

(1975) 07 RAJ CK 0025
In the Rajasthan High Court
Case No : Civil 2nd Appeal No. 62 of 1967

Smt. Rampyari Ors.

APPELLANT

Vs

Santokhsingh

RESPONDENT

Date of Decision : 09-07-1975

Acts Referred:

Citation : (1975) WLN 240

Hon'ble Judges : S.N. Modi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.N. Modi, J.—This is a defendant's second appeal in a suit for injunction and possession.

2. The house of appellant is situated near the railway station Bayana, Towards the north of the house of the appellants, there is a plot of land which is 175 square yards in area. This plot of land was purchased by the plaintiff respondent on 4.12.62 for Rs. 840/- from the Municipal Board, Bayana According to the plaintiff respondent, the possession of this plot of land was handed over to him but the defendant appellants planted some trees there and thereby encroached upon the plaintiff's plot. The plaintiff therefore filed the present suit for restraining the defendant-appellants from encroaching upon his plot and also claimed possession of the plot. The defendant appellants contested the suit and pleaded that the suit property had been in their possession since 1947 They also pleaded that they had put fencing around the land and planted fruit and flower plants therein. It was further mentioned that a chappar and an oar were also constructed them. The learned Munsif after framing necessary issues and recording the evidence of the parties came to the conclusion that the plot in question was owned by the plaintiff He further found that the defendants took possession of the land some time after 1962 The trial judge accordingly decreed the suit. On appeal by the defendants, the learned District Judge upheld the findings of the trial court and dismissed the appeal. Hence this second appeal by

the defendants.

3. Learned Counsel for the appellants challenged the findings arrived at by the courts below on the ground that the appellate court did not properly appreciate the evidence on the record. He further contended that there is over whelming proof that the defendants have been in possession of the plot in question since 1947, and, therefore, the suit brought in the year 1963 was barred by time; the defendants having acquired title by prescription.

4. None of the aforesaid contentions has any force. The defendants purchased their house from the Custodian of Evacuee Property in the year 1960 The sale deed executed by the Custodian in favour of the defendants clearly shows that on the southern side of the house there is a plot belonging to the Government There is nothing in the sale deed to show that the vendees possessed this land belonging to the Government. The defendants' contention is that prior to the sale-deed they were occupying the house as tenants and in their capacity as tenants they took over possession of the nazul land lying on the southern side of the house in the year 1947. Even if this plea is accepted, the defendants cannot be said to have acquired any title by prescription in respect of the nazul land. It is not in dispute that in order to acquire title over the nazul land a period of 60 years continuous possession is necessary. In this view of the matter, the defendants even if held to be in possession from the year 1947, that would not make them the owners of the plot The courts below were right in decreeing the suit and holding that the plaintiff was entitled to possession over the plot in question.

5. There is no force in this appeal and it is dismissed with costs.