

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.11338 OF 2017
(Arising out of SLP(C)No.4250/2016)

ZILA PANCHAYAT ETAH ... APPELLANT(S)

VS.

OM PRAKASH SHAH ... RESPONDENT(S)

WITH

CIVIL APPEAL NO.11339 OF 2017
(Arising out of SLP(C)No.22411/2016)

ZILA PANCHAYAT ETAH ... APPELLANT(S)

VS.

VIKRAM SINGH & ORS. ... RESPONDENT(S)

O R D E R

1. Leave granted.
2. Heard learned counsel for the parties.
3. The appeals have been preferred by the defendant-Zila Panchayat, Etah. Aggrieved by a common judgment and order passed by the High Court in two second appeals arising out of two suits. The High Court affirmed the judgment and decree passed by the trial court.
4. The plaintiffs, namely, Om Prakash Shah and Vikram Singh, filed suits. Some other persons, who also joined as plaintiffs in the capacity as tenants, had put some

temporary wooden structures (kiosks) on the area in question. In the suit, relief was prayed for issuance of permanent injunction in respect of the suit land.

5. It was averred in the plaint filed in O.S.No.77/2002 by Om Prakash Shah, that one collapsed/dilapidated building at Mohalla Brahminpuri, City Marhara, District Etah, existed only in the shape of remains and that it was a property that belonged to the plaintiff, boundaries were also depicted in paragraph 2 and 3 of the plaint filed by Om Prakash Shah. The building had collapsed about 50 years back. There was one stone which recorded that building had been constructed by Panna Lal Shah, the great-great-grandfather of Om Prakash Shah, who was a business man. The building had been constructed by District Board, Etah, to a run school, with the permission of the owner of the property. The District Board used to run a school in that building and later on, building was returned to the property owner. During the life time of Guljari Lal, the grand father of the plaintiff, till 1957 plaintiff remained in possession of the property. Some temporary wooden structures were erected by the plaintiffs. It was averred that the defendant, Zila Panchayat had no concern with the property, and the wooden shops were given to the tenants on rent.

6. Earlier a suit, i.e, O.S.No.17/1994 was filed by the plaintiff, Vikram Singh, along with some others, praying

for a mandatory injunction. However, the said suit was dismissed on 11.1.2002, due to non-appearance of the plaintiffs. The plaintiff, Om Prakash Shah, filed an application for impleadment as a party in O.S.No.17/1994, which was unfortunately dismissed. Aggrieved by rejection of his application, Om Prakash Shah filed a revision against the said order, which also was dismissed with a finding that the plaintiff, Om Prakash Shah, has no legal right to remain in possession as the suit was filed for issuance of permanent injunction restraining the defendants from erecting wooden structures/shops over the property.

7. In the written statement filed by Zila Panchayat, in the present case it was contended that the land was still used as a sports and prayer ground for students, the plaintiff, Om Prakash Shah, has no relation or business with any part of the property in question and none of the ancestors of the plaintiff were residents of Farookabad and Lala Pannalal Sahukar was not the family member/ great-great-grand-father of the plaintiff. The plaintiff wanted to usurp the property in question. The plaintiff mentioned the name of Harnarayan as the father of Panna Lal, which was not correct. That a school was run on the land in question after seeking permission from the appropriate authorities. A letter issued by the Chairman of the District Board, which was filed by the plaintiff, stating that the District Board took permission from the owner for

running the school, was forged and fabricated. There was no reason to issue such a letter, as the school was running previously and school building was already constructed. Therefore there was no need to take such permission by the District Board for running the school and no question arises to give the building or its land back.

8. It was further contended in the written statement that the property in question has been entered in the Government Register as Nuzul Khasra number 594, which was handed over to the District Board in the year 1892 for management. A school was running over this Khasra No.594, which was subsequently renumbered as 14 in the village records and 2/212 in the municipal records. The plaintiff had intentionally not arrayed the State of Uttar Pradesh as a party to the suit and on account of such non-joinder of the State, the plaintiff is not entitled to any relief. It was also averred that the market value of the land in question was not less than 20 lakhs at that point of time (in 2003) when suit was filed, that there was no proper valuation done for the suit and hence, the suit was liable to be dismissed.

9. The Zila Panchayat has adduced documentary evidence, i.e., property record maintained by the concerned authorities to support its case. The revenue record indicate property Nuzul Khasra No.595 to be the school property. Municipality register has been produced which

records disputed plot No.2/212 situated at Bada Bazar in Marhara Municipality, belonging to Zila Parishad. Apart from that, even in the copy of Khatauni issued on 23.02.1994 in respect of Tehsil & District Etah, regarding 1400 Fasli=1993-1994 of Pargana Marhara, the property is recorded in the name of school under the ownership of Management Zila Parishad. The plaintiff, Om Prakash Shah, has admitted in the deposition that the land of disputed ownership is Survey No.212. It is apparent the survey number is recorded in relevant document under the ownership of Zila Parishad, which is clear from the property register maintained by the Municipality.

