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Narayan Singh and Ors Vs. Smt. Dariya Kanwar

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Court : Rajasthan Jodhpur

Decided On : Jan-01-2015

Appellant : Narayan Singh and Ors

Respondent : Smt. Dariya Kanwar

Advocate for Pet/Ap. : Mr. S.L. Jain

Judgement :

S.B. CIVIL SECOND APPEAL No.77/2013. Narayan Singh & Ors. Vs. Gheesu Singh Along-with 9 connected second appeals. Judgment dated 09/12/2014 1/9 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR. ::

JUDGMENT

:: (1) S.B. CIVIL SECOND APPEAL No.77/2013. Narayan Singh & Ors. Vs. Gheesu Singh & (2) S.B. CIVIL SECOND APPEAL No.100/2013. Narayan Singh & Ors. Vs. Smt. Dariya Kanwar & (3) S.B. CIVIL SECOND APPEAL No.101/2013. Narayan Singh & Ors. Vs. Bhop Singh & (4) S.B. CIVIL SECOND APPEAL No.102/2013. Narayan Singh & Ors. Vs. Rawat Singh & (5) S.B. CIVIL SECOND APPEAL No.103/2013. Narayan Singh & Ors. Vs. Smt. Dariya Kanwar & Ors. & (6) S.B. CIVIL SECOND APPEAL No.105/2013. Narayan Singh & Ors. Vs. Daan Singh & (7) S.B. CIVIL SECOND APPEAL No.106/2013. Narayan Singh & Ors. Vs. Madho Singh & (8) S.B. CIVIL SECOND APPEAL No.107/2013. Narayan Singh & Ors. Vs. Gaj Singh & S.B. CIVIL SECOND APPEAL No.77/2013. Narayan

Singh & Ors. Vs. Gheesu Singh Along-with 9 connected second appeals. Judgment dated 09/12/2014 2/9 (9) S.B. CIVIL SECOND APPEAL No.108/2013. Narayan Singh & Ors. Vs. Arjun Singh & (10) S.B. CIVIL SECOND APPEAL No.137/2013. Narayan Singh & Ors. Vs. Moap Singh & (11) S.B. CIVIL SECOND APPEAL No.138/2013. Narayan Singh & Ors. Vs. Bhanwar Singh Date of Judgment ::::

09. h December 2014. PRESENT HON'BLE Dr. JUSTICE VINEET KOTHARI Appearance: Mr. S.L. Jain, for the appellants/defendants. Mr. Rajesh Parihar, for the respondent/plaintiff(s). -- BY THE COURT:

1. Heard learned counsel for the parties.

2. The appellants/defendants, Narayan Singh and others have preferred this second appeal against the concurrent judgment and decree dated 07.03.2013 passed by learned Additional District Judge, Sumerpur, District Pali, and judgment and decree dated 08.03.2010 passed by learned Civil Judge (Jr. Division), Sumerpur, District: Pali, of injunction against them in a suit for injunction filed by the respondents/plaintiffs. S.B. CIVIL SECOND APPEAL No.77/2013. Narayan Singh & Ors. Vs. Gheesu Singh Along-with 9 connected second appeals. Judgment dated 09/12/2014 3/9 3. The case set-up by the plaintiffs in the present suit for injunction against the defendants was that certain Patta(s). were issued by the Panchayat Samiti- Koselav, Tehsil: Sumperpur, District Pali, and since the defendants tried to interfere in the peaceful possession of the plaintiffs, they had to file the present suit for injunction. The learned trial court decreed the suit in favour of plaintiff(s). The facts are illustratively taken from SBCSA No.77/2013-Narayan Singh & Ors. Vs. Gheesu Singh.

4. On 08.03.2010, the learned Civil Judge (Jr. Division), Sumperpur, District Pali, passed the following decree in favour of plaintiff: - : " %(* ", , /0 ", 1 3 " 3 ", " " : " : /: " * (: 1 1 "" 5. The first appeal filed by the appellants/defendants also failed and the learned Additional District Judge, Sumperpur, District: Pali dismissed the Appeal No.02/2010 on 07.03.2013. The reasons assigned by the learned appellate court while S.B. CIVIL SECOND APPEAL No.77/2013. Narayan Singh & Ors. Vs. Gheesu Singh Along-with 9 connected second appeals. Judgment dated

09/12/2014 4/9 upholding the judgment of learned trial court are also quoted herein below for ready reference: -

6. " 1 .-1 1 " " " * ((-4 " " " " D " %(33/ * " 1 / " " " 33/ * " 1 * 1 * " " : . % " : % , % " " , 1 1 -1 , " " " 1 3 3 % " " " % " " " 3 ", " % 3 % : 0 % %1 : 3 : , " 3 3 , : 3 % , 3 C " D D " B3?? , (, " : " : % " %1 : 1 : , % " " S.B. CIVIL SECOND APPEAL No.77/2013. Narayan Singh & Ors. Vs. Gheesu Singh Along-with 9 connected second appeals. Judgment dated 09/12/2014 5/9 6. While admitting the present second appeal, a coordinate bench of this Court on 29.05.2013 framed the following substantial question of law: - Whether the judgment and decree of courts below stand vitiated as the findings of possession over the plot in question is based on Patta Exhibit-1 that the Panchayat has denied that no such record is available with them?..

