
(2012) 11 AHC CK 0130
In the Allahabad High Court
Case No : Second Appeal No. 1096 of 2012

Surya Bali and Others

APPELLANT

Vs

Ram Shiromani and Others

RESPONDENT

Date of Decision : 30-11-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2012) 11 AHC CK 0130

Hon'ble Judges : Kalimullah Khan, J

Final Decision : Dismissed

Judgement

Kalimullah Khan, J.

Heard learned counsel for the parties.

Materials available on record make it clear that plaintiffappellant instituted a suit for permanent prohibitory injunction before the trial court against the defendantrespondent to restrain him from making any kind of interference in the peaceful possession of his Araj Nos.76, 77 and 78, detailed in the plaint. Defendant contested the suit by filing written statement with a pleading that his house has already been construction in the disputed land. Issues were framed. Parties adduced their evidence. Learned trial court dismissed the suit in toto on the ground that the land in suit is not identifiable. The aforesaid judgment of the trial court was challenged under Section 96 of the C.P.C. by the plaintiff. Appellate court made a reappraisal of the evidence and partly allowed the appeal restraining the defendant from making any kind of interference in the peaceful possession of plaintiff's Araj no. 77, whereas the appeal was dismissed in regard to the Araj nos.76 and 78 on the ground that the area of those plots are more than that what the plaintiff claims and his land is not identifiable. Feeling aggrieved, this second appeal has been preferred.

Learned counsel for the appellants do concede that the area of plot nos.76 and 78 are more than the area of the plaintiff in those plots and no demarcation has

so far been made by the revenue authorities but he insists that since defendant is making encroachment over the aforesaid area, the land in suit, which is, according to him, is in the exclusive possession of the plaintiff, therefore, the suit deserved to be decreed and appeal filed under Section 96 of C.P.C. was bound to be allowed in toto.

The concurrent findings of facts recorded by both the learned courts below in regard to Arazi Nos.76 and 78 are borne out by the evidence oral as well as documentary whereby it has been held that the land of the plaintiff in both the above big arazi is not identifiable. The concurrent findings of facts are neither perverse nor illegal. Therefore, following legal consequences are to ensure :

- 1) that no injunction can be granted in relation to unidentifiable land because such decrees cannot be executable;
- 2) that the contention raised by plaintiffappellant before this court relates to the question of possession. There is hardly a scope for this court to interfere with the findings of possession concurrently recorded by the courts below within the limited parameters of Section 100 of C.P.C;
- 3) that the second appeal does not involve any substantial question of law and no failure of justice appears to have occurred, the only thing supposed to be done by this court is to dismiss the appeal.

Before parting with the matter in hand, it is hereby made clear that refusal to grant relief of injunction to the plaintiff does not tantamount to empower the defendant for forceful unauthorized dispossession of the plaintiff from his land. The apprehension to the said effect pointed out by learned counsel for the appellant is therefore baseless.

Dismissal of the suit of the plaintiff, in no way, gives legal right to the defendant to forcibly oust him from his land.

No substantial question of law is involved in this second appeal. Hence, this second appeal is dismissed at the admission stage itself.