

(2012) 03 AHC CK 0137

Allahabad High Court

Case No: Second Appeal No. 744 of 2011

Chunni Lal

APPELLANT

Vs

Harish Raghav
(Deceased) and
Anothers

RESPONDENT

Date of Decision: March 23, 2012

Acts Referred:

- Specific Relief Act, 1963 - Section 38

Hon'ble Judges: Rajes Kumar, J

Final Decision: Dismissed

Judgement

Rajes Kumar, J.

The plaintiff is the appellant in the suit. The suit was filed for permanent injunction, which has been dismissed by the trial court, against which the appeal has been filed, which has also been dismissed by the impugned order dated 30.05.2011. Hence the present appeal has been filed.

2. The contention of the appellant was that he was the member of society, namely, Govind Nagar Sahkari Grah Nirman Samiti and plot of 100 sq. meter was allotted to him. After the allotment, the possession has been given. The appellant had raised certain constructions over it. The suit for permanent injunction has been filed with the plea that he may not be evicted except in accordance to law. The trial court has refused to grant injunction on the ground that said plot has been sold to Smt. Saroj Balyan against the registered sale deed and, therefore, the allotment in favour of Chunni Lal does not appears to be correct. The appellant failed to prove his legal allotment. The trial court has further recorded the finding that on the basis of identity card, ration card and telephone bill the possession of the plaintiff is not established. The finding recorded by the trial court has been approved by the appellate authority.

3. Learned counsel for the appellant submitted that after the allotment, the appellant has been put in possession of the suit property. Even if he may not have a title over the property but he can not be evicted forcefully except in accordance to law. Reliance is placed on the decision of the Apex Court in the case of Ramesh Chanda Ardawatiya vs. Anil Panjwani, reported in JT 2003 (4) SC, 450.

4. I have considered the submission of learned counsel for the appellant and perused the impugned order.

5. Admittedly, the appellant does not have a title over the suit property. The court below has found that the allotment was not proper and plaintiff failed to prove the legal allotment. Further the finding has also been recorded that the plaintiff had also failed to prove the possession over the suit property. The findings of both the courts below are finding of fact. No substantial question of law arises, which requires consideration.

6. So far as the decision cited by learned counsel for the appellant, referred herein above is concerned, it is not applicable to the present case and is clearly distinguishable on the facts. In the said case, the plaintiff entered into a contract for sale with Sri Ram Niwas Vaidhya. It appears that the plot was allotted to the society in favour of his predecessor intitle. He has been inducted into possession of the plot by Sri Niwas Vaidhya and having constructed the boundary wall. He claimed to be a person rightfully entitled to the plot and yet was sought to be dispossessed by the defendant otherwise than in due course of law. On these facts, the Apex Court has held that the person in possession may not have title to the property yet if he has been inducted into possession by the rightful owner and is in peaceful and settled possession of such property he is entitled in law to protect the possession in law by a person having a title better than what he has. A person in possession of the property cannot be forcibly dispossessed by another rank trespasser and even if the latter does so, the former may be entitled to restoration of possession, because the law respects peaceful possession and frowns upon the person who takes the law in his own hands."

7. In the said case, the plaintiff was inducted into possession by the rightful owner and his dispossession was forcefully sought while in the present case, the plaintiff was not able to prove the genuineness of the allotment in his favour and his rightful possession over the property by a rightful owner. A sale deed was executed in favour of Smt. Saroj Balyan. She is the owner of the property and not the rank trespasser. Thus, the appellant failed to prove its title and lawful possession over the suit property and his entitlement to get injunction.

8. In view of the above, the appeal fails and is accordingly, dismissed.