

Bhonra Vs. Sonia and anr.

Bhonra Vs. Sonia and anr.

SooperKanoon Citation : sooperkanoon.com/762605

Court : Rajasthan

Decided On : Apr-15-1985

Reported in : 1985(2)WLN684

Judge : Guman Mal Lodha, J.

Appeal No. : S.B. Civil Second Appeal No. 29 of 1974

Appellant : Bhonra

Respondent : Sonia and anr.

Judgement :

Guman Mal Lodha, J.

1. This is Civil Second appeal by the plaintiff appellant against the judgment of the first appellate court reversing the judgment and decree passed by the trial court for the removal of the encroachment upon the village path way.

2. It is common ground between the parties that the judgment of the Gram Panchayat (Ex. 1) on the question, whether the disputed land is a public way and gram path, was not considered by the first appellate court while reversing the decree passed by the trial court in favour of the plaintiff-appellant.

3. Shri J.P. Goyal, the learned counsel for the plaintiff-appellant submitted that according to the decision in Bansilal v. Gram Pamchayat 1959 RLW 24 Gram

Panchayat has got jurisdiction under Section 24 of the Rajasthan Panchayat Act to decide the question of village path-way/gram path and, therefore, the judgment is relevant and admissible.

4. The learned counsel for the respondent on the contrary submitted that as per the judgment of this court in Mishrimal v. Gram Panchayat Slwana 1957 RLW 136, when there is a question of dispute between gram panchayat and other persons regarding gram path, the decision of the gram panchayat cannot be final.

5. Be that as it may, the relevancy of the document cannot be doubted and disputed, though the weight which is to be given to it in appreciation, would depend upon cumulative effect of the entire evidence both, oral and documentary.

6. The learned counsel for the respondent submitted that even if this document in question is admissible, it cannot be relied upon to be of prime importance for the decision of possession and the ownership and further also it cannot be relied upon for getting a decree against the defendants.

7. It would be pre-mature to decide these questions here in second appeal. Obviously the judgment is vitiated on account of non-consideration of the document (Ex.1) which is a material document between the parties.

8. Consequently, the judgment of the first appellate court is set aside allowing this second appeal by remanding the case to the first appellate court. The first appellate court would now re-hear the entire appeal and decide the case afresh according to law. The parties would appear before the Additional District Judge Kishangarh-Bas (Alwar) on 10th July, 1985, and it would not be necessary to send information to the parties any more as the learned counsel undertake to produce their clients on that date before that court.

9. The parties would bear their own costs, so far as this second appeal is concerned.

10. The registry should send the record of the lower courts to the Additional District Judge, Kishangarh-Bas (Alwar) forthwith.

