



HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil Second Appeal No. 40/2020

1. Rama S/o Sh. Padma, Aged About 60 Years, R/o Peeparla Ki Dhani, Tehsil Ahore, Distt. Jalore
2. Kesi W/o Sh. Padma, Aged About 56 Years, R/o Peeparla Ki Dhani, Tehsil Ahore, Distt. Jalore
3. Hema Ram @ Sanwlia S/o Sh. Rama, Aged About 34 Years, R/o Peeparla Ki Dhani, Tehsil Ahore, Distt. Jalore

-----Appellants

Versus

1. Jasa Ram S/o Sh. Padma, R/o Peeparla Ki Dhani, Tehsil Ahore, Distt. Jalore
2. Laxminarayan @ Lakhma Ram S/o Sh. Heeralal, R/o Muleva, Tehsil Ahore, Distt. Jalore
3. Chatraram S/o Sh. Bhoma, R/o Nimbala Ki Dhani, At Present Residing At Bhadrarjun, Tehsil Ahore, Distt. Jalore
4. Jogaram S/o Sh. Tikma, R/o Khudasa, At Present Residing At Bhadrarjun, Tehsil Ahore, Distt. Jalore
5. Chenaram S/o Sh. Galba, At Present Residing At Bhadrarjun, Tehsil Ahore, Distt. Jalore
6. Seeta D/o Rama, R/o Peeparla Ki Dhani, Tehsil Ahore, Distt. Jalore

-----Respondents

For Appellant(s) : Mr. Nitesh Mathur.

For Respondent(s) :

HON'BLE MR. JUSTICE ARUN BHANSALI

Judgment

16/08/2021

This appeal under Section 100 CPC is directed against judgment and decree dated 21.1.2015 passed by Civil Judge (Sr. Division), Jalore and judgment and decree dated 28.11.2019 passed by District Judge (Family Court), Jalore, whereby, the suit



filed by respondent -Jasa Ram has been partly decreed and the appeal filed by the appellants has been rejected, respectively.

The suit for partition, permanent injunction and possession alongwith mesne profit for use and occupation was filed by the plaintiff against Laxmi Narayan and the appellants *inter alia* with the averments that plot of land at Bhadrajoon Ki Dhani was jointly purchased by plaintiff and defendant No.1 on 27.4.1981; since the date of purchase the plaintiff and defendant No.1 are in possession of the plot, boundaries thereof were indicated in the plaint, a patta dated 27.5.1996 was also issued in favour of the plaintiff. It was claimed that after purchase of the plot, plaintiff and defendant No.1 constructed six shops and one shop was constructed at the back of shop No.5 and 6 alongwith a water tank etc., the plot was not partitioned, both the parties have equal share, the defendant No.2 was plaintiff's brother, defendant No.3 his sister-in-law, defendant No.4 his nephew and defendant No.5 his niece, who were not favourably inclined to the plaintiff.

Defendants No.2 to 8 were bent upon dispossessing the plaintiff and, therefore, on 24.7.2002, an FIR was lodged and challan was filed by the police, in which, it was held that the possession was that of plaintiff. The defendant No.3 also lodged a false FIR, in which, charge-sheet was filed and matter is pending.

The plaintiff filed suit for permanent injunction on 28.1.2004 before the Civil Judge (Jr. Division), Jalore, which was pending for service of defendants, when plaintiff reached the disputed plot on 01.02.2004 on shop No.1 defendant No.3 had put lock, on shop No.2 defendant No.6 was in possession, similarly on shop No.3 Jogaram and on shop No.6 Chaina Ram were in forceful possession and the plaintiff was not permitted to enter the



premises. It was alleged that defendants have trespassed over the property and they have no legal right and, therefore, the plaintiff be handed over possession.

Further allegations were made that defendant No.1 was raising construction over the plot, for which, he had no right. It was prayed that the suit be decreed, possession be handed over to the plaintiff after partition by metes and bounds with defendant No.1, injunction be granted against defendants and mesne profit for use and occupation of the shops was sought.

Written statement was filed by defendants No.2 to 6 denying the averments made in the plaint. It was claimed that the plot was purchased by plaintiff's and defendant No.2's father – Padma as Karta of the joint family from the income of the family and as plaintiff alone was available in the village, only his name was indicated, the plaintiff has alone not paid the consideration and as such he was not entitled for half share, the property belongs to the joint family, the plaintiff never remained in possession, the same was in possession of the defendants, the shops were constructed by the defendant No.1 and other defendants, the property was partitioned by their father between them, whereby, the plot was given to the defendant and plaintiff was given two storey house.

Further objections were raised about the limitation, pecuniary jurisdiction of the court and that suit for permanent injunction without possession was not maintainable. The defendant No.1 also resisted the suit.

Based on the averments of the parties, the trial court framed as many as 14 issues. On behalf of the plaintiff, two witnesses i.e.



plaintiff himself and his father – Padma were examined. On behalf of the defendants three witnesses were examined.

After hearing the parties, the trial court came to the conclusion that defendant No.1 was in possession of half of the plot and plaintiff himself accepted that defendant No.2 and others were in possession of half of the plot. It was held based on patta (Ex.3-A) that plot was purchased by the plaintiff, the fact about construction of the shops by the plaintiff was held as not proved. It was held that between the parties it was already decided by competent court that the plot already stands partitioned between defendant No.1 and the plaintiff, based on the statements of plaintiff and defendant No.1's father, it was held that the plea of partition sought to be raised by the defendant had no substance. Ultimately based on the findings on various issues, the suit was partly decreed against defendants No.2 to 6 and 8.

Feeling aggrieved, the appellants filed first appeal.

The first appellate court, after hearing the parties, reiterated the findings recorded by the trial court and dismissed the appeal.

It is submitted by learned counsel for the appellant that the two courts below fell in error in decreeing the suit and not accepting the plea raised by the appellant regarding the property in question being joint and the same having been partitioned and defendant being in possession of the property pursuant to the said partition and, therefore, the judgments impugned give rise to a substantial question of law.

I have considered the submissions made by learned counsel for the appellants and have perused the judgments passed by the two courts below.



The trial court after thoroughly discussing the evidence, which was led by the parties and specially the statement of Padma – father of plaintiff and defendant No.2 came to the conclusion that the suit property was indeed owned by the plaintiff in whose name the documents stand and that the defendant No.2 and his family were trespassers over the said plot of land.

The appellants failed to lead any cogent evidence to substantiate the contention that the property was purchased out of any joint funds and that there was partition in the family, whereby, the suit plot came into their share. In absence of any cogent evidence led in this regard and the fact that the sale deed as well as the patta of the land in question stand in the name of plaintiff, no fault can be found in the concurrent findings recorded by the two courts below.

Learned counsel for the appellants failed to point out any perversity in the concurrent findings of fact recorded by the two courts below so as to give rise to any substantial question of law.

In view of the above discussion, there is no substance in the appeal. The same is, therefore, dismissed.

सत्यमेव जयते (ARUN BHANSALI),J

17-Sumit/-