

Murlidhar Vs. Ramlal

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Court : Rajasthan

Decided On : Aug-25-1978

Reported in : 1978(11)WLN360

Judge : S.K.M. Lodha, J.

Appeal No. : S.B. Civil Second Appeal No. 464 of 1967

Appellant : Murlidhar

Respondent : Ramlal

Judgement :

S.K.M. Lodha, J.

1. This is a plaintiff's second appeal against the judgment and decree of the District Judge, Merta, dated July 8, 1967 in a suit for demolition; of a latrine and perpetual prohibitory injunction. The facts leading to this appeal are these. There is a locality known as Nayanagar in the town of Deedwana. The plaintiff's house, the description of which was mentioned in para 1 of the plaint is situated in that locality in the town of Deedwana. Contiguous to it in the north was the house of one Usman, which has now been purchased by the defendant-respondent Plaintiff has submitted a plan Ex. 1 along with the plaint and these two houses belonging to the plaintiff and the defendant 'have been distinctly shown in it. The case of the plaintiff appellant is that the wall DB, is his exclusive and he is the sole owner in

possession of it. There is two ventilators and a water spout in this wall. Towards north, of this wall, according to the plaintiff there was an open vacant land which was owned and possessed by the State Government. The defendant-respondent has no right whatsoever over that land. But he, however, constructed a latrine on it without the permission of the Municipal Board, Deedwana. On, January 27, 1963. while constructing the latrine he made use of the plaintiff's wall. DE. The construction of the latrine resulted in the closure of the plaintiff's one window and half of the ventilator. He was deprived of the natural advantages arising out of the situation of this land in respect of air and light. It was also stated by the plaintiff that the construction of the latrine by the defendant has caused nuisance to him. He, therefore, prayed that a decree for mandatory injunction for demolition of the latrine and restraining the defendant by means of perpetual prohibitory injunction from making any sort of further construction over the land in future may be passed. The land beneath the latrine has been shown by the letters GHEF in the plan Ex. 1.

2. The defendant has contested the suit of the plaintiff on various grounds. He, however, admitted the location of the two houses belonging to the plaintiff and the defendant as averred by the plaintiff. The case of the defendant as disclosed in the written statement was that the plaintiff has not acquired any right of easement in respect of air and light through the windows or to make any complaint or grievance about their closure. As regards the wall DE his case is that this wall is jointly owned and possessed by the parties and is not of the exclusive and sole ownership of the plaintiff. He has also stated that the latrine has not been constructed on the Government land but the land below it is of his exclusive ownership and possession.

3. The plaintiff submitted rejoinder to the written statement of the defendant. In the rejoinder he reiterated the stand taken by him in the plaint. He however, admitted that he claimed the right of air and light through the windows and ventilators on basis of natural advantages annexed with his land and not on the basis of easement.

4. The learned Munsif framed the following issues on April 18, 1963.

1. Whether the land marked by letters G H E F in the topography filed by the plaintiff is the Govt. (Khalsa) land?
2. Whether the wall marked by letter DE in the topography filed by the plaintiff is of the plaintiff's exclusive ownership? And, whether the plaintiff has acquired a right of air and light through the window marked Z and ventilator marked Y situated in the said well?
3. Is the plaintiff entitled to perpetual prohibitory injunction as pleaded by him in plaint?
4. What will be the relief?

After trial the learned Munsif by his judgment dated January 18, 1965 decreed the plaintiff's suit against the defendant with costs with the direction that the defendant's latrine under dispute shall be demolished. The defendant was further restrained from making any encroachment over the plaintiff's wall DE and from causing any interference with the right of the plaintiff in respect of light and air through the window Z and ventilator Y. The defendant was restrained from making any construction on the land GHEF.

5. Being dissatisfied with the decree passed by the learned Munsif defendant went up in appeal before the District Judge. He vide his judgment dated July 8, 1967 accepted the appeal and set aside the judgment and decree of the learned Munsif dated January 18, 1965 and dismissed the suit of the plaintiff with no order as to the costs in both the courts.

