005. The plaintiff-respondent filed a suit, which was decreed, before the trial Court for permanent injunction as well as mandatory injunction inter alia with the plea that there is a rest house at Khatu Shyam Ji belonging to the plaintiff which is surrounded by boundary wall. The aforesaid land measuring 1738 sq. yards was purchased by the plaintiff from one Shri Ram Chandra S/o Shri Chouth Mal, by caste Dhanka, resident of Village Khatu Shyam Ji on 14.7.1995 for sale consideration of Rs. 3,16,500. The construction was made after taking permission from the Gram Panchayat. The Gram Panchayat issued the permission for construction on charging the fee of Rs. 17,390. The defendant no.1, son of ex-Sarpanch taking benefit of his position, is adamant to demolish the construction. It was pleaded that in front of the rest house, after road boundary, there is a Damar road. The defendant-appellant submitted an application for lease deed in the Panchayat on 10.8.1999 for land measuring 25"x22". On the aforesaid application, two Panchas of the Gram Panchayat visited the spot and recommended for lease

deed of 33.5 sq. yards of land, which land actually comes within the boundary of the plaintiff. The defendant on that basis is adamant to demolish the wall of the plaintiff. The defendant-appellant filed a written statement on 17.10.2003 denying the facts in the suit. He disputed the map filed by the plaintiff with the plaint. It was contended that the land purchased by the petitioner was different and the map annexed with the suit is of different land. The land shown in the map is not in the possession of the plaintiff. The land of the defendant has wrongly been added in the map. The land of the defendant is surrounded by boundary wall. There is a lot of construction material over it. Plaintiff with bad intention wants to encroach upon the land of defendant, which is being used by him for many years. The petitioner merely submitted an application before the Gram Panchayat for issuance of patta of his ancestral land. After making due compliance of the provisions, the Gram Panchayat issued patta. Anyone who is aggrieved of the issuance of patta can approach the appellate authority under the Panchayati Raj Act and not the civil Court. The learned trial Court decreed the suit where against the first appeal was preferred by the appellant, which too was dismissed.

2. Shri Ajay Gupta, learned counsel for the appellant has submitted that the judgement and decree passed by both the Courts below are illegal and without jurisdiction. The trial Court had arbitrarily closed the opportunity of filing written statement by order dt. 21.11.2003 and did not take the written statement filed by the appellant on record, holding it to be time barred, whereas the same were on record. The trial Court further did not frame any issue and only on the basis of ex-parte evidence of PW-1 Anil Kumar, who is not a plaintiff, decreed the suit. Notice under Sec. 80 CPC is not served upon either before the District Collector or Development Officer, who are party-defendant in the suit. It is a mandatory requirement under Sec. 109 of Panchyati Raj Act also. The Gram Panchayat was not impleaded as party, which is a necessary party. It was argued that the date fixed for written statement was 18.12.2002 and thereafter the date was fixed for filing reply to the application under Order 7 Rule 11 CPC. The defendant filed written statement on 17.10.2003 and till then the service of the defendant no.3 was not complete, but even then without closing the opportunity of filing reply, the learned trial Court presumed that the written statement is time barred and did not take the same on record. The trial Court ought to have first passed order of closing of reply and thereafter could have declined to take the reply on record. The trial Court recorded the statement of plaintiff on 8.4.2005, but neither the opportunity of cross examination was given, nor the opportunity of submitting the evidence was given to the defendant-appellant. It is argued that under the Specific Relief Act when there is alternate remedy, then the suit before the civil Court is not maintainable. Without impleading the State Government as a party, the suit could not have been continued. It was argued that the suit would be filed only by registered Trust and the plaintiff is not a registered trust. According to the appellant, there are substantial questions of law, therefore, the impugned order is set aside.

