

Laxman Singh Vs. Jagannath

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Court : Madhya Pradesh

Decided On : Sep-15-1999

Reported in : 2000(1)MPHT384; 2000(1)MPLJ79

Judge : S.S. Jha, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 151 and 152 - Order 1, Rule 3B - Order 6, Rules 1 and 2 - Order 7, Rule 3 - Order 20, Rule 9 - Order 21; Madhya Pradesh Civil Courts Rules - Rule 38

Appeal No. : Second Appeal No. 293/95

Appellant : Laxman Singh

Respondent : Jagannath

Advocate for Def. : K.K. Lahoti, Adv.

Advocate for Pet/Ap. : A.M. Naik, Adv.

Disposition : Appeal allowed

Judgement :

S.S. Jha, J.

1. This appeal was admitted on the following substantial questions of law:--

(i) 'Whether in the absence of requirements of Order VII Rule 3 of Code of Civil Procedure whereby full particulars and identity of disputed portion is not mentioned in the plaint, suit is liable to be decreed ?'

(ii) 'Whether in the absence of map of demarcation and proof of report of demarcation the appellate Court was right in considering the document of Panchanama ?'

(iii) 'Whether the suit of plaintiff was maintainable without impleading the State of M.P. as provided under Order 1 Rule 3-B of Code of Civil Procedure ?'

2. Brief facts of the case are that the plaintiff/respondent has filed a civil suit for possession of agricultural land. The plaintiff claimed that he is the Bhumiswami of the land bearing survey No. 101, area 0.240 hectare, situated in village Bamuliya, Tehsil Sironj, District Vidisha. This land is 'Kheda'. A public road is on the western side of the land. The house of the defendant is towards southern side of the suit land and remaining lands of the defendant are extended on other two sides of the plaintiff's land. Plaintiff's land is surrounded by defendant's property from three sides except the western side. The plaintiff has applied for demarcation of his land on 25-1-1984 before the Tahsildar. In the demarcation, it was found that the defendant had made some encroachment over the suit land.

3. The claim was denied by the defendant. The trial Court dismissed the suit holding therein that the suit as filed is not complying with the provisions of Order 7 Rule 3 of Code of Civil Procedure (hereinafter, referred to as 'Code'), and in the absence of plea of possession of specific land, no decree could be passed. The first appellate Court reversed the judgment and decree of the trial Court and decreed the suit.

4. The first question of law involved in this appeal is whether in the absence of specific pleadings as provided under Order 7 Rule 3 of the Code and particular identity of the suit land, the suit is liable to be dismissed.

5. In the case of Laxmichand Shitabrai and Anr. v. Nemichand Hukumchand (1960 MPLJ 687), it was held that where the subject-matter of a dispute is altogether

unascertainable the suit cannot be entertained at all. It is quite easy for a person to imagine that the neighbour is committing the outrage of encroachment on his land to the width of an inch or two, but he cannot pursue that matter in a Court of law unless he is in a position to get it demarcated fairly and with some degree of accuracy. This order was passed while considering the scope of Order 6 Rules 1 and 2 of the Code.

6. Order 7 Rule 3 of the Code is reproduced below :--

'Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.'

Rule 3 of Order 7 of the Code provides that where the subject-matter of the suit is immovable property, the plaint shall contain a description of property sufficient to identify it, and in case such property can be identified by boundaries or numbers in record of settlement or survey, the plaint shall specify such boundaries or numbers.

7. Counsel for the appellant submitted that from the bare pleadings in the plaint and in the absence of any map of alleged encroachment, the suit of the plaintiff should be dismissed. He also submitted that the Allahabad High Court in the case of Ganesh v. Shri Ram Lalji Maharaj Birajman Mandirand Ors. (AIR 1973 Allahabad 116) held that when the other description of the property is sufficient to identify it and at no stage of the suit had the parties raised any dispute as to the identity of the suit property, the Court in exercise of its powers under Sections 151 and 152 of the Code can correct any error or misdescription in the decree pertaining to the boundaries of the suit property. However, in para 10 of the judgment, it is held that the law requires is that the description of the property in such given in the plaint must be sufficient to identify the property. If independently of the boundaries the property can be sufficiently identified, then any error or misdescription in the boundaries cannot affect the suit. Learned counsel for the respondent thus submitted that the plaintiff be permitted to furnish correct description of the property in dispute.

8. In the case of N.P. Singh v. State of Bihar (AIR 1983 Patna 244) the scope of Order 7 Rule 3 of the Code was considered.
9. From the pleadings contained in the plaint, it is apparent that the suit property could not be identified. Specific description and boundaries of the suit property are not given in the plaint.
10. The purpose of Order 7 Rule 3 of the Code is that unless the plaintiff indicates the identity of the property claimed by him either by means of boundaries or by means of map as required by Order 7 Rule 3 of the Code, it would be difficult for the Court to find whether the plaintiff has title to the property claimed and whether any encroachment or dispossession has been made by the defendant. Thus the duty of the party is to give description sufficient to identify the property in dispute. If such decree is passed, it shall be unworkable. The Court can only pass a decree which can be executed under Order 21 of the Code.
11. In the present case, it appears that before admitting the plaint and issuing notice to the defendant, the trial Court has not followed the procedure laid down in Rule 38 of M.P. Civil Courts Rules. However, on pleadings, it is found that the plaintiff is the Bhumiswami of Survey No. 101 area 0.240 hectare. The first appellate Court has recorded a finding that the property in dispute is properly identified. On going through the records and pleadings of the plaint, it is found that the encroachment portion is not specified.
12. The plaintiff alone has entered the witness box. In his deposition, he has not specified the specific portion encroached upon by the defendant. He has submitted a document Ex. P-1 which is a certified copy of demarcation of the lands at village Bamuliya-Uda sent by the Office of Revenue Inspector to the Naib-Tahsildar. Ex. P-2 is a certified copy of Panchanama. Original documents and records were not called from the Revenue Courts. The Revenue Officers, who measured the land were also examined. The plaintiff in his deposition has stated that he does not remember the survey number of suit land and has stated that it must be recorded in the map. In the plaint, sufficient specifications of the land encroached is not mentioned and no map is furnished.

