

Rameshwar and Brajesh Vs. Viith Additional District and Sessions Judge, Deoria and ors.

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Court : Allahabad

Decided On : Jan-23-2002

Reported in : 2002(2)AWC1137

Judge : Anjani Kumar, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 9

Appeal No. : C.M.W.P. No. 2770 of 1985

Appellant : Rameshwar and Brajesh

Respondent : Viith Additional District and Sessions Judge, Deoria and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Jokhan Prasad, Adv.

Disposition : Petition allowed

Judgement :

Anjani Kumar, J.

1. Petitioners-plaintiffs filed Suit No. 392 of 1982 before the Court of Munsif, Deoria with the following reliefs :

1 ;g fd olnwj Jh cSukek 22-12-1981 ogd oknhx.k cuke izfroknhx.k ealw[kk djs dhfMxzh iznku fd;k tkos A

2;g fd olnwj fMxzh bEruk bZ nokeh izfroknh la;k ,d dks loZFkk ds fy, euk fd;ktkos fd gLo rQlhy tSlk fookfnr vk'kfy;kr esa fdlh izdkj dh eqtkfger u djsa vkSju dCtk n[ky ge oknhx.k esa vojks/k mRiUu djs A

3;g fd ge oknhx.k dh izfroknh ua- ,d ls [kpkZ eqdnek o odhy esgurkuk fnykus dhfMxzh iznku fd;k tkos A

4;g fd vykok ;k ctk; nknjlh etdwjkokyk ds oknhx.k ftl fdlh vU; nknjlh ds eqLrgydjkj ik;s tkos mldh Hkh fMxzh okgd oknhx.k cuke izfroknhx.k lkfnj dj fn;k tkosA**

2. An objection was filed by the defendants before the trial court that the suit is not cognizable before the civil court, therefore, the same should be rejected and the petitioners-plaintiffs be relegated to the revenue court. The trial court decided the said suit in favour of the plaintiffs that the suit is cognizable by the civil court.

3. Being aggrieved by the aforesaid order, the defendants preferred a revision before the revisional court and the revisional court arrived at and recorded findings that the suit is not cognizable by the civil court, therefore, the suit may be dismissed and the petitioners-plaintiffs may be directed to go to the revenue court.

4. Heard learned counsel for the parties. Shri Jokhan Prasad, learned counsel for the petitioners has argued that in view of the law, which will depend on the allegations in plaint and also the relief clause and in view of the recent Supreme Court decision in Sri Ram and Anr. v. Ist Additional District Judge and Ors., 2000 (1) AWC 862 (SC) : JT 2001 (2) SC 573, wherein the Supreme Court has affirmed the decision of Full Bench decision in Ram Padarath and Ors. v. IInd Additional District Judge, Sultanpur and Ors., 1989 (1) AWC 290 (LB) ; 1989 RD 21. the law laid down by Supreme Court and after going through the relief clause, the view taken by the revisional court is not correct and suffers from the manifest error of law.

5. In view of what has been stated above, it is abundantly clear that the suit is cognizable by the civil court and in this view of the matter, the order dated

5.11.1984, Annexure-3 to the writ petition, passed by the revisional court is liable to be set aside and is hereby quashed.

6. With the aforesaid observation, the writ petition is allowed. There will, however, be no order as to costs.

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