

Nathu Dan and Ors Vs. Deepa Ram and Anr

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Court : Rajasthan Jodhpur

Decided On : Sep-22-2015

Appellant : Nathu Dan and Ors

Respondent : Deepa Ram and Anr

Judgement :

S.B. Civil Second Appeal No.240/2011 Nathu Dan & Ors. Vs. Deepa Ram & Anr. & S.B. Civil Second Appeal No.184/2011 Nathu Dan & Ors. Vs. Deepa Ram & Anr. Judgment, Tuesday, 22/09/2015. 1/9 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR ::

JUDGMENT

:: (1) S.B. Civil Second Appeal No.240/2011 Nathu Dan & Ors. Vs. Deepa Ram & Anr. & (2) S.B. Civil Second Appeal No.184/2011 Nathu Dan & Ors. Vs. Deepa Ram & Anr. Date of Judgment ::: Tuesday, 22/09/2015. PRESENT HON'BLE Dr. JUSTICE VINEET KOTHAIiii RI Mr. Salil Trivedi on behalf of Mr. Sajjan Singh, for the appellants. Mr. Sunil Beniwal, for the respondents. -- BY THE COURT (ORAL):

1. The appellants/defendants have preferred these two second appeals under Section 100 of CPC, 1908, assailing the judgment and decree dated 05.04.2006 passed by learned Additional District Judge, Deedwana, in Civil Appeal No.72A/99 (06/94)-Bhagwanaram & Anr. Vs. Nathudan & Ors. and Civil Appeal 76/99 (14/94)-Nathudan & Ors. Vs. S.B. Civil Second Appeal No.240/2011 Nathu Dan & Ors. Vs.

Deepa Ram & Anr. & S.B. Civil Second Appeal No.184/2011 Nathu Dan & Ors. Vs. Deepa Ram & Anr. Judgment, Tuesday, 22/09/2015. 2/9 Bhagwanaram & Anr., respectively, whereby the appeal filed by the appellants/defendants was dismissed, whereas the appeal filed by the respondents/plaintiffs was allowed, while reversing the judgment and decree dated 18.02.1994 of the learned Munsif and Judicial Magistrate (First Class), Deedwana, in Civil Regular Suit No.7/1992-Bhagwana Ram & Anr. Vs. Nathudan & Ors., whereby the suit filed by the respondents/plaintiffs for permanent injunction with respect to joint Khatedari land of Khasra No.72 ad-measuring 22 Bigha situated in Village Kushalpura, which was purchased by the father of the plaintiffs, was rejected.

2. The learned trial court after evaluating the evidence of the parties vide its judgment and decree dated 18.02.1994 decreed the plaintiffs' suit and observed as under: - : 72 % ' -3 % .(. (. ' . (. 7 . % : , < (' ' .1 % "- " ' . % : -3 , S.B. Civil Second Appeal No.240/2011 Nathu Dan & Ors. Vs. Deepa Ram & Anr. & S.B. Civil Second Appeal No.184/2011 Nathu Dan & Ors. Vs. Deepa Ram & Anr. Judgment, Tuesday, 22/09/2015. 3/9 A -4 : 1 3 C A ' , A % ' 7 Sd/- (. () I , (" 3. The first appeal filed by the appellants/defendants assailing the judgment of the learned trial court was dismissed by the learned lower appellate court vide its judgment dated 05.04.2006 while observing as under: - A 7 .58 % A . (A .58 N % . . % (.58 7 N . N . A .58 7 O O P N N % . 7 . (' 7 A A , % . A S.B. Civil Second Appeal No.240/2011 Nathu Dan & Ors. Vs. Deepa Ram & Anr. & S.B. Civil Second Appeal No.184/2011 Nathu Dan & Ors. Vs. Deepa Ram & Anr. Judgment, Tuesday, 22/09/2015. 4/9 (7 N(3 % O . A 91, 92 188 . (. A . N 7 N % % . A . A . (7 251 (1) % % . (. . A 251 (2) % A 251 (1) . % . (% . A : % . (% (A N . A 7 7 .(A . (' AW . (A (A . AW Y N A C % .60 N Z (. % A . ' % ' A % .60 (7 A (A A S.B. Civil Second Appeal No.240/2011 Nathu Dan & Ors. Vs. Deepa Ram & Anr. & S.B. Civil Second Appeal No.184/2011 Nathu Dan & Ors. Vs. Deepa Ram & Anr. Judgment, Tuesday, 22/09/2015. 5/9 % % . % ((A % % A % N Z . A : 15 P N 'N . A 'N : N % . 7 A 'N . % , (C C A (1 . A 'N % . A (N A . ((A (. A ((2 . (A 'N % (N A ((% 7 A . (% A (. A . % . , . . % .60 % . . A , . ((A (A (, . .60 N Z (. , ' ' C A : S.B. Civil Second Appeal No.240/2011 Nathu Dan & Ors. Vs. Deepa Ram & Anr. & S.B. Civil Second Appeal No.184/2011 Nathu Dan & Ors. Vs. Deepa Ram & Anr. Judgment, Tuesday, 22/09/2015. 6/9 .60 A (7 % ' A A , 'N A 'N % ' A . (.1 . '