10. The trial court decreed the suit in favour of the plaintiffs-respondents. The first appeal as well as the second appeal filed by the appellant herein were also dismissed affirming the judgment and decree passed by the trial court on the basis of oral evidence adduced by the plaintiffs. The evidence adduced by the respondent had been discarded.

11. We have heard learned counsel for both the parties at length, and we are of the considered view that the trial court, the first appellate court and the High Court gravely erred in law in decreeing the suit, and First Appellate Court and the High Court erred in affirming the decree, without looking to the matter in its proper perspective.

12. Even assuming the averments in plaint are correct that the building had fallen down after it was given to the school, had been constructed by Zila Panchayat on the land. The relevant paragraph from the plaint is extracted hereunder :

“6. That when the building of the property as mentioned in the abovenoted para 1 was constructed, with the permission of owner of the property, District Board Etah used to run a school therein and after closure of the school, the building was returned to the property owner.”

It is apparent from the aforesaid pleadings of the plaintiff that the permanent construction of school building was raised on the land by the District Board, Etah. Even assuming for a moment, case set up is correct, once licensee has raised work of permanent character and incurred expenses, it becomes irrevocable under Section 60 of the Indian Easments Act, 1882. Section 60 of the Indian Easemens Act, 1992 is extracted hereunder :

“License when revocable.-A license may be revoked by the grantor, unless-

1. It is coupled with a transfer of property and such transfer is in force;
2. The licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in the execution.

13. Thus, in our view, even as per the pleadings of the plaintiff, the suit could not have been decreed. Apart from that, we find that the findings recorded by the trial court

as to the ownership of plaintiffs are wholly perverse and impermissible. The documentary evidence could not have been discarded in the method and manner in which it has been done. There was absolutely nothing to rebut the Nazul Khasra or the records maintained by the municipality and Zila Parishad. The appellant had pleaded Survey numbers in its written statement very clearly and had adduced evidence in this regard. There was absolutely nothing to discard the documentary evidence adduced by the appellant and rely upon oral *ipse dixit* evidence of the plaintiff-respondent. There is statutory presumption of correctness of revenue entries which has not been rebutted in the instant case. The plaintiff-respondent was claiming his ownership on the property in question, but no documentary evidence had been adduced on his behalf indicating that they were the owners of the property in question. Absence of entry in relevant documents of ownership also negates case of plaintiffs. Thus the property in question was clearly under the ownership of the Government. Even assuming that it belonged to the ancestors of the plaintiff, once the land had been given to run a school, which had been constructed on the land by District Board, obviously licence could not have been revoked. It was admitted by the plaintiff, Om Prakash Shah, that the property in question is plot No.212. The record indicates that it is owned by respondent-plaintiff.

14. Thus we find no legal basis to sustain the judgment and decree passed by the courts below, the same are wholly unsustainable. An attempt has been made by the plaintiff to illegally usurp the valuable property of the school. Suits were frivolously filed without any right, title or interest. The judgment and decree passed by the courts below are set aside. The appeals are allowed, with costs of Rs.25,000/- in each of the matter. Let the costs be deposited by the plaintiffs-respondents with the Supreme Court Bar Association within a period of six weeks and compliance thereof be reported to this Court.

.....J.
[ARUN MISHRA]

.....J.
[MOHAN M. SHANTANAGOUDAR]

New Delhi;
1st September, 2017.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).4250/2016

(Arising out of impugned final judgment and order dated 28-04-2015 in SA No.488/2015 passed by the High Court Of Judicature At Allahabad)

ZILA PANCHAYAT ETAH

Petitioner(s)

VERSUS

OM PRAKASH SHAH

Respondent(s)

(With appln.(s) for exemption from filing O.T. and for bringing on record additional facts]

WITH

SLP(C)No.22411/2016 (XI)

Date : 01-09-2017 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Petitioner(s) Mr. Ujjwal K. Jha, Adv.
Mr. Braj Kishore Mishra, AOR
Ms. Aparna Jha, Adv.
Mr. Abhishek Yadav, Adv.
Mr. Karan Sharma, Adv.

For Respondent(s) Mr. S.R. Singh, Sr. Adv.
Mr. Ankur Yadav, Adv.
Mr. Dhruv Paliwal, Adv.
Ms. Shweta Yadav, Adv.
Mr. Mangal Prasad, Adv.
For Ms. Asha Gopalan Nair, AOR

Mr. Rajshekhar Rao, Adv.
Mr. Varun Mishra, Adv.
for Ms. Liz Mathew, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeals are allowed in terms of the signed order, with costs of Rs.25,000/- in each of the matter. Let the costs be deposited by the plaintiffs-respondents with the Supreme Court Bar Association within a period of six weeks and compliance thereof be reported to this Court.

(Sarita Purohit)
Court Master

(Tapan Kumar Chakraborty)
Branch Officer

(Signed order is placed on the file)