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Court : Rajasthan

Decided On : Sep-09-1980

Reported in : 1980WLN(UC)424

Judge : S.K. Mal Lodha, J.

Appeal No. : S.B. Civil Second Appeal No. 169 of 1970

Appellant : Prem Raj

Respondent : Jeth Mal and ors.

Advocate for Def. : Mr. M.S. Narain Bhatta

Disposition : Appeal dismissed

Judgement :

S.K. Mal Lodha, J.

1. Against the judgment and decree dated March 3, 1970 of the Civil Judge, Jodhpur, the defendant has filed this appeal which arises out of a suit for possession and injunction.

2.The plaintiff-respondents instituted a suit against defendant No. 1 Premraj and defendant No. 2 Shrinathji Maharaj Shri Mohannathji for possession and injunction. Ex. 6 is the map which was appended to the plaint. The plaintiff, have

stated that they are owners of plots No. 1,2,3A to 3D and 4A. The plaintiff, have further mentioned that plot No 1 was purchased on December 15,1946 from Rajendra Kumar son of Vishwanath; plot No. 2 was purchased from Ballabhadas son of Jethmal on March 21, 1947. The remaining aforesaid plots are said to have been purchased from defendant No. 2. On the west of plots No 1 and 2, the house of defendant No. 1 is situate. It was alleged that on August 27,1961, defendant No. 1 opened a door in his wall leading to plot No. 2 and he further encroached upon the land marked MSTD According to the plaintiffs, the land marked MSTD is part of plots No 1,2, 3B and 3C and encircled it by putting stone slabs around it. The suit was instituted in the curt of Munsif No. 1, Jodhpur on November 20, 961 praying that the possession of defendant No. 1 on the land marked MSTD may be removed and the same may be handed over to the plaintiff . It was also prayed that mandatory injunction may be issued against defendant No. 1 for the closure of the door. The plaintiff. also claimed mesne profiles in respect of the land in suit @ Rs. 6/- p.m. Separate written statement have been filed by defendants No. 1 and 2. In the written statement, which was filed on July 4 1962 by defendant No. 2, it was stated that no cause of action has been disclosed against him and so. the plaint may be rejected. Defendant No. 1 contested the suit on various grounds. It was pleaded that the land snown in red colour in the plan Ex. 6 is of defendant No 1's ownership It was stated that the possession of the of the land in dispute in his and he has been using it on his own right. Toe objections were taken that the suit of the plaintiffs is not within limitation and that he has become owner by adverse possession. The write a statement was filed by defendant No. 1 on April 4 1962. The trial court framed necessary issues arising out of the pleadings of the parties on August 13,1962 After recording evidence of the parties, the learned Munsif, recorded the following findings.

(1) that the plaintiff are the owners of the land marked MSTD;

(2) that the plaintiffs have failed to prove possession within 12 years preceding the date of the institution of the suit;

(3) that the defendants were not the owners of the land in dispute by ad verse possession;

(4) that the plaintiff have filed to prove that the door marked X was opened in the year 1961; and

(5) no finding in regard to the mesne profits to which the plaintiffs were entiolec, was recorded.

3. In view of the aforesaid finding , the leaned Munsif dismissed the suit. Aggrieved, the plaintiffs went in appeal. Tae learned Civil Judge partly accepted the appeal and ordered as under:

(1) that the plaintiff's suit be decreed with coats for possession of the land marked MSTD in the site plan Ex, 6; and

(2) that defendant No. 1 be dispossessed and that the plaintiff, in other respect, was dismissed The parties were ordered to bear their own coats of the appeal Feeling dissatisfied with the appellate judgment dated March 3. 1970 defendant No. 1 (appellant) has come up in appeal to this court.

4. I have heard Mr. M L. Chhangani, learned Counsel for the appellant and Mr. M.S. Narain Bhatta, learned Counsel for the respondents and have also gone through the record of the case.

5. On the basis of the arguments that were advanced before the learned Civil Judge, he formulated two main points for consideration in the appeal befoie, him: (1) Whether the plaintiff are the owners of the suit land MSTD: and (2) Whether the plaintiff are in possession of the suit land MSTD within 12 years from the date of the filing of the suit i.e. November 20.1S61?

6. On the aforesaid points, the learned Civil Judge has recorded the following findings:

(1) that the plaintiff have proved to the bill that they were the owners of the land in dispute. He therefore, confirmed the finding regarding ownership arrived at by the learned Munsif.

(2) that the plaintiffs were in possession of the land marked MSTD till they were o(sic)ated from it and defendant No. 1 has encroached upon this land by putting

stone slabs This act of ousting was within 12 years of the institution of the suit.