3. Shri B.L. Agarwal, learned counsel appearing for the respondents opposed the appeal and disputed that the written statement was filed with enormous delay. The defendant-appellant appeared before the trial Court on 5.7.2001, whereas the written statement was filed on 17.10.2003, which is with delay of two years and three months. The learned trial Court has granted number of opportunities to the defendant-appellant. Learned counsel argued that as per Order VIII Rule 1 of CPC, 90 days time is allowable for filing the written statement from the date of service of summons. The statement of PW-1 Anil Kumar was recorded on 8.4.2005, but no application was made by the defendant to produce his evidence or to ask for his cross examination. The contention therefore that adequate opportunity of hearing was never given to the appellant is totally incorrect. Learned counsel submitted that plaintiff has purchased the land measuring 1738.7/9 from the khatedar-Ram Chandra. The jamabandi was exhibited as Ex.3, map was exhibited as Ex.4 and land conversion order was exhibited as Ex.2 issued by the competent authority. The plaintiff-respondent paid the requisite charges to the Gram Panchayat and sought permission to raise construction, which was granted. Learned counsel submitted that Commissioner was also appointed to examine the spot. The Commissioner's report has corroborated the version of the plaintiff-respondent that the boundary wall has been constructed by them and they have raised construction of building within the boundary wall. The defendant-appellant has illegally got the patta of part of this land. The defendant-appellant failed to avail the remedy before the trial Court, therefore, the appeal being not maintainable be dismissed.

4. Having heard the learned counsel for the parties and perused the material on record, I find that both the Courts below have examined the documentary evidence as well as oral evidence produced by the plaintiff and satisfied themselves about the fact that defendant had purchased the disputed land from Ram Chandra in the year 1995 by way of registered sale deed Ex.1. After obtaining NOC and permission from the Gram Panchayat, the construction was raised. The conversion order is Ex.2 and the site plan is Ex.4, according to which the disputed land has pucca construction on both its sides. In the southern side, there is Shyam Satsang Mandal Dharamshala and in the western side there is Dharamshala of Shri Shyam Sankirtan Mandal, Jhunjhunu and in the northern side, there is a road from Khatu to Ringus. There is no land left between the road of Dharamshala of the plaintiff. The report of the Commissioner dt. 5.10.2005 was also produced, which has also proved that there is pucca construction existing on both sides of the Dharamshala of plaintiff, which is situated 26 feet away from the middle of the road between Khatushyamji to Ringus, there is pucca construction. The measurement of the total land in possession of plaintiff is 1738.7/9 which is in conformity with the sale deed. The learned appellant Court even rejected the argument of any dispute between the two by deeply examining the same. This was also verified from the photographs placed on record. The defendant has lazily contested the suit as even though after service of notice, he did not file the written statement within 30 days. He first appeared

before the trial Court on 5.7.2001 and thereafter he has taken two years and three months to file the written statement on 17.10.2003, that too without any leave of the Court. There is no merit in the argument that the trial Court should have first passed the order closing evidence and thereafter separately passed the order disallowing the written statement on record.

5. The provisions of CPC have been purposely amended to have ensure timely filing of the written statement. Those provisions cannot be completely brushed aside in a case where litigant like the appellant take years to file written statement and then want such written statement to be liberally taken on record even without showing any justification for the delay. No application was made by the appellant before the trial Court permitting him to adduce his evidence. The trial Court could not be therefore accepted on its own to grant such permission. Reference in this connection may be made to provisions of Order VIII Rule 1 CPC, which inter alia provides that the defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence. The proviso then reads that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.

6. The patta issued by the Gram Panchayat in a case like this allotting the land of the plaintiff could have no legal sanctity particularly when it is a private land of khatedar which the plaintiff had purchased and Gram Panchayat had no legal right to allot patta of such land. Patta even otherwise could not have been issued on the basis of alleged prolonged possession without verifying the possession on ground that this land was already in possession of the plaintiff and pucca construction is existing there. All the argument in support of this appeal that have been advanced are on facts and do not raise any question of law much less the substantial question of law. I find no merit in this appeal, which is accordingly dismissed.