
(2007) 09 RAJ CK 0076
In the Rajasthan High Court
Case No : Civil Second Appeal No. 383 of 2005

Sushila and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 20-09-2007

Acts Referred:

Citation : (2007) 09 RAJ CK 0076

Hon'ble Judges : N.K. Jain, J

Bench : Single Bench

Advocate : Pankaj Gupta, for the Appellant; Nirmala Sharma, Dy. G.A., for the Respondent

Final Decision : Allowed

Judgement

N.K. Jain, J.—Heard learned counsel for both the parties and with their consent, the appeal is being disposed off finally.

2. Following substantial question of law is involved in this second appeal.

WHETHER, the Courts below committed an illegality in dismissing the suit of the plaintiff after recording a finding that the Civil Court had in jurisdiction to entertain the present suit, which is triable by the Revenue Court only?

3. Briefly stated the facts of the case are that the plaintiff-appellant! filed a suit for permanent injunction in the trial Court, wherein an application was filed on behalf of the defendants under Order 7 Rule 11, C.P.C. for dismissal of the suit on the ground that the matter relates to an agricultural land, therefore, the suit is triable by the Revenue Court only and the Civil Court has no jurisdiction to entertain, try and decide the suit.

4. The trial Court allowed the application filed by the defendants and dismissed the suit. Being aggrieved with the same, an appeal was preferred by the plaintiff, but the same was also dismissed. Hence this second appeal has been preferred on behalf of the plaintiffs.

5. The only argument, raised on behalf of the plaintiff-appellant, is that both the Court below have committed an illegality in dismissing the suit, in spite of the fact that the Courts below have recorded a finding that the Civil Court had no jurisdiction to entertain, try and decide the present case as it was relating an agricultural land, therefore, if the Court was of the view that the suit is not triable by the Civil Court, then at the most the suit could have been returned to the plaintiff for presentation in the appropriate Court, instead of dismissal of the suit. Therefore, the judgments passed by the Courts below are liable to be set aside and the plaint may be ordered to be returned to the plaintiff-appellant to file the same before the Competent Court having jurisdiction.

6. Learned counsel for the respondents has no objection in returning the plaint to the plaintiff/appellant in view of his contention, as mentioned above.

7. I have considered the submissions of the learned counsel for both the parties, the present suit was filed for permanent injunction and when an application filed by defendants under Order 7 Rule 11, C.P.C. was allowed and it was held that the suit is not triable by the Civil Court as the Civil Court has no jurisdiction, then the Civil Court had no jurisdiction to dismiss the suit also. At the most of the suit could have been returned to the plaintiff for presentation of the same in the Competent Court having jurisdiction.

8. In these circumstances, the present second appeal is liable to be allowed and the judgment and decree passed by the Courts below are liable to be set aside.

9. Consequently, the above formulated question is answered in favour of the appellant and it is held that the Civil court had no jurisdiction to dismiss the suit when the suit was not triable by it and it should have been returned to the plaintiff.

10. Consequently, the second appeal is allowed and the impugned judgments passed by the Courts below are set aside and it is directed that the original plaint filed by the plaintiff be returned to the plaintiff for presentation of the same in the competent Court having jurisdiction. No order as to costs.