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Court : Rajasthan

Decided On : Aug-01-2001

Reported in : 2002(4)WLN514

Judge : Prakash Tatia, J.

Appeal No. : S.B. Civil Misc. Appeal No. 839 of 2000

Appellant : Balak Ram

Respondent : Bageshwari Devi

Disposition : Appeal dismissed

Judgement :

Prakash Tatia, J.

1. Heard learned Counsel for the parties. Perused the order. Learned Counsel for the appellant placed on record a report obtained by the appellant from the Tehsildar (LR), Anoopgarh by which the injunction application of the appellant was dismissed by the trial Court.

2. Learned Counsel for the appellant submitted that the appellant is in possession of the land in dispute and his possession is required to be protected as the land in dispute was subject matter of the agreement to sell in favour of the appellant and agreement to sell was executed on 19th March, 1983.

3. According to learned Counsel for the appellant the appellant was in continuous possession of the land in dispute and there is no proof in favour of the respondent for possession of the land in dispute with respondent. Therefore, the appellant is entitled to protect his possession and the respondent has no right to evict and dispossess the appellant from the land in dispute.

4. The trial Court took note of the entire material on record and categorically held that no documentary evidence has been placed on record by the appellant-plaintiff in support of his possession whereas the respondent has placed on record the documents, which are mentioned in page No. 4 of the order. It is relevant to mention here that the trial Court also observed that the agreement was not even attested by the notary public or by Tehsildar for which learned Counsel for the appellant submitted that it is not the requirement of law for getting attestation of the agreement to sell from notary public or Tehsildar. It may be true that there is no requirement for attestation of the agreement to sell by the notary public and Tehsildar but to show that agreement to sell was authentic and executed by the executant and on the date mentioned in the agreement, attestation by the Tehsildar or notary makes the document more credible. Therefore, this was one of the factors considered by the trial Court, which cannot be said to be an illegal approach or the approach is against any principle of law.

5. Learned Counsel for the appellant vehemently submitted that as per the report of the Tehsildar dated 12th Dec, 2000 filed today in Court, it is clear that appellant is in possession of the property. I perused the report of the Tehsildar and also application, which was moved by the appellant before the Tehsildar. In application dated 4th Dec, 2000 appellant stated that he is in possession of property since the date when he purchased the land in dispute though it is an admitted case that appellant has not purchased the land in dispute as there is no sale deed executed in favour of the appellant. Anyway on 4th Dec, 2000 appellant again categorically stated that he is in possession of the property, assuming for the sake of argument, it is the date of agreement, then it comes from the year 1983 and this is an admitted case that appellant was behind the bars from 1984 to 1999 as convict for life imprisonment, therefore, the fact stated by the appellant on face of it is a wrong statement of fact. Not only this but even the report of the Tehsildar completely

falsified the claim of the appellant. The report of the Tehsildar dated 12th Dec, 2000, on back side of the application, says that one Bhirchand Odh was in occupation of the house over the land in dispute and he was cultivating the land and even appellant's case is not that Bhirchand Odh was in possession of the land on behalf of the appellant in the application. It is also not clear from the report whether prior to this report any notice was issued to the respondent or not. The report also destroy the case of the appellant. In this report dated 12th Dec, 2000 it is mentioned that the cultivation is since last one year only whereas the case of the plaintiff- appellant even in application is that he is in possession since the date of agreement to sell.

6. The trial Court also found that there is material alternation in the agreement and no documentary evidence is in favour of the appellant whereas other documents show the possession of the respondent. Therefore, there is no illegality in the order of the trial Court.

7. Learned Counsel for the appellant submitted that even if appellant is in possession of the property in dispute as trespasser even then he is entitled to protect the possession. But here in this case the appellant was not found in possession of the property in dispute and the judgment cited by the learned Counsel for the appellant has no application to the facts of this case.

8. Hence, the appeal of the appellant is dismissed.