

(2011) 05 GUJ CK 0072
In the Gujarat High Court
Case No : Second Appeal No. 100 of 1995

Shah Chandrakant Ramji	Vs	APPELLANT
Patel Karshanbhai Nathubhai and Others		RESPONDENT

Date of Decision : 12-05-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 96

Citation : (2011) 05 GUJ CK 0072

Hon'ble Judges : K.S. Jhaveri, J

Bench : Single Bench

Advocate : C.H. Vora, for the Appellant; Y.N. Oza, for Defendants 1-3 and Y.S. Mankad, for Defendant 4, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—The present appeal is one u/s 100 of the Code of Civil Procedure, wherein the Appellant is the original Plaintiff, and the Respondents are the Defendants.

2. The scope of Section 100 Code of Civil Procedure, and the powers of the High Court while exercising jurisdiction as a second appellate Court are by now well demarcated and require no detailed discussion. The Supreme Court has, in the case of (i) Ramaswamy Kalingaryar Vs. Mathayan Padayachi, (ii) Kashibai and Another Vs. Parwatibai and Others, and (iii) Parsini (dead) through Parsini (dead) thorough LRs. Vs. Atma Ram and others, clearly reiterated the principle that the High Court cannot, while functioning as a second appellate Court u/s 100 Code of Civil Procedure, upset the findings of fact recorded by the lower appellate Court by reassessing the evidence, or reassess the qualitative value of such evidence on record, and thus cannot reverse such findings of fact. In fact, the High Court cannot interfere with such findings of fact even by examining or reappreciating the evidence from the aspect of "sufficiency of proof".

3. The pertinent facts, in brief, leading to the present appeal are as under:

3.1 The Appellant-original Plaintiff had filed a civil suit for declaration being Civil suit No. 8 of 1983 wherein the issue of limitation was raised by the Respondents. After hearing the parties, the trial Court dismissed the same. Being aggrieved by the said judgment and decree dated 04.12.1987 passed by the Civil Judge, (J.D), Nakhatrana, Kutch in Regular Civil Suit No. 8 of 1983 the Appellant/Plaintiff preferred Regular Civil Appeal No. 11 of 1988 under the provisions of Section 96 of the CPC before the Extra Asst. Judge, Kutch at Bhuj After a detailed discussion on the averments and pleadings of the parties and after reconsideration and depreciation of the entire evidence on record, the lower appellate Court confirmed the findings of fact recorded by the trial Court and dismissed the appeal filed by the Plaintiff.

4. In substance, the trial Court has framed issues at Exh 41 and found that the suit filed by the Plaintiff is barred by limitation. The trial Court has observed that the explanation put forward by the Plaintiff is not plausible enough so as to provide leverage to the Plaintiff. The Plaintiff has not proved as to when he came to know about the facts at the first instance. The Courts below have given cogent and valid reasons for the same. This Court is in complete agreement with the concurrent findings of the Courts below.

5. As already discussed by me hereinabove, the scope and ambit of the present appeal u/s 100, Code of Civil Procedure, is extremely narrow. It is not open to me to reappraise the evidence on record, and to arrive at findings contrary to the findings of fact recorded by the two Courts below, particularly when such findings are neither perverse nor absurd, and when the judgment and decrees impugned herein cannot be said to be based on "no evidence".

6. In spite of the earnest efforts of the learned Counsel for the Appellant, I am unable to find as acceptable any other view as regards the appreciation of the evidence and the conclusions to be drawn there from.

7. Learned Counsel for the Appellant is unable, on the particular facts of the case, to make out any substantial question of law on the basis of which the judgments and decrees of the two Courts below would require interference by this Court.

8. In the premises aforesaid, there is no substance in the present appeal and the same is accordingly dismissed with no order as to costs.