7. Leaned counsel for the appellant has assailed the findings of the learned Civil Judge on the points of ownership and possession. Learned compel submitted that while deciding point No. 1 formulated by the learned Civil Judge, he has ignored material evidence and has misread the o(sic)al and documentary evidence. In support of his argument he referred to the statement of PW 3 Sardar Ahmed Patta Ex. 5 and plan Ex 6 Before the learned Civil Judge, on the basis . of the statement of PW 3 Sardar Ahmed. Patta Ex 5 undpan Ex. 6, it was contended that the plaintiffs have failed to prove their owtnership in respect of the land in dispute. The learned Civil Judge scru(sic)oistd the statements of PW 1 Jethmal, PW 4 Sampat Raj PW 5 and Mangilal and PW 6 Rajendra kumar. He also examined the sale deed Ex 4 1, Pattas Ex A2 and A3 issued by the Thikana. The learned civil Judge also considered the statements of DW Prem Raj, DW 4 Jay Narayan and DW 6 Mohannath. On the basis of the statements of the aforesaid defen dan's witnesses, he held that the Patta Ex. A2 and A3, on which reliance was placed by the defendant, are not genuine documents. The learned Civil Judge, after taking into consideration of the relevant oral and documentary evidence of the parties held that the plaintiffs have successfully proved that they are the owners of the land in dispute At the request of the learned Counsel for the appellant whether any material evidence has been ignored or misread, I have read the relevant statements of the witnesses and the documents Having read them, I am unable to agree with the learned Counsel for the appellant that any material evidence has been ignored or that any portion there of has been misread so as to vitiate the finding regarding ownership of the land in question. The finding of the learned Civil Judge in respect of ownership of the land in dispute is based on the appreciation of evidence. In arriving at this finding, the learned Civil Judge has not committed any mistake of law. It cannot be said that the e is no evidence in support of it or that on the basis of the evidence on record, no reasonable man could have reached the conclusion to which the learned Civil Judge did. Adequacy or sufficiency of evidence in regard to a finding of fact arrived at by the first appellate court is not a ground of second appeal. Reference in this connection may be made do Ratnappa v. Bojappa : [1964]2SCR673 The question of the plaintiffs' title is one of fact and the finding in this regard is not vitiated on any count. In my opinion, the

learned Civil Judge was right in holding that the plaintiffs have proved their ownership.

8. The next question that, therefore, arises is whether the plaintiffs have proved that they were in possession of the land MSTD within years from the date of the filing of the suit or not the learned civil Judge has observed that it appeared to him to be admitted position that the land in dispute was more or less lying open and as was not bound it was not being put to any specific u(sic)e. While examing the second point, formulated by him, the learned Civil Judge took into consideration the statements of PW. 2 Jethmal, PW 5 Mungilal and P.W 6 Rajendrakumar. The statement of D W 1 Premraj, D W. 2 Hastimal, D W 3 Mishrimal D W. 4 Jainarayan and DW, 5 Shankar Lal were also a(sic)ticed by the learnd Civil Judge Having reffered to the fact that it was an open land, the learned Civil Judge as of the opinion that mere tethering of some animals or using the land for the purpose of s(sic)oring fuel would not tantamount to possession of defendant No. 1 Taat view that such acts would not amount to the possession stands supported by Wazirimal v. Ganga Ram AIR 1926 Lah 370 Rulia v. Noor Mohamhned AIR 1926 Lah 615 and Asaram v. Ramchandra : AIR1939 All161 The learned civi Judge, in my opinion was right when he held that because of the maxim 'possession' follows a(sic)le' the plaintiffs will be considered in possession of the land until they were effectively outsted from it i.e when defendant No. 1 occupied the land MSTD by enclosing it with the stone slabs. The finding that de endant No. 1 oocupied the land by enclosing it with the stone slabs within 12 years preceding the date of the filing of the suit, has not been shown to be erroneous, for, defendant No 1 has admisted that he had done so only five or years back. His statement was recorded on May 22 1965. The learned Civil Judge was therefore right in holding that the act of ouster was within 12 years of the institution of the suit. There is no justificable ground to Interfere with this finding of fact Both the points formulated by the learned Civil Judge referred to above related to the questions of fact and the finding in respect thereof cannot b; attacked in second appeal without showing that they are vitiated because of any error of law or being based on no evidence or that no reasonable man could reach to that conclusion to which the learned Civil Judge did.

9. No other point survives for my consideration.

10. The result is that appeal has no force and it is, accordingly, dismissed with costs.

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