

Hanuman Vs. Duli Chand

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Court : Rajasthan Jodhpur

Decided On : Nov-17-2015

Appellant : Hanuman

Respondent : Duli Chand

Judgement :

S.B.CIVIL SECOND APPEAL No.246/1994.

Hanuman versus Duli Chand .Judgment, Tuesday, dated 17.11.2015.

1/6 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

::

JUDGMENT

:: S.B.CIVIL SECOND APPEAL No.246/1994.

Hanuman S/o Pabudanji versus Duli Chand S/o Pabudanji .Date of Judgment ::::
Tuesday, 17th November, 2015.

PRESENT HON'BLE Dr.

JUSTICE VINEET KOTHARI Appearance: Mr.K.C.Samdariya, for the appellant-
defendant.

Mr.Sudhir Sharma, for the respondent-plaintiff.

<<>> BY THE COURT: (Oral) 1.

The present second appeal under Section 100 of the Code of Civil Procedure has been filed by the appellant- defendant in a suit for declaration, permanent injunction and recovery of money against the judgment and decree dated 25.08.1994 passed by the learned District Judge, Bikaner in Civil Appeal Decree No.61/1994 Hanuman versus Duli Chand.

(filed by the present appellant challenging the judgment and decree of the learned Trial Court) and S.B.CIVIL SECOND APPEAL No.246/1994.

Hanuman versus Duli Chand .Judgment, Tuesday, dated 17.11.2015.

2/6 No.67/1994 Duli Chand versus Hanuman.

(filed by the respondent-plaintiff seeking enhancement of the amount awarded by the learned Trial Court) by which, both the appeals were dismissed by the learned FiRs.Appellate Court, while affirming the judgment and decree dated 18.05.1994, decreeing the suit of the plaintiff-Duli Chand, passed by the learned Munsif & Judicial Magistrate, Bikaner in Civil Original Suit No.134/1986 Duli Chand versus Hanuman.2.

The relevant portion of the findings of the learned Trial Court recorded in the impugned judgment and decree dated 18.05.1994 is quoted herein below for ready reference:- ! :-

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' 1 + 1 9: ; &

2) ?.

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. A .

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' A A 9: ; ' ?.

9 ?.

3) . ' 9: + S.B.CIVIL SECOND APPEAL No.246/1994.

Hanuman versus Duli Chand .Judgment, Tuesday, dated 17.11.2015.

3/6 . (A A) 200/- ;

4) ; A H I sd/- (H) . .

L A " 3.

Being aggrieved by the judgment and decree dated 18.05.1994 passed by the learned Trial Court, both the parties, i.e., the plaintiff-Duli Chand and the defendant- Hanuman, have filed the respective appeals before the learned FiRs.Appellate Court of Additional District, Bikaner which were came to be dismissed on 25.08.1994, while affirming the judgment and decree of the learned Trial Court dated 18.05.1994.

The relevant portion of the findings of the learned FiRs.Appellate Court in the impugned judgment and decree dated 25.08.1994 is quoted herein below for ready reference:-

19) M + . H ?.

1I 1 H A ' A R' 2 A A H + ?.

.

.25/2/87 A + S.B.CIVIL SECOND APPEAL No.246/1994.

Hanuman versus Duli Chand .Judgment, Tuesday, dated 17.11.2015.

4/6 ; H 1A ?.

A R H ?.

1W H 1W A ?.

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I ?.

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H ?.

?.

A ?.

9A1 ; H ?.

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H H + A A H ?.

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20) : A I 9 A H

21) M ' . A H H .3 5 ; 9 H 40/- . 1A + H A A , . ' A A A + . A + H 800/- .

1 A 20/1/92 ?.

; 215/- .

15/5/94 ?.

; 194-50 H !

22) ! .

A ; 9A1 ?.

9 S.B.CIVIL SECOND APPEAL No.246/1994.

Hanuman versus Duli Chand .Judgment, Tuesday, dated 17.11.2015.

5/6 ?.

9A1 H .

H A A A H ; ; -2 ?.

sd/- (.) 9A A " 4.

Being aggrieved by both the concurrent judgments and decrees of the Courts below, the defendant-appellant has filed the present second appeal in which, a co-ordinate Bench of this Court, while admitting the present second appeal, has framed the following substantial questions of law on 22.12.1994 which are quoted herein below for ready reference:- 'i.

Whether the plaint does not disclose any cause of action for granting decree of mandatory injunction for removal of the 'chowki' ?.

ii.

Whether the judgment passed by both the lower courts are perverse.?

iii.

Whether the plaintiff being not the owner of the land of the chowki is entitled for removal of the chowki constructed by the appellant ?.

iv.

Whether the land on which the chowki has been constructed is covered by the patta Ex.-9 and falls in the share of the appellant ?..

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6/6 5.

Having heard the learned counsels for the parties and upon perusal of the record of the case, including the impugned judgments and decrees of the learned Courts below, this Court is satisfied that there is no force in the present second appeal filed by the defendant-appellant against the concurrent judgments and decrees passed by the learned Courts below after critical appreciation of the evidence led before them.

The mandatory injunction has been rightly granted on the basis of evidence led before the learned Trial Court and there is no perversity in the judgment of the Courts below.

Therefore, in this view of the matter, the present second appeal of the defendant-appellant deserves to be dismissed and the substantial questions of law are liable to be answered against the appellant-defendant and in favour of the plaintiff-respondent.

6.

Accordingly and in view of the above, the present second appeal filed on behalf of the appellant-defendant- Hanuman S/o Pabudanji stands dismissed.

No costs.

A copy of this order be sent to the learned Courts below and to the parties concerned forthwith.

(Dr.

VINEET KOTHARI).J.

/Mohan/ / H-4 /

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