
(2014) 04 RAJ CK 0128

In the Rajasthan High Court

Case No : Civil Second Appeal No. 529/2011

Secretary, Urban Improvement Trust, Udaipur and Another	APPELLANT
Vs	
Gyanprabha and Another	RESPONDENT

Date of Decision : 22-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2015) 2 WLN 324

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Deelip Kawadia, Advocate for the Appellant; Anurag Shukla, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Arun Bhansali, J.—This second appeal u/s 100 CPC is directed against judgment and decree dated 13.01.2006 passed by Additional District Judge No. 2, Udaipur, whereby, the appeal filed by the appellants has been dismissed and the judgment and decree dated 08.03.1999 passed by Civil Judge (Junior Division) Udaipur City (South), Udaipur has been affirmed.

2. The facts in brief may be noticed thus the plaintiff-respondent No. 1 filed a suit for declaration and permanent injunction with the averments that her house was situated at Mohalla Old University Road, Ganeshnagar Pahada, which is in existence since 1972; the land earlier was agricultural land and its Arajai number was 499; whereafter, Arajai numbers were changed to 823, 824, 825, 830 and 832; whereafter plaintiff deposited conversion charges with the Conversion Department; in front of the house vacant land is available, which is being used as way; the plaintiff is its owner and the land is in her Khata; in front of plaintiff's house there is a courtyard made of fencing, a gate has been placed, regarding which, the Municipality took proceedings, which on production of documents were dropped; however, on 16.12.1997 the Urban Improvement Trust's Officers visited plaintiff's house and directed her to remove the fencing and threatened

forcible removal, for which, they have no right; permanent injunction was sought that the defendants be directed not to remove the fencing from the courtyard and not to break the tiles.

3. A written statement was filed by the defendants; it was denied that the house was constructed since 1972; it was claimed that the same was new construction and was constructed on the land belonging to the Trust without permission; the construction existing on Arajji No. 830, which is in the ownership and Khata of the Trust, the same has not been converted and only a token amount has been deposited; the entire land lying vacant is not being used as way; the plaintiff could have raised construction on the land owned by her after getting the maps approved and seeking permission, which has not been done; the plaintiff has encroached on the road and, therefore, the notice u/s 91A of the Urban Improvement Act ("the Act") has been issued, which cannot be stayed.

4. On the pleadings of the parties, the trial court framed four issues; on behalf of the plaintiff - plaintiff's husband was examined as PW-1 and seven documents were exhibited; on behalf of the defendants - DW-1 Kailash Chandra Jain, Patwari and Inder Lal Sharma, Inspector were examined.

5. After hearing the parties, the trial court came to the conclusion that the house was constructed in the year 1972 and, therefore, the defendants were not justified in threatening demolition of the said construction, however, it came to the conclusion that land on the eastern side of the plaintiff's house, which was being used as way, was not owned by the plaintiff; the issue regarding pre-requisite notice u/s 98 was not pressed by the defendants and, consequently, the trial court passed a decree, whereby, the plaintiff was declared owner of the house in question; defendants were restrained from demolishing the said house and plaintiff was restrained from raising any further construction without seeking permission from the competent authorities; the suit was rejected qua the land on the eastern side of the house, being used as way.

6. Feeling aggrieved, the appellants filed appeal before Additional District Judge, Udaipur, who after hearing the parties upheld the judgment and decree passed by the trial court.

7. It is submitted by learned counsel for the appellants that both the courts below fell in error in decreeing the suit filed by the plaintiff; it was submitted that the construction was raised in violation of the provisions of the Act and, therefore, the trial court was not justified in granting injunction regarding demolition of the said construction; in any case, the courts below should have left it open for the appellants to proceed in accordance with law.

8. Learned counsel for respondent No. 2 supported the appellants.

9. I have considered the submissions advanced by learned counsel for the parties.

10. Both the courts below have concurrently found that the construction sought to be objected by the appellants was in existence since 1972 and the appellants

for the reasons best known to them thought it appropriate to take action in the year 1997, after a passage of 25 long years and that also without issuing any notice in this regard; both the courts below after thoroughly examining the oral and documentary evidence available on record have recorded findings of fact, which do not call for any interference; the decree was passed by the trial court in the year 1999 and the first appeal was dismissed by the appellate court in the year 2006; even from the date of passing decree by the trial court in the year 1999, 15 years have passed and the nature of decree passed by the trial court also does not call for any interference in the second appellate jurisdiction.

11. In view of the above discussion, there is no substance in the second appeal and the same is, therefore, dismissed.