6. Aggrieved by the judgment and decree of dismissal of Suit the plaintiff has preferred this appeal.

7. Mr. Rajendra Mehta, learned Counsel for the appellant, argued that the finding of the learned District Judge on issue No. 1 is erroneous. The learned District Judge instead of examining the oral and documentary evidence of the parties in connection with issue No. 1 has said that 'the plaintiff is bound down by map Ex. A.1 produced by himself and so he is not authorised, to raise such things' In addition to this he has mentioned in the judgment while deciding issue No. 1 that

the land belongs to the; defendant as proved h) the statements of the defendant's witnesses DW 1 Rameshwar, DW 2 Mai Chand, DW 3 Mohanlal, DW 5 Rama Kishan and DW 6 Jeewanlal, wherein they have clearly stated that the children of Usman and Vasludeen use to attend the. call of nature on this land and this platform was used by them as latrine. In this connection Mr. Mehta submitted that the defendant has not laid down any foundation regarding the plea of estoppel and that the boundaries described in the map Ex. A.1 filed by the plaintiff appellant in the year 1953 before the Municipal Board Deedwana was not between the parties to the suit, and, therefore, cannot amount to estoppel. He also argued that Ex. A.1 plan is inadmissible in evidence. He invited my attention to *Myarsi Bai. and Ors. v. Dhansakh Lal and Ors.* AIR 1965 SC 1065 and contended that before invoking the doctrine of estoppel the three conditions must be satisfied: (1) representation by a person to another (2) the other shall have acted upon the said representation and (3) such action shall have been detrimental to the interests of the person to whom the representation has been made He submitted that there is no material to show that representation was made by the plaintiff and on that representation the defendant acted detrimental to his interest. There is neither pleading of estoppel nor is there any foundation for it & since estoppel is a mixed question of law & fact, the learned District Judge was wrong in deciding issue No. 1 on this basis. Apart from this, Ex. A.1 in law cannot estoppel the plaintiff from challenging the title of the defendant. He supported his argument in another way also According to him, if there is any estoppel, it is only against the first owner Usman and not against the defendant as he (Plaintiff) has purchased from Hemandas and Ex. A.1 merely mentions that the northern portion belongs to Usman. On the basis of the map Ex. A.1 no title can be conferred. Mr. Jain, learned Counsel for the respondent, on the other hand supported the finding of the learned District Judge in respect of issue No. 1 but he conceded that the learned Judge of the lower appellate court was wrong in invoking the doctrine of estoppel on the basis of the map Ex. A.1. According to Mr. Jain, the boundaries given by the plaintiff in the map Ex. A.1 amount to admissions and these admissions can be used against the plaintiff. Learned Counsel for the appellant while meeting the argument raised by the learned Counsel for the respondent submitted that the learned District Judge has not decided issue No. 1 against the plaintiff holding that the boundaries given in

the map Ex. A.1 are admissions of the plaintiff According to him the boundaries mentioned in the map do not amount to admissions and even if they are admissions, they being vague cannot be relied upon In this connection reference was made to Sushil Kumir Gupta v. Shankar Bhattachdrjee : AIR 1971 SC1542 and Nagubail Ammal and Ors. V.B. Sama Rao and Ors. : [1956]1SCR451 .

8. I have carefully considered the finding of issue No. 1 given by the learned District Judge in (he judgment under appeal. I have no hesitation in saying that while deciding issue No. 1 he was considerably influenced by the fact that the plaintiff is estopped from challenging the possession of the defendant over the land in suit on the basis of Ex. A.1. The learned District Judge has observed 'this contention of the earned Counsel for the plaintiff is not tenable to my mind because when the plaintiff has produced that map Ex. A.1. in the Municipal Board in the year 1953 at that time this dispute has not seen the light of the day and at that time his house which is now owned by Hemandas was in the possession of Usman and Vasluddin and after his migration to Pakistan this property was declared as evacuee and then it was sold to Hemandas vide sale deed Ex. A.4.' The learned District Judge was not right in saying that the plaintiff is not authorised to raise such things & that he is estopped from challenging the possession of the defendant over the land in dispute. He could not deny the plaintiff the plea that the land belongs to the State by applying the doctrine of estoppel. The burden of issue No. 1 was on the plaintiff-appellant. During trial beside himself, the plaintiff examined PW. 2 Dwarka Prased, PW. 3 Ayodhya Prasad, PW. 4 Nanne Khan, PW. 5 Mooi Ghand and PW. 6 Ganni. The following documents were produced and proved by the plaintiff in the course of the trial Site plan Ex. 1, Patta Ex. 2, sale certificate Ex. 3, report dated 28 1-63 Ex.3 (Note:-two documents have been marked as Ex. 3) and Istihar dated 10-7 1961 Ex. 4, details of the measurements Ex. 5 and application to the Administrator, Municipal Board, Deedwana dated 28-1-1963 Ex. 6. The defendant has examined DW. 1 Rameshwar, DW 2 Mai chand, DW 3 Mohanlal, DW 4 Gordhanla), DW. 5 Rama Kishan and DW 6Jeewanlal. He produced and proved: (1) map Ex A. 1, the entries from the Bahi Ex. A 2/ PW. 1, sale deed dated 7 4-1959 Ex. A-4, permission dated 22-2 1962 Ex. A. 5, sale deed dated 24-9-) 953 Ex. A.6 and patta dated 11-6-1943 Ex. A.7. The learned District Judge merely made mention of the nanus of DW 1 Rameshwar, DW 2 Mai ('hand,