7. Mr. S.L. Jain, learned counsel for the appellants/defendants relying upon the judgment of Hon'ble Supreme Court in the case of Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LR's & Ors. reported in 2008 AIR SCW2692vehemently submitted that the Patta(s). were issued in favour of even some minor persons and possession was shown to have been given to them, whereas a minor did not have any capacity to contract and, therefore, there was no question of giving them a valid possession of the suit land when the Patta(s). were issued. He further submitted that under the information sought by the defendants under the Right to Information Act, 2005, the Gram Panchayat had admitted that the record for issuance of such Patta(s) was not available with the Gram Panchayat. Learned counsel for the appellants/defendants also urged that the proceedings for cancellation of the these Patta(s). filed by the S.B. CIVIL SECOND APPEAL No.77/2013. Narayan Singh & Ors. Vs. Gheesu Singh Along-with 9 connected second appeals. Judgment dated 09/12/2014 6/9 present appellants are pending adjudication before the appropriate forums. He, therefore, submitted that the suit simpliciter for injunction without claiming the relief of title of possession by the plaintiffs was not even maintainable and the both the courts below have erred in granting injunction in favour of plaintiffs.

8. In the case of Anathula Sudhakar (supra) relied upon by the learned counsel for the appellants/defendants, the Hon'ble Apex Court has held as under: - Where a

cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter. As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases whereas de jure possession has to be S.B. CIVIL SECOND APPEAL No.77/2013. Narayan Singh & Ors. Vs. Gheesu Singh Along-with 9 connected second appeals. Judgment dated 09/12/2014 7/9 established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession. But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title (either specific, or implied). Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the Court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the Court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.. 9. Per contra, Mr. Rajesh Parihar, learned counsel appearing on behalf of respondents/plaintiffs submitted that the suit for injunction simpliciter was filed because the plaintiffs were having the Patta(s). issued in their favour by the Gram Panchayat, therefore, the question of title and possession cannot be gone into and the suit for injunction simpliciter only could have been filed and maintained even as per the Hon'ble Supreme S.B. CIVIL SECOND APPEAL No.77/2013. Narayan Singh & Ors. Vs. Gheesu Singh Along-with 9 connected second appeals. Judgment dated 09/12/2014 8/9 Court decision relied upon by the opposite counsel. He further submitted that actually no substantial question of law arises in the present second appeals.

10. Having heard the learned counsel for the parties at length and upon perusal of the record, this Court is of the considered opinion that the courts below have not erred in granting the injunction as prayed by the plaintiffs. Admittedly, the land in question belonged to the Gram Panchayat and not to the private defendants, which fact is not even disputed and denied by the defendants/appellants. The title in the form of Patta(s). issued by the Gram Panchayat in favour of the plaintiff(s), and the factum of possession is attached with the title and so long as the said Patta(s). hold the field, for which cancellation proceedings are said to have been initiated by the defendants and same are said to be pending before the appropriate forums, the injunction could not be refused on the basis of arguments of the learned counsel for the appellants/defendants, who are private parties and sought to interfere with the possession of the plaintiffs cannot be injuncted as has been done by the courts below. The said argument is bereft of any force.

11. Accordingly, the substantial question fo law framed by the coordinate bench of this Court, quoted above, is bound to be answered in favour of plaintiffs/respondents, and it is held that S.B. CIVIL SECOND APPEAL No.77/2013. Narayan Singh & Ors. Vs. Gheesu Singh Along-with 9 connected second appeals. Judgment dated 09/12/2014 9/9 the judgment and decree of the courts below in a suit for injunction are not vitiated merely because the Gram Panchayat has denied that the record of issuance of Patta(s). in question were not available under the information given to the defendants under the RTI Act, 2005.

12. So far as the proceedings initiated by the defendants for seeking cancellation of the Patta/s is concerned, this Court would not like to make any comment on the validity of Patta(s). at this stage, nor it lies also within the frame of this appeal.

13. This Court, therefore, finds no force in the present second appeal of the defendant.

14. Consequently, the present second appeals of the appellants/defendants, ten in number, against different plaintiffs of Patta holders, are dismissed. No costs. A copy of this judgment be sent to the concerned parties and the courts below forthwith. (Dr. VINEET KOTHARI), J.

DJ/- 70 to 80

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