

Uda Ram and ors. Vs. Sedhya and ors.

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Court : Rajasthan

Decided On : Nov-19-1991

Reported in : 1992(1)WLC414; 1991WLN(UC)374

Judge : R.S. Kejriwal, J.

Appeal No. : S.B. Civil Revision Petition No. 457 of 1989

Appellant : Uda Ram and ors.

Respondent : Sedhya and ors.

Advocate for Pet/Ap. : Mr. Mathur, Mr. Jain

Disposition : Petition allowed

Judgement :

R.S. Kejriwal, J.

1. This revision has been directed against the order dated 31.5.89, passed by learned Additional District Judge, Dausa, in Civil Miscellaneous Appeal No. 36/1985, by which he confirmed the order dated 12.8.1985, passed by learned Munsif, Bandikui, on an application for temporary injunction.

2. The relevant facts giving rise to this revision are that the plaintiff non petitioners filed a suit against the defendant petitioners for injunction. They also filed an

application for temporary injunction praying that the petitioners be restrained from going the taking their bullocks through eastern side of Khasra No. 6343. The trail court allowed the application for temporary injunction vide order dated 12.8.1985. Against the order of the trail court, the defendants filed an appeal. During the pendency of appeal, the petitioners submitted an application under Order 41 Rule 27 CPC alongwith the order of Tehsildar, Baswa, report of Patwari alongwith site plan. It seems from the record that no order was passed on this application by the lower appellate court and ultimately the lower appellate court vide its order dated 31.5.1989, rejected the appeal of the petitioner. Being aggrieved with the said order, the petitioners have come in revision.

3. It has been argued by Mr. Mathur, counsel for the petitioners that the lower appellate court did not consider the application of the petitioner submitted under Order 41 Rule 27 CPC. The plaintiff non-petitioners also submitted reply to the said application. Mr. Mathur argued that from the documents submitted by the petitioners before the appellate court it is apparent that the plaintiffs have another way for their filed and as such their appeal should have been allowed by the lower appellate court. He further argued that as the lower appellate court did not consider the application and the documents submitted alongwith it and as such committed serious illegality and irregularity in passing the impugned order.

4. On the other hand, Mr. Jain, counsel for the plaintiff non petitioners argued that the petitioners did not argue the said application before the lower appellate court and under these circumstances it may be deemed that the lower appellate court rejected the said application of the petitioners. He argued that the lower appellate court did not commit any illegality and irregularity in deciding the appeal. He further argued that if this Court is of the view that the documents filed by the petitioners before the first appellate court were not considered by the said Court, this Court can consider those documents in revision. He further argued that no such ground was taken by the petitioners in their memo of revision. He also argued that the documents have no bearing.

5. After hearing learned Counsel for the parties, I am of the view that when the petitioners submitted application under Order 41 Rule 27 CPC the lower appellate

court should have decided that application. By not deciding the application the trial court has refused to exercise its jurisdiction vested in it by law. Under these circumstances, in my view the order passed by the lower court is perverse and in case the same is allowed to stand, it would cause injury to the petitioners.

6. Consequently, I allow the revision, set-aside the order dated 31.5.1989 passed by learned Additional District Judge, Dausa, and direct him to decide the application of the petitioners submitted under Order 41 Rule 27 CPC immediately within a period of one month from the receipt of the record. If the Court allows the application, then the said Court is directed to give opportunity to the plaintiff non petitioners to rebut the documents and then to decide the whole appeal within a period of six months from the receipt of record.

7. Both the parties are directed to appear before the lower appellate court on 11.10.1991.

8. The office is directed to return the record immediately alongwith a copy of this order to the appellate court.