

Surinder Singh Vs Tilak Raj

Surinder Singh Vs Tilak Raj

SooperKanoon Citation : sooperkanoon.com/904803

Court : Delhi

Decided On : Jul-26-2010

Judge : Mr. Indermeet Kaur, J.

Acts : Indian Penal Code (IPC) - Sections 453.

Appeal No. : R.S.A.11/2009 & C.M.Appl.498/2009

Appellant : Surinder Singh

Respondent : Tilak Raj

Advocate for Pet/Ap. : Mr.Diwan Singh Chauhan, Adv.

Judgement :

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

ORDER

1. This second appeal is directed against the impugned judgment dated 22.10.2007 endorsing the finding of the trial court dated 19.3.2005 wherein the suit of the plaintiff/respondent Tilak Raj for possession and damages had been decreed in his favour.

2. This appeal has been preferred by the tenant/appellant. The questions of law have been formulated on page 6 of the appeal. It is submitted that the landlord/respondent i.e. Tilak Raj, even as per his own case was the lessee of the lessor who is Delhi Development Authority (DDA); DDA should have been impleaded as a party. Further the conviction of the respondent Tilak Raj for the offence punishable under Section 453 of the IPC was primarily the reason for treating the appellant as a tress-passer which is an incorrect appreciation of the legal proposition; judgment of the criminal court is never binding on the civil court. Further the suit filed by the respondent for possession/simplicitor without asking for the relief of a mandatory injunction seeking demolition of the unauthorized structure on the suit property was also by itself not maintainable; all these submissions have raised a substantial question of law.

3. Arguments have been heard.

4. This was a suit filed by the plaintiff seeking recovery of plot no.B-11/492, Raghubir Nagar, Najafgarh Road measuring 25 sq.yds which had been allotted to him vide possession and allotment slip no.2945 dated 12.1.1997 issued by the DDA at the rate of Rs.8/- per month. Plaintiff had constructed a boundary wall and gate thereon and was in possession. In April, 1997, the defendant in his absence had unauthorizedly and forcibly taken possession of the suit property. In para 8 of the plaint it is stated that on this plot the defendant had illegally raised an unauthorized construction i.e. with temporary ACC sheets. Prayer for possession of the aforesaid property along with mesne profit had been made.

5. The trial judge had framed six issues; five witnesses on behalf of the plaintiff and four witnesses on behalf of the defendant had been examined. Trial judge had held that the record proved that the plot had been allotted in favour of the plaintiff vide possession slip Ex PW-4/2 evidencing the allotment and the possession in his favour. DW-2/2 the order dated 20.06.1977 in the property register of the Department evidenced that the name of the defendant had only been recommended for allotment. This document had been examined and appreciated by the trial court. The contrary stand of the defendant of the date of his allotment; coupled with the documentary evidence i.e. the allotment and possession slip in

favour of the plaintiff had led the trial court to discard the document Ex.DW-2/2. Defendant was held to be a tress-passer.

6. The objection about non-joinder of the DDA was never taken in the written statement.

7. The trial judge had as another piece of evidence taken support of the judgment of the criminal court Mark A wherein the defendant (appellant herein) had been convicted for the offence punishable under Section 453 of the IPC. Categorical finding of the trial judge was that it is a settled proposition that the judgment of a criminal court is not binding on the civil court. Reference was only made to this judgment to support his findings which were otherwise arrived at on the basis of the oral and documentary evidence adduced before the court. Suit of the plaintiff was accordingly decreed.

8. Suit was for possession and mesne profits. Plaintiff had clearly averred that after the unauthorized occupation of the plot, the defendant had made an illegal structure therein. Prayer for possession did not have to be coupled with any other additional prayer of a mandatory injunction. This submission of the counsel for the appellant is bereft of any merit. The suit of the plaintiff was adequately protected under Section 9 of the Code of Civil Procedure.

9. The findings of the trial court were endorsed by the appellate court; finding of both the courts below was that the defendant/appellant was an unauthorized occupant. The grounds of appeal as also the substantial question of law raised in the body of the appeal do not raise any question of law much less any substantial question of law.

10. This court is bound by the parameters as contained in Section 100 of the Code of Civil Procedure. There is no merit in the appeal. Appeal as also the pending application is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com