

Poonam Chand and anr. Vs. Ram Lal

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Court : Rajasthan

Decided On : Aug-11-1983

Reported in : 1983WLN(UC)454

Judge : K.S. Lodha, J.

Appeal No. : S.B. Civil First Appeal No. 56/80

Appellant : Poonam Chand and anr.

Respondent : Ram Lal

Disposition : Appeal dismissed

Judgement :

K.S. Lodha, J.

1. This is a defendant's first appeal against the judgment and decree of the learned District Judge, Churu, dated 24 5-80 decreeing plaintiff's suit for a declaration of the sale deed dated 21-3-78 as void, for possession of the property in dispute and mesne profits. The plaintiff has also filed a cross-objection so far as the mesne profits are concerned.

2. Briefly stated the facts of the case are that the property in dispute described in para no. 1 of the plaint was alleged to be an evacuee property bearing no. 45. The plaintiff had been in possession thereof from May, 1956 to 1 '8-62 as a tenant @ Rs. 1.50 p.m. Thereafter this property was sold to the plaintiff by the Competent Officer on 13-8-62 by a registered sale deed. The case of the plaintiff further was that one of his relations Shri Padam Chand had been permitted by him to stay in this property as his licensee. The defendant Poonam Chand also was their relation and he also started living in this property with the permission of the plaintiff from 1967. Later the plaintiff's daughter was married to the eldest son of defendant no. 1 and the defendants continued to stay in the house in dispute with the permission of the plaintiff. However, defendant no. 1 Poonam Chand executed a sale deed in respect of half the property in favour of his younger son Umesh Chand defendant no. 2 and got it registered on 21-2-78. According to the plaintiff, defendant no. 1 Poonam Chand has no title to this property and, therefore, he could not have sold any part of it to defendant no. 2 and, therefore, the sale deed executed by Poonam Chand was void and ineffective so far as the plaintiff was concerned. The plaintiff, therefore, wanted a declaration to the above effect and also claimed possession of the property as also mesne profits @ Rs. 80/- p.m. The defendants contested the suit. Their case was that this property was lying vacant and they had been living in this property since before 1955. They did not, however, deny that it was evacuee property so far as the sale in favour of the plaintiff was concerned, the only reply given by the defendant in para no. 3 was that the property was never auctioned as alleged by the plaintiff and if the plaintiff had obtained a sale deed surreptitiously, he cannot claim any title to it. They pleaded ignorance about the alleged sale deed. The claim for mesne profits was also contested. On these pleadings, the court below framed the following seven issues:

1 vk;k oknh tk;nkn eqrokv;k eqUntk en ua- 1 vthZnkok dk ekfyd gS

2 , vk;k mDr tk;nkn es izfroknh la- 1 lu~ 1967 ls crkSj oknh dk ykbZIUyh jgus yxk

3 vk;k izfroknh la- 1 us tks cs;ukek izfroknh la- 2 ds Ik{k es rkjh[k 21&2&78 dks dj;k gS oks ceqdkcys oknh uktk;t] dyvne] vukf/kdkjiw.kZ ckfry o csvlj gS

4 vk;k izfroknhx.k ls tk;nkn eqrnkfo;k dk dCtk ikus dk vf/kdkjh gS

5 vk;k izfroknhx.k ls ehu izksfQV ikus dk vf/kdkjh gS] ;fn gks rks fdl rjg ls

6 vk;k oknh us izfroknh la- 1 dsk tk;nkn eqrnkfo;k dsk viuh yM+dh dh lxbkZ izfroknh la- 1 ds yM+ds ds lkFk r; djus ds oDr HksV dj fn;k

7 nknjlh

After taking the evidence of both the parties, the trial court decreed the plaintiff's suit to the effect that the plaintiff was declared to be the owner of the property in dispute, that the sale deed executed by defendant no. 1 was void and ineffective so far as the plaintiff was concerned and the sale deed was cancelled. Mesne profits were awarded @ Rs. 45/- p.m. It is against this decree that the present appeal and the cross-objections have been filed as already stated above.

3. I have heard the learned counsel for the parties and have gone through the record.

4. The learned counsel for the appellants has raised four contentions before me. His first contention is that the sale deed in favour of the plaintiff is without jurisdiction because the Competent Officer could not have sold this property to the plaintiff unless it was established that it was composite property. His second contention is that the plaintiff has failed to prove his possession within twelve years of the filing of the suit and, therefore, the suit could not have been decreed. His third contention is that the mesne profits have been awarded at an excessive rate. His fourth contention is that the defendants' evidence had wrongly been closed.

5. In the cross-objections, on the other hand, the learned counsel for the respondent has urged that the mesne profits awarded are inadequate.