13. Normally notices should not have been issued on such plaint. The trial Court dismissed the suit holding therein that the plaint is vague and plaintiff has failed to prove encroachment. Both the Courts held that plaintiff is owner of Survey No. 101. Plaintiff has not filed any application for amendment specifying the encroachment before the lower appellate Court. When the suit was dismissed by the trial Court holding that the portion of encroachment is not specified in the plaint, then proper pleadings specifying the encroachment should have been brought before the lower appellate Court. The lower appellate Court while reversing the judgment held in para 7 of the judgment as under :--

^7&iz;'u 1% vihykFkhZ oknh us viusokni= esa ;g Li'V mYys[k fd;k gS fd xzke cwewfj;k fLFkr Hkwfe losZ - 101jdok 0-240 gs- dk og Hkwfe Lokeh gS] ftl ij izfroknh us iwoZ] mkj o nf{k.krhuksa fn'kkvksa esa voS/k :i ls dCtk dj fy;k gS vkSj bl gsrq dj;k;s x;s lhekadudks ekuus ls badkj dj fn;kA vius c;ku esa mlus Li'V dgk gS fd izfroknh usmldh tehu ij mkj dh rjQ nks ckal rFkk iwoZ if'pe dh vksj 30 gkFk pk SM+h Hkwfeij dCtk dj fy;k g SA vihykFkhZ dk ;g Li'Vhdj.k okn fMh fd;s tkus ds fy;siz;kZlr g SA vr% v/kh- U;k;ky; ds fu'd'kZ ls eSa lger gksrs gq;s ;gBgjk;k tkrk gS fd vihykFkhZ oknh us okn Hkwfe dk Li'V mYys[k fd;k gS vkSjbl vk/kkj ij okn fMh fd;k g SA**

The plaintiff in para 4 of his plaint, has pleaded as under :-

^4- ;g fd es<+ ij fookn gksus ls o izfroknh}kjk ges'kk es<+ FkksM+h&FkksM;+h iVkdj dCtk djus ls oknh }kjk fiNyso'kZ lhekcanh djkbZ xbZ U;k;ky; rglhy }kjk iz-- 46@vk12@82&83 }kjkfnukad 25&1&84 dks oknh ds [ksM+s dh lhek can dh xbZA ijarq izfroknhlhekcanh dks ekuus dks rRij ugha gS vkSj mlds dCts dh mkj fn'kk esa djhc nksckal pkSM+h iwoZ&if;'pe yEckbZ esa o iwoZ fn'kk esa iwoZ&nf;{k.k dksus rddjhc 1 ckal pkSM+kbZ dh oknh dh Hkwfe ij voS/k :i ls dCtk fd;s gq;s gS vkSjlhekcanh ds i'pkr~ Hkh NksM+us dks rRij ugha gSA**

14. Thus, there is no specification of exact encroachment. Plaintiff had a feeling that encroachment by the defendant is about two bamboo in width over east west boundary and width of one bamboo over south-eastern side and defendant is not willing to deliver possession. Thus provisions of Order VII Rule 3 C.P.C. were not complied with. Therefore, on failure to comply with the provisions of Order VII Rule

3 C.P.C., Plaintiff was liable to be rejected. Even if the decree is passed, then also, the decree shall be inexecutable under Order XX Rule 9 C.P.C.. The plaintiff has not availed the opportunity of amending the plaint in appeal after the suit was dismissed. The lower appellate Court is not justified in reversing the decree holding therein that specification of the land is mentioned in the plaint. Without considering the import of Order VII Rule 3 C.P.C.. Thus the finding by the lower appellate Court is perverse and is set-aside. The findings of the trial Court are proper. The plaint is liable to be Rejected. Thus without any specification of the land, the decree passed is unworkable under Order XX Rule 9 C.P.C.. Question of law No. (i) is answered accordingly.

15. As regards question of law (ii), as discussed above, the demarcation report was not proved by the plaintiff. Therefore, the lower appellate Court has committed an error in relying upon the document Ex. P-2 the 'Panchanama'. Question of law No. (ii) is answered accordingly.

16. As regards question of law No. (iii) that the State of Madhya Pradesh is a proforma party and has to be impleaded under Order 1 Rule 3-B C.P.C., the omission to implead the State of Madhya Pradesh as a party is an irregularity and not an illegality. Irregularity can be cured. This view is taken by a Division Bench of this Court in the case of Brijraj Singh v. Shrimati Bitto Devi (1991 (2) MPJR 279).

17. The plaintiff/respondent has also moved an application I.A. 6265/99 before this Court under Order 1 Rule 3-B C.P.C. for impleading the State of Madhya Pradesh as party.

18. Thus, on the facts, as discussed above, the suit filed by the plaintiff without specifying the land and the map of the land in dispute could not be decreed.

19. In the result, the appeal is allowed and the judgment and decree passed by the lower appellate Court is set-aside and the plaint is rejected. There shall be no order as to costs.