

Ram Niwas Vs. Bhoja and ors

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Court : Rajasthan Jodhpur

Decided On : May-29-2014

Appellant : Ram Niwas

Respondent : Bhoja and ors

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR :

JUDGMENT

: S.B.CIVIL SECOND APPEAL NO.315/2011 Ram Niwas versus Bhoja & ORS.Date of Judgment :: 29.05.2014 PRESENT HON'BLE Mr.JUSTICE ARUN BHANSALI Mr.Gopal Acharya, for the appellant.

Mr.Rajvendra Saraswat for Dr.

Sachin Acharya, for the respondents.

---- BY THE COURT: This appeal is directed against the judgment and decree dated 25.01.2008 passed by Additional District Judge No.2, Bhilwara Camp Shahpura, whereby the judgment and decree passed by Civil Judge (Senior Division) dated 06.01.2003 has been upheld.

The facts in brief may be noticed thus: the appellant claiming himself to be the owner of the suit property, filed a suit for permanent and mandatory injunction against the respondents, inter alia, with the averments that the appellant has been

wrongly dispossessed from the suit property and, therefore, the defendants be directed to hand over back the possession of the suit property by way of mandatory injunction.

The suit was resisted by the defendant-respondents.

On behalf of the plaintiff, three witnesses were examined 2 and eight documents were exhibited.

On behalf of the defendant- respondents, one witness was examined.

After hearing the parties, the trial court came to the conclusion that on the date of filing of the suit, the plaintiff was not in possession of the suit property and, therefore, he was not entitled to permanent injunction and, consequently, dismissed the suit.

The fiRs.appellate court after hearing the parties, maintained the judgment and decree passed by the trial court.

It is submitted by learned counsel for the appellant that the appellant was wrongly dispossessed from the suit property and, therefore, the suit for permanent and mandatory injunction was filed.

Learned counsel for the respondents submits that subsequent to the passing of the impugned judgment by the trial court, the appellant has in fact filed a suit for possession and the said suit also has been dismissed by the trial court.

Learned counsel for the respondents also placed reliance on judgment of Hon'ble Supreme Court in Anathula Sudhakar v.P.Buchi Reddy (Dead) by LR.s.and Ors.: (2008) 4 SCC594 in support of the preposition that a suit for possession was required to be filed by the appellant.

In view of the categorical finding recorded by both the courts below that the appellant was not in possession of the suit property on the date of filing of the suit, the further finding that the suit for mandatory injunction for seeking possession back was not maintainable does not require any interference by this Court.

3 Consequently, there is no substance in the present second appeal and the same is, therefore, dismissed.

The stay application is also dismissed.

(ARUN BHANSALI).J.

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