A ('N % A A A % N . (% (. W A . ((. A . (. . A . ' % .60 .C 19 .19 . (% . . ' , % 7 (' 7 A A .72 . A ' .60 'N (7 A 7 3 % . (. 7 A 7 . (' A A S.B. Civil Second Appeal No.240/2011 Nathu Dan & Ors. Vs. Deepa Ram & Anr. & S.B. Civil Second Appeal No.184/2011 Nathu Dan & Ors. Vs. Deepa Ram & Anr. Judgment, Tuesday, 22/09/2015. 7/9 : 7 1 a % 7 .3 7 (A 7 .3 % . (A , 7 1 % N . 7 1 % 7 (A xxx ' -(Z ' (72 /99 (Z ' 7 (P a 7 (A .58 % . % . . (. (. A - (Z ' . (76/99 (7 (A .C C A , N A % 7 Sd/- () (, (

"4. Learned counsel for the appellants/defendants submits that that the appellate court below has erred in decreeing plaintiffs' suit and in rejecting appellants/defendants' appeal as the learned appellate court below has erred in S.B. Civil Second Appeal No.240/2011 Nathu Dan & Ors. Vs. Deepa Ram & Anr. & S.B. Civil Second Appeal No.184/2011 Nathu Dan & Ors. Vs. Deepa Ram & Anr. Judgment, Tuesday, 22/09/2015. 8/9 deciding the Issue No.1 in favour of appellant without deciding the application filed by the appellants under Order 41 Rule 27 CPC. He, therefore, submitted that substantial question of law arises in the present appeal and the decree of the learned appellate court allowing plaintiffs' appeal deserves to be reversed and that of the appeal of the defendant deserves to be allowed.

5. On the other hand, Mr. Sunil Beniwal, learned counsel for the respondents has supported the impugned judgment and decree of the first appellate court and submitted that the learned appellate court has considered the relevant evidence led by the parties and in the present second appeal re-appreciations of the evidence cannot be done. He, therefore, argued that the second appeals preferred by the appellants/defendants be dismissed.

6. Having heard the learned counsel for the parties and upon perusal of the judgments of the courts below, this Court is satisfied that no substantial question of law arises in the present second appeal of the appellant/defendant. The learned appellate court has not committed any error in allowing the plaintiffs' appeal and has properly appreciated the evidence led by the parties. S.B. Civil Second Appeal No.240/2011 Nathu Dan & Ors. Vs. Deepa Ram & Anr. & S.B. Civil Second Appeal No.184/2011 Nathu Dan & Ors. Vs. Deepa Ram & Anr. Judgment,

Tuesday, 22/09/2015. 9/9 7. In the opinion of this Court, the courts below have considered the evidence, oral as well as documentary, led by the parties concerned and the learned appellate court below has rightly decreed the suit filed by the plaintiffs and no substantial question of law arises for consideration by this Court in the present second appeal of the defendants.

8. Accordingly, and in view of above, the present second appeals of the appellants/defendants, have no force and the same are hereby dismissed. No costs. A copy of this order/judgment be sent to the parties concerned and the court below forthwith. (Dr. VINEET KOTHARI), J.

DJ/- 37-38

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