DW 3 Mohanlal, DW 5 Rama Kishan and DW 6 Jeewanlal and rest contended by saying that 'they have clearly said that the children of Usman and Vasluddin used this land for attending the call of nature on this land'. The learned District Judge was required to adjudicate on the question whether the land marked by letters GHEF in the topography filed by the plaintiff is the Government land or not? He did not record any categorical finding on issue No. 1 but merely applied the doctrine of estoppel against the plaintiff and made a reference to some of the defendant's witnesses in respect of the use of the land below the latrine. In order to determine the controversy between the parties he should have given a clear finding whether the land in dispute over which the latrine exists is the Government land or not? As I have stated above the learned Judge of the lower appellate court misdirected himself and did not apply his mind to the precise question that was raised and argued before him. In this connection; it was necessary that the oral and documentary evidence which was produced by the parties and which has been mentioned above should have been weighed in an intelligent and intelligible manner and this should appear from the judgment itself I am constrained to say that the lower appellate court did not examine the oral and documentary evidence of the plaintiff at all. The appraisal of the evidence of some of the defence Witnesses was not of the requisite quality it does not carry that assurance to this Court which it should that the evidence has been properly read. It was all the more necessary when the learned District Judge was reversing the judgment and decree of the trial court and dismissing the plaintiff's suit The finding arrived at by the learned District Judge in the following words that 'so far as the plaintiff is concerned he is estopped and so the issue No. 1 is decided in favour of the defendant and against the plaintiff-cannot be sustained

9. So far as issue No. 2 is concerned the learned District Judge has observed that no documentary evidence has been produced by either of the parties in respect of their respective contentions in regard to the wall marked D.K in the site plan Ex. 1 but looking to the oral evidence of the parties, he held that the wall which is between the latrines of the parties is of the plaintiff alone. However, as the plaintiff had constructed a latrine the learned District Judge was of the view that even if it is held that this wall belongs to the plaintiff, the latrine of the defendant cannot be dismantled because he has made this latrine on his own land and also constructed

another wall near the wall DE as has been admitted by the defendant Rameshwar DW t and Mohanlal DW 3 and the plaintiff has not said any word about it. It is, therefore, clear that the plaintiff was held not entitled for demolition of the latrine as according to the learned District Judge it exists on the land of the defendant. Whether the land marked GHEF on which the latrine of the defendant exists is the Government land forms the subject matter of issue No. 1 and so if this issue is decided in favour of the plaintiff-appellant, then even according to the learned District Judge since the latrine does not exist on the land belonging to the defendant, the plaintiff may be entitled to get it dismantled. It is correct that the plaintiff has not acquired the right of easement in respect of the window and ventilator on the basis of the prescription i.e. 20 year user. The learned District Judge has also observed that it is a fact that the plaintiff had two small windows in his wall and one window was completely closed and other half was also closed by the construction of the wall of the defendant but it cannot be said that by it the plaintiff had suffered substantial damage because the light which is now present in the latrine is enough. If the land GHEF is held to be the Government land then the plaintiff is entitled to the advantage of receiving lateral light. It has been held in *Anopchand v. Misri Lal and Ors.* ILR 1963 Raj. 676 that as against a stranger who has no right on the neighboring land, owner of the plot of land may insist that there should not be any disturbance in the enjoyment of lateral light. The natural advantage of receiving lateral light may be liable to be disturbed by the owner or occupier of the land in the neighborhood if he makes any construction over his land but not by one who is a stranger. As I have not sustained the finding of the learned District Judge on issue No. 1, the finding on issue No. 2 also cannot be upheld.

10. As stated by me above the finding on issue No. 1 has not been arrived at by the learned District Judge after weighing oral and documentary evidence of the parties, it cannot be maintained and I am left with no alternative but to set aside the judgment and decree under appeal dated July 8, 1967 and remand the case to the learned District Judge, Merta to decide the appeal afresh in the light of the observations made above keeping in view the provisions of Order 41 Rule 31 CPC. He shall allow the parties a fresh opportunity to address arguments in the case and thereafter he will decide the appeal by producing a proper judgment in

accordance with law. In the circumstances of the case I will make no order as to costs.

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