

Raja Ram Vs. Mst.Devtaniya

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Court : Madhya Pradesh

Decided On : Apr-05-2013

Appellant : Raja Ram

Respondent : Mst.Devtaniya

Advocate for Pet/Ap. : Shri. Avinash Zargar

Judgement :

SA 1034.06 Second Appeal No.1034 of 2006 (Raja Ram versus Mst.

Devtaniya and seven otheRs.05-04-2013 Shri Avinash Zargar, learned counsel for the appellant.

Received records from Trial Court and FiRs.Appellate Court.

Heard on admission.

Perused the records.

Plaintiff's second appeal is directed against the dismissal of civil suit No.544-A/2002 (Decreed on 30-06-2005) and its affirmation in Civil Appeal No.99- A/2005, dismissed on 11-05-2006.

Suit for declaration and permanent injunction was preferred by Appellant in respect of land bearing Survey No.641 admeasuring 1.10 acres situate at village Mandil, tahsil Huzur, district Rewa, on the ground that over said land name of one

Sumena Singh Tiwari, husband of respondent/defendants No.1 and 2 and father of respondents No.3 to 7 was recorded in revenue records.

Wherein name of appellant/plaintiff was recorded in pursuance to order dated 15-10-1970 passed in mutation proceedings.

However, in a revision by respondents No.1 to 7 the order dated 15-10-1970 was set aside.

It is the said order the quashment whereof was sought with a declaration that the appellant/plaintiff is the owner of the suit land and the respondents/defendants be restrained.

The respondents/defendants were proceeded ex-parte.

SA 1034.06 The suit was, however, dismissed by the trial Court on a finding that the appellant cannot be treated as owner and in possession of suit land merely on the basis of revenue receipts and that the erstwhile entry of name in revenue record cannot be treated to be conferment of title.

The said finding having been affirmed in appeal, has led the appellant/plaintiff to prefer this second appeal on the ground that the Courts below have erred in law by discarding the presumption under section 117 of the Madhya Pradesh Land Revenue Code, 1959 arising on entries made in the revenue records and in not believing the averments in plaint and the evidence which was unchallenged as such the findings by courts below are perverse.

It is a matter of record borne out from the evidence, oral and documentary that, except the testimony of the appellant/plaintiff and some revenue receipts, there is no cogent material recording the appellant/plaintiff as owner in possession of the suit land.

The appellant/plaintiff having raised specific plea in the plaint of being the owner in possession of suit property was under an obligation to have substantiated the same by cogent evidence.

Instead, on the basis of necessary implication of admission in the event of non-filing of written statement the appellant/plaintiff sought that the suit ought to have been decreed in his favour.

Sub-Rule (2) of Rule 5 of Order 8 of Code of Civil SA 1034.06 Procedure, 1908 provides that where the defendant has not filed a pleading, it shall be lawful for the court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the court may in its discretion require any such fact to be proved.

Thus, in a given case as the present one when the Court has not pronounced the judgment on the basis of the facts contained in the plaint in the event of non-filing of written statement it was lawful for the trial Court to have exercised the discretion requiring the appellant/plaintiff to prove his title and possession over the suit property by cogent evidence.

The appellant/plaintiff having failed to do so has been rightly non-suited.

In view whereof the decisions in Lohia Properties (P) LTD.Tinsukia versus Atmaram Kumar : (1993) 4 SCC 6 and M.

Venkataramana Hebbar (dead) by L.

Rs.vs.M.Rajagopal Hebbar and others : (2007) 6 SCC 40.are of no assistance to the appellant.

In the result, as there is no error of law, no substantial question of law arises for adjudication.

Consequently, this second appeal is dismissed at admission stage.

Costs as incurred.

(SANJAY YADAV) sc JUDGE

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