6. Voluminous evidence has been led by the plaintiff both oral as well as documentary and quite a good deal of evidence has also been produced by the defendants. The court below has considered the evidence of both the parties at a considerable length and has arrived at the findings I, therefore, do not think it necessary to deal with all this evidence and shall restrict my-self to the contentions raised before me.

7. I shall first take up the last contention raised by the learned counsel for the appellants, namely, the closure of the evidence of the defendants. It may at once be stated that the defendants had already produced seven witnesses and the defendant Poonam Chand was the last. He was examined on 5-4-80. On that day, an application was filed by the defendant that he wanted to produce some documentary evidence to rebut the plaintiff's evidence to the effect that the plaintiff's daughter Sharda Kumari was having her education at Rajaldesar. This application was rejected by the learned District Judge on the ground that this evidence was not at all material evidence and in any case, the defendant need not rebut every part of the plaintiff's statement. There was no issue on this aspect of the matter and in these circumstances at that late stage, there was no point in permitting the defendant to produce any evidence in this respect. In my opinion, the view taken by the learned District Judge, in the facts and circumstances of the case, cannot be said to be wrong in any manner.

8. On that day, the defendant also wanted time to produce some other witnesses. The court found that for the last two hearings, the defendant had not been producing those witnesses nor had he filed any process fee and the summonses for their being summoned and, therefore, there was no reason to grant him any further time to produce those witnesses. It clearly appears that the defendant was negligent in not producing these

witnesses nor getting these summoned and, therefore, his evidence cannot be said to have been wrongly closed.

9. Coming to the first contention of the learned counsel for the appellants, it may at once be stated that the contention has absolutely no force. As already stated above the fact that the property in dispute was evacuee property has not been disputed by the defendants in the written statements and as a matter of fact, it was impliedly admitted to be evacuee property. It was also not disputed that the sale deed of this property had been executed by the Competent Officer in favour of the plaintiff. All that was pleaded was that the defendants had no knowledge of the sale deed. In the circumstances, when there was a registered sale deed by the Competent Officer and the property appears to be evacuee property, it could be assumed that it was also a composite property and the Competent Officer was entitled to sell it. Further the question whether the property in dispute was evacuee property or composite property, cannot be decided in this suit.

10. The contention that the plaintiff has failed to prove his possession within twelve years of the filing of the suit also deserves to be rejected out-right. In the first place, this is not a suit based on possession and latter dispossession. This is a suit based on title and from the admission of the defendant himself, it is established beyond doubt that the defendant was in permissive possession within twelve years of the filing of the suit. Reference in this connection may be made to the statement of DW 7 Poonam Chand. Poonam Chand states that the letter (Ex. 1) (it appears to be wrongly stated as Ex. 1, it is Ex. A 1 because Ex. 1 is the sale deed) was written by the plaintiff Ram Lal. After fifteen days of the receipt of this letter, his son was engaged to the plaintiff's daughter. The ceremony of engagement took place in the house in dispute at Churu and at the time of this ceremony, the plaintiff Ram Lal told him that he would gift this house to the defendant and that the defendant may continue to stay in that house. He further states that thereafter his son was married to the plaintiff's daughter in 1972 and even at that time, the plaintiff did not execute the gift deed of the suit property in their favour. This leaves no room for doubt that the defendant was in permissive possession in the house in dispute right upto 1972. The suit was filed on 25-4-78. Therefore, even if it was to be assumed that the plaintiff was to prove his possession within twelve years of the filing of the suit, though in my opinion, in these circumstances, the plaintiff was not required to prove, it is abundantly clear that the plaintiff is in constructive possession of the house in dispute within twelve years of the filing of the suit and the defendant was only in permissive possession.

11. So far as the question of mesne profits is concerned, this also, in my opinion, stands concluded by the defendant's own evidence. This is an admitted case of the defendant that he had been receiving house rent allowance @ Rs. 45/- p.m. for this very house. Now it does not lie in his mouth to say that the award of damages on the mesne profits at that rate is excessive. The learned counsel, however, urged that even according to the standard rent of this house, the amount of mesne profits would clearly appear to be excessive. In my opinion, the question of standard rent is alien to the present matter. Here the defendant is not a tenant but is only a licensee, who has over-stayed after the licence was revoked and what are being awarded are damages and not rent.

12. At this stage, it will also be convenient to dispose of the plaintiff's cross-objections. The plaintiff himself has got produced the statement from the education department from whom the defendant had been receiving his house rent allowance @ Rs. 45/-p.m. in respect of this house. This impliedly shows that the plaintiff had also consented to this rent at that time. That being so, he also now cannot be allowed to say that the amount of mesne profits is inadequate.

13. No other contention has been raised before me by either of the parties.

14. In the circumstances, the appeal and the cross-objections are without any substance and hereby dismissed. However, in the facts and circumstances of the case. I shall leave the parties to bear their own costs.

