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Natwar Lal Vs. Lal Chand

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Court : Rajasthan Jodhpur

Decided On : Sep-22-2015

Appellant : Natwar Lal

Respondent : Lal Chand

Advocate for Pet/Ap. : Mr. Shreyansh Mardia

Judgement :

S.B. Civil Second Appeal No.79/2009 Natwarlal Vs. Lalchand Judgment, Tuesday, 22/09/2015. 1/10 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR ::

JUDGMENT

:: S.B. Civil Second Appeal No.79/2009 Natwarlal S/o Sh. Pratapji Lohar Vs. Lalchand S/o Sh. Chunnilal Kansara Date of Judgment ::: Tuesday, 22/09/2015. PRESENT HON'BLE Dr. JUSTICE VINEET KOTHARI Mr. Vasudev Gaur on behalf of Mr. Om Mehta, for the appellant/defendant. Mr. Shreyansh Mardia on behalf of Mr. Sandeep Shah, for the respondent/plaintiff. -- BY THE COURT (ORAL):

1. The appellant/defendant having concurrently lost the legal battle before the two courts below, has preferred this second appeal under Section 100 of Code of Civil Procedure, 1908, assailing the judgment and decree dated 29.08.2008 of learned

District Judge, Sirohi, dismissing appellant/defendant's Appeal No.04/2008-Natwarlal Vs. Lalchand, while affirming the judgment and decree dated 18.12.2007 passed by learned Civil Judge (Sr. Division), Sirohi, decreeing respondent/ plaintiff's suit, being Suit No.18/2001-Lalchand Vs. Natwarlal, S.B. Civil Second Appeal No.79/2009 Natwarlal Vs. Lalchand Judgment, Tuesday, 22/09/2015. 2/10 for declaration and possession of land (Bada.) situated in Village Mandar, Ward No.6, Kansaron-Ka-Bas, Sirohi.

2. The learned trial court after evaluating the evidence of the parties vide its judgment and decree dated 18.12.2007 decreed the plaintiff's suit and observed as under: - -9 1958 " # * # 1 # 2 3 * " # 5 6 # 7 - 552 # 9 # 5.2 # 3 # = 5 # 552 # 5 - 7 7 5 -8 # 9 # J 7 9 7 , , 5 5 J # 5 * # 5.2 # 3 5 J 9 5 -6 9O # S.B. Civil Second Appeal No.79/2009 Natwarlal Vs. Lalchand Judgment, Tuesday, 22/09/2015. 3/10 9O : 2 9 J 5 -10 9O # # 7 J 9O 9O # J * 4375.8 7 # * 917.3 -10 # * 7 - 10 # 3 5.2 # 3 5 9 9 J9. J6.1 J9. J6.5 39 5 # 9 3 2 9 5 2 4 5 2 # : 2 5 ?. 5 12.6.2001 " 5 5 552 # 9 9.J.-2 9.J.-3 S.B. Civil Second Appeal No.79/2009 Natwarlal Vs. Lalchand Judgment, Tuesday, 22/09/2015. 4/10 9 39 # 1996 # 5 9O \ J 5 7 7 5 2000 # 9O 7: # \ 9 5 7 5 7 # 9 5 552 # 5 _ # 5 9 # 7 5 5 _ 7_ # 5 # 3-4 5 9 9 7 , 5 9 \ 1996 # J 9 2 5 , 5 , 9 9 7 5 -6 9O 7 5 29 9 9 5 \ S.B. Civil Second Appeal No.79/2009 Natwarlal Vs. Lalchand Judgment, Tuesday, 22/09/2015. 5/10 # 9 65 9 7 7 9O , 2000 # 7 , 5 9 5 _ # 5 9 1996 7 : 5 5 , 2000 # 9O _ 9O - 10 J 9 5 9 # # 5 5 39 # # 39 # 9 7 5 7 , 2000 10 _ 9 5 # 39 # 5 9 39 # # 2 5 S.B. Civil Second Appeal No.79/2009 Natwarlal Vs. Lalchand Judgment, Tuesday, 22/09/2015. 6/10 5 2 # 7 # 7* ?. 5 J 9 # 5 # 5 5 9 # ?. 9 9 # 5 _ # # 9 9 , 5 5 # 9 5 J 9 # 5 9 \ 5 2 : _ \ * # 9 xxx J (5.2 #) 5 S.B. Civil Second Appeal No.79/2009 Natwarlal Vs. Lalchand Judgment, Tuesday, 22/09/2015. 7/10 2 J Sd/- (g 5) 29 (J)

"3. The first appeal filed by the appellant/defendant assailing the judgment of the learned trial court was dismissed by the learned lower appellate court vide its judgment dated 29.08.2008 while observing as under: - 29 * h- -2 -5 _ 552 # , 9 2 7 7 5 9 7 , 9 5 -9 # 3 9 552 # .. 5 7 552 , 9 5 9 29 _ , # 7 5 9 7 9 9 5 9 9 : 9 - 7 9 9 9 5 29 S.B. Civil Second Appeal No.79/2009 Natwarlal Vs. Lalchand Judgment, Tuesday, 22/09/2015. 8/10 29 (.5.) J 5 18.12.2007 7 9 9 J 7 29 3 9 Sd/- (7) 29,

"4. This Court vide order dated 23.03.2009 while issuing notices to the respondents directed the parties to maintain the status quo of the possession of the suit property.

5. Learned counsel for the appellant/defendant submits that both the courts below have erred in holding the ownership of the plaintiff on the basis of possession, which was wrongly inferred by the courts below although the same was not proved by material and cogent evidence by the plaintiff. He further argued that the courts below further erred in absolving the plaintiff from the burden of proving his ownership and possession and rather than rebuttal of the defence put forth by the defendant. The learned courts below have also failed to consider that there was inordinate delay of about six years in filing the suit though according to plaintiff himself the cause of action arise in the year 2001. He, therefore, submitted that both the courts below have erred in decreeing the plaintiff's suit. S.B. Civil Second Appeal No.79/2009 Natwarlal Vs. Lalchand Judgment, Tuesday, 22/09/2015. 9/10 6. On the other hand, Mr. Shreyansh Mardia, learned counsel for the plaintiff/respondent vehemently argued that both the courts below have concurrently decreed the suit filed by the petitioner as the defendant had encroached over his land ('Bara') of which he was in possession since the time of his forefathers and certified copies of other documents (Ex.2 to

5) with respect to suit land was produced, which has rightly been considered by the learned courts below. Merely because the appellant/defendant was permitted to cut down the tree of Tamarind by the concerned Gram Panchayat, however, merely permitting the defendant to cut the tree cannot be termed that the defendant was having any sort of title over the land in question.

7. 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. Both the courts below have concurrently decreed the suit filed by the plaintiff/respondent finding that the plaintiff has proved his title and the possession over the land in question and the defendant illegally trespassed over the land ('Bara') in question while the appellant was out of village.

9. In the opinion of this Court, the courts below have considered the evidence, oral as well as documentary, led by S.B. Civil Second Appeal No.79/2009 Natwarlal Vs. Lalchand Judgment, Tuesday, 22/09/2015. 10/10 the parties concerned and have rightly decreed the suit filed by the plaintiff for declaration and possession and no substantial question of law arises for consideration by this Court in the present second appeal.

10. Accordingly, and in view of above, the present second appeal has no force and the same is 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/- 33

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