
Ram Bhajan and another Vs Abdul Rahman and others

Second Appeal No. 1674 of 1975

Court: Allahabad High Court

Date of Decision: March 19, 1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Section 100, 96#Evidence Act, 1872 " Section 101, 104

Citation: AIR 1997 All 17 : (1996) 2 CivCC 115

Hon'ble Judges: S.K. Phaujdar, J

Bench: Single Bench

Advocate: K.K. Bajpati, for the Appellant; M.A. Qadari, for the Respondent

Final Decision: Dismissed

Judgement

1. This second appeal u/s 100 CPC is directed against the judgment and decree dated 22-5-1975 passed by the IIInd Addl. District Judge,

Fatehpur, in Civil Appeal No. 61 of 1974 whereby the learned first appellate Court had reversed the judgment and decree dated 20-4-1974

recorded in Original Suit No. 493 of 1970 passed by the Additional Munsiff, Fatehpur. The aggrieved plaintiffs have preferred this appeal.

2. The suit of the plaintiffs was filed for a property which was a dilapidated house described as a bagar. There was no dispute concerning the

identity of the land. The plaintiffs claimed the same as owners in possession and made a prayer for a perpetual injunction against the defendants for

restraining them from interfering with the possession of the plaintiffs. As an alternative measure, the plaintiffs claimed relief of possession in case

they were found to be out of possession.

3. The defendants, on the other hand, claimed that it was their bagar lying contiguous to their house and the plaintiffs had never been in possession

thereof. The defendants claimed possession by way of storage of agricultural implements, storage of the materials for taj is taken out every year for

the Moharram as also by tethering cattle etc.

4. The judgments of the Courts below indicate that the parties had not adduced any documentary evidence in proof of their claims and both the

parties relied on oral evidence. A Commissioner was sent under orders of the Court to look to the situation of the land and the Commissioner had

made an initial report. Subsequently, under orders of the Court, the Commissioner had made a further report also. The Court of the first instance

believed the case of the plaintiffs and held that the plaintiffs established their ownership and possession over the land in suit and, accordingly, it had

decreed the suit. The first appellate Court, how-ever, placed reliance on the second report of the Commissioner and was further of the view that

although the defence case was not an acceptable one, the plaintiffs could not have gained from the weakness of the defence case and were

required to prove their own case under the law. On an analysis of the evidence, the first appellate Court disbelieved the plaintiffs' witnesses and

held that the plaintiffs had failed to prove title and possession and were not entitled to the reliefs claimed. The appeal was allowed and the suit of

the plaintiffs was dismissed.

5. This appeal was filed in the year 1975 prior of the amendment of the CPC (in short, CPC) requiring framing of the-substantial questions of law

at the the time of admission of a second appeal.

6. The appeal, however, made out a set of grounds as indicated in the memorandum of appeal. The first ground taken therein was that the first

appellate Court had allowed the appeal after giving contradictory findings. The learned counsel for the appellant submitted that the first appellate

Court had once discarded the defence theory that the defendants had their "parnalas" over the suit property. At a subsequent stage, according to

the learned counsel, the existence of the parnalas was considered to discard the plaintiffs' story. A perusal of the first appellate Court's judgment

indicated that the learned Court below had not disbelieved the fact that there were parnalas of the defendants. The only thing it held was that the

mere existence of the parnalas could not give an ownership to the defendants on the disputed land. The existence of these parnalas was again

brought into action while appreciating the evidence of the plaintiffs' witnesses who had denied the very existence thereof as against the admission

of the plaintiffs on that point. The Court below held that these witnesses were not competent to speak on the possession of the land at all as they

had shown utter ignorance on the situation of the land in this respect. It cannot be stated, therefore, that the learned appellate Court had passed his

judgment on contradictory findings.

7. The next point on which the appellate judgment was challenged was that the Court below should not have placed reliance on the additional

report of the Commissioner. The ground for such attack was that the trial Court had held it to be a manipulated one. The first appellate Court was

a Court of facts and it had every right to view the facts from its own angle giving good reasons for its opinion. Simply because the trial Court had

described a particular document as a manipulated one, the first appellate Court was not estopped from reopening that matter. Nothing has been

placed before this Court to infer any illegality in the approach of the Court below to rely upon the additional report of the Commissioner.

8. It was further urged in the memo of appeal that the defendants had not pleaded the case which they tried to develop further. The reading of the

pleadings indicate that while the plaintiffs claimed ownership and possession over the bagar the same was the claim of the defendants also and they

had indicated what were the acts of possession. If anything more was stated, I find from the appellate judgment, that the same were rightly rejected

and in fact the defendants' case was also not accepted by the first appellate Court. The next point agitated in this appeal was that there was not an

iota of evidence in support of the defendants ownership and possession of the bagar in dispute and, it was submitted, the Court below should not

have allowed the first appeal. This, in my view cannot be raised as a ground of appeal as, in fact, the Court below had discarded the defence cases

also, but he has rightly put the burden on the plaintiffs and has rightly refused to give any benefit to the plaintiffs for the weakness of the defence

case. Another point on which the appeal was pressed was that upon the finding of the trial Court that the plaintiffs were owners in possession of

the suit property, the first appellate Court could not have reversed the decision on irrelevant and extraneous considerations. It is not disputed by

the parties that the case of the parties depended on oral evidence alone. The trial Court gave its own appreciation of the facts and the appellate

Court, it is clear from its judgment, had given good reasons for discarding the evidence of the plaintiffs. He had copiously quoted from the

statements of these witnesses to come to the conclusion that they were unreliable on the point of proving the possession of the plaintiffs on the suit

property. It was finally contended that the lower Court allowed the appeal on points which were not urged at all. A reading of the judgment at

page 2 indicates that it was urged before the first appellate Court that the view taken by the munsif was not correct, and that it was not proved that

the bagar belonged to defendants now, 1 and 2. The first appellate Court had discussed both these points and discarded the second point to come

to conclusion that the defendants also could not prove title or possession, but it was of the view, on the basis of the evidence, that the plaintiffs too

had failed to prove title and possession and thereby failed to discharge their onus. The scope of the second appeal u/s 100, CPC is very limited.

The High Court is not expected to reappraise the facts to come to a conclusion other than the one arrived at by either of Courts below. Even if this

Court felt that on facts the case of a particular party is proved, it is not open for it to substitute its views on facts in place of the views of the lower

Courts unless the view expressed by the learned Court was tainted with perversity. The Court of the first appeal had a right to appreciate the facts

in its own way and good reasons for his arriving at a particular decision have been given. There is no averment before me that the Court had

overlooked any important piece of evidence or had misread the evidence in such a manner that his conclusion becomes tainted. It would be

unwarranted for this High Court to enter into the facts in the absence of any perversity in the approach of the Court below.

9. For the reasons stated above, I find no merit in this second appeal and the same is accordingly dismissed. The judgment and decree of the first

appellate Court stands confirmed. The parties are directed to bear their own costs.

10. Appeal dismissed.