

Rajesh Kumar Singh and ors. Vs. Pratap Singh and ors.

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Court : Allahabad

Decided On : Sep-22-2006

Reported in : 2007(1)AWC55

Judge : Umeshwar Pandey, J.

Appellant : Rajesh Kumar Singh and ors.

Respondent : Pratap Singh and ors.

Disposition : Appeal dismissed

Judgement :

ORDER

Umeshwar Pandey, J.

1. Heard learned Counsel for the appellants.
2. This appeal has been reelected against the judgment and .aecree dated 24.8.2006 passed by the lower appellate court whereby the plaintiffs-appellants' appeal filed against the trial court's judgment rendered in a suit for specific performance of contract and permanent injunction, has been dismissed.
3. The appellants of the aforesaid suit have filed it seeking relief of specific performance of contract and permanent injunction and stating that the property in question was agreed to be transferred by the defendants in their favour but they

declined in spite of the fact that in earlier suit for the relief of specific performance of contract filed on the basis of same agreement was decreed in terms of their compromise by the lower appellate court. The defendants, when did not execute the sale deed in pursuance of the decree passed in the aforesaid suit No. 143 of 1964 also tried to disturb the possession of the plaintiffs over the property in question. It is therefore the subsequent Suit No. 11 of 1991 was filed. The trial court dismissed the subsequent suit holding that since the decree for specific performance of contract on the basis of the impugned agreement was decreed earlier, no question for passing another decree to the same effect, would arise and the relief for permanent injunction was also refused for reason that from the evidence available, the plaintiffs had not succeeded to prove their claim of possession over the disputed land. Against the judgment of the trial court, the appeal preferred before the lower appellate court was found to be without merit and concurrent findings regarding possession have been recorded there also holding that the plaintiffs did not have any right for claiming the relief of specific performance of contract on the basis of same agreement of sale regarding which a decree was in his hand. The appeal was thus dismissed.

4. Learned Counsel appearing for the appellants contends that the court below has though, rightly dismissed the suit for specific performance of contract but the dismissal of the suit for the relief of permanent injunction was wholly against the law and the evidence available on record.

5. From perusal of the record* and the arguments made by the learned Counsel, it appears to be evident that the earlier suit of 1964 for the relief of specific performance of contract stood decreed by the trial court in terms of the compromise and a fresh suit for the same relief by the plaintiffs for the same cause of action was rightly found to be a misconceived venture. The plaintiffs had no occasion to come before the Court and pray for that relief of specific performance of contract, which they already had in their possession. The suit for this relief thus, was not maintainable and the learned Counsel has also conceded in this regard.

6. In so far as the relief for permanent injunction sought by the plaintiffs appellants is concerned, the courts below have concurrently recorded their findings of fact

after discussing the evidence available on record. The Courts have found that the khasra entry, which indicate the possession of the parties over the land, are consistently in favour of the defendants and not the plaintiffs. Therefore, the claim of the plaintiffs in this regard had not been found substantiated as to grant the relief of permanent injunction. Otherwise also since the sale deed in favour of the plaintiffs in respect of the land in suit is yet to be executed, they do not possess any title in the same and they cannot be granted relief for permanent injunction in respect of that property against the defendant, who is till date, the real owner of that. It is however, obvious that the plaintiffs, who are having a decree of specific performance of contract in their pocket, can execute the same and thereafter can claim possession of the land in pursuance to the said acquisition of title by them.

7. In the aforesaid view of the matter, no substantial question of law is available for decision in this second appeal as to admit it. The appeal having found to be devoid of merit is hereby dismissed at the admission stage.

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