

Gulab Mohd. Vs. Sheikh Lateef

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Court : Madhya Pradesh

Decided On : Apr-25-2013

Appellant : Gulab Mohd.

Respondent : Sheikh Lateef

Judgement :

1 HIGH COURT OF MADHYA PRADESH : JABALPUR S.A. No.735/1996 Gulab Mohd (dead) through L.Rs. Haseen Bi and others Vs. Sheikh Lateef (dead) though L.Rs. Jarina and others Present : Honble Mr. Justice R.S. Jha. For the appellants : Shri Dinesh Agrawal, advocate. For the respondents : Shri T.S. Ruprah, Senior advocate with Shri Harpreet Ruprah.

JUDGMENT

(25.04.2013) This appeal has been filed by the appellant being aggrieved by judgment and decree dated 28.08.1996 passed in Civil Appeal No.35-A/93 passed by Fourth Additional Judge to the Court of District Judge, Sagar whereby the judgment and decree dated 23.08.1993 passed by the Sixth Civil Judge, Class-II, Sagar in Civil Suit No.39-A/90 has been partly modified.

2. This appeal was admitted by this court on the following substantial question of law:- Whether the finding recorded by the lower appellate court in respect of the suit, is perverse ?..

3. The brief facts leading to the filing of the present appeal are that the plaintiff/appellant had filed a suit for declaration and permanent injunction to the effect that the 2 wall standing between the houses of the plaintiff/appellant and respondent belongs to them and that consequently, the respondent/defendant be restrained from demolishing the same and constructing the house.

4. The trial court held that the appellant/plaintiff had failed to prove his title to the wall in question, however, as he had been permitted by the respondent to use the wall as a support for constructing the roof of the house of the appellant/plaintiff, therefore, the respondent/defendant was restrained by a decree of permanent injunction from demolishing the wall. The appellant as well as the respondent being aggrieved filed an appeal and a cross appeal respectively before the First Appellate court which have been decided by the impugned judgment and decree by modifying the judgment and decree of the trial court to the extent that while the respondent has been permitted to demolish the wall in question and construct his house, the appellant/plaintiff has been permitted to use the wall after reconstruction for the purpose of supporting his roof.

5. The learned counsel for the appellant submits that the finding recorded by the courts below regarding title of the wall in question is perverse as it is based on no evidence and therefore, deserves to be set aside. It is further submitted that the appellant/plaintiff is entitled to not just use of the wall but also declaration to the effect that he is the owner of the same.

6. The learned senior counsel for the respondent per contra submits that the evidence on record namely; the evidence of the DW/2 Sheikh Usman and the document 3 Ex. D/1 make it clear that the wall in question actually belongs to the respondent but the respondent had permitted the appellant to place their 'Baderi' on the same and therefore, the finding recorded by the court below is in accordance with law and is based on proper appreciation of evidence.

7. Having heard the learned counsel for the parties and having perused the statement of PW/2 Syed Ahmad, PW/3 Nand Kishore as well as the statement of DW/2 Sheikh Usman and the document Ex. D/1, I am of the considered opinion that the finding recorded by both the courts below regarding failure on the part of

the appellant to establish his title to the wall does not suffer from any material irregularity as it is based on proper analysis of the oral and documentary evidence available on the record.

8. It is however, evident from the said statements and document that the respondent had permitted the appellant/plaintiff to use the wall and in such circumstances, while I find no reason to interfere with the judgment and decree of the first appellate court however, with a view of ensure that no future dispute arises, the judgment and decree passed by the first appellate court is clarified to the extent that while the respondent shall be entitled to demolish the wall in question and undertake fresh construction of his house the appellant shall also be entitled to demolish his house and undertake fresh construction by constructing his own wall adjoining to the wall of the respondent.

9. The learned senior counsel for the respondents 4 fairly states that in case the appellant undertakes such construction on his own area and on his own property, the respondent has no objection and would not raise any objection to the construction of a wall adjoining his wall.

10. In view of the aforesaid and in view of the statement of the learned senior counsel for the respondent, the appeal filed by the appellant is disposed of with the aforesaid clarifications. (R.S. Jha) Judge msp 5

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