

(2000) 03 SC CK 0015

In the Supreme Court Of India

Case No : Civil Appeal No. 11634 of 1995

Shreepat

APPELLANT

Vs

Rajendra Prasad and Others

RESPONDENT

Date of Decision : 02-03-2000

Acts Referred:

Citation : (2000) 7 JT 379

Hon'ble Judges : S. Saghir Ahmad, J; Doraiswamy Raju, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. Respondent No. 1 - Rajendra Prasad had instituted a suit for declaration and possession over land bearing Khasra No. 257/3 against the Appellant on the ground that he had purchased this land-from its previous owner - Premnarayan - by a registered sale-deed. It was further pleaded that the Appellant had forcibly taken possession and was trying to construct his house. The suit was resisted by the Appellant on the grounds, inter alia, that the land in dispute was not part of Kteasra Plot No. 257/3, but was part of Khasra Plot No. 257/1 which was the Government land and over which the Appellant was in possession since long, it having been leased out to him. It was also pleaded that he had constructed the house over that land.

2. On a consideration of the evidence on record, the trial court decreed the suit. The decree was affirmed by the lower appellate court and upheld by the High Court in Second Appeal.

3.. The principal contention raised by learned Counsel for the Appellant is that though there was a serious dispute with regard to the identity of the land in dispute, whether the land in dispute formed part of Khasra No. 257/3 or Khasra No. 257/1 (sic) courts below did not get the identity established and decreed the suit of the Respondent only on the basis of oral evidence which was not sufficient for he purpose of establishing the identity of the land in dispute at the spot.

4. In our opinion, this contention is correct. Since there was a serious dispute with regard to the area and boundaries of the land in question, especially with regard to its identity, the courts below, before decreeing the suit should have got the identity established by issuing a survey commission to locate the plot in dispute and find out whether it formed part of Khasra No. 257/3 or Khasra No 257/1. This having not been done has resulted " in serious miscarriage of justice. We consequently allow the appeal, set side" the order passed by the courts below as affirmed by the High Court and remand the case to the trial court to dispose of the suit afresh in the light of the observations made above and in accordance with law.