

(2012) 03 AHC CK 0218

Allahabad High Court

Case No: Second Appeal No. 35 of 2012

Bajrang Bali Pandey

APPELLANT

Vs

Innar Yadav and Others

RESPONDENT

Date of Decision: March 19, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 11
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 9

Hon'ble Judges: Sibghat Ullah Khan, J

Bench: Single Bench

Advocate: Ramendra Asthana and Atul Srivastav, for the Appellant; Sharad Srivastava, Jamal Ali and Sharad Srivastava, for the Respondent

Final Decision: Dismissed

Judgement

Hon'ble Sibghat Ullah Khan, J.

Heard learned counsel for the appellant and learned counsel for respondent no. 1 and respondent no. 4/1 who have appeared through caveat at the admission stage. This Second appeal has been filed by one of the ten plaintiffs of O.S. no.13 of 1984. Rest of the plaintiffs/legal representatives of deceased plaintiffs are respondents no. 5 to 18 in this Second Appeal. The suit was filed by Ram Sudhar Pandey against respondents no. 1 to 3 and respondent no.4 who has died and is survived by respondent nos. 4/1 to 4/4. The suit was decreed by Ist Additional Munsif Ghazipur on 7.5.1988 and defendants were restrained from interfering in the possession of the plaintiff over the property in dispute shown in the map of Vakil Commissioner by latter A,B,C D,E,F, H. Commissioner"s map was made part of the decree. Against the said decree defendants filed Civil Appeal no.142 of 1988. Meanwhile, original plaintiff had died and had been survived by 10 legal representatives one of whom had also died. Appeal was allowed and suit of the plaintiff was dismissed through judgment and decree dated 13.12.2011 passed by A.D.J. (newly created temporary ex-cadre) Ghazipur hence this Second Appeal.

2. The lower appellate court after thorough examination of the evidence on record found that the pukka construction shown by letters KK - DE in the Commissioners map had been made by the plaintiff around 1980 as was evident from the oral statement of plaintiff's witnesses themselves.

3. As far as the old house of the plaintiff is concerned, from the Amin map it is clear that it has got no opening towards land in dispute. No side of the old house of the plaintiff is parallel to any side of the land in dispute. The land in dispute is situate towards southern eastern corner of plaintiff's old house. Moreover, plaintiff gave the dimensions of his old house according to which the total area was hardly 35 sq. yard. The land in dispute is 15 -20 times of the area of plaintiffs old house. Plaintiff's case was that he had taken the land over which he had constructed his old house for Rs. 200/-. However, he did not produce any sale deed. Moreover, from perusal of revenue record, Lower appellate court found that land in dispute was not entered as gaon sabha land on 1.7.1952 and during consolidation it was entered as abadi land. Lower appellate court further found that plaintiff could not even prove that the pukka room and thatched hut existing on the land in dispute belonged to the plaintiff.

4. Initially, plaintiff gave the number of the land in dispute as 34, however, afterwards he denied the said fact but did not give any new number. The lower appellate court from the perusal of the documents filed before it pertaining to consolidation found that old numbers of plot no.34 were 55,56,57 and 58 which were bhoomidhari plots of different persons and during consolidation it was converted into abadi. Accordingly, if on 1.7.1952 the land belonged to different bhoomidhars/ Seerdhar it could not settle u/s 9. Moreover, disproportionately large area of land can not settle u/s 9 of U.P.Z.A.L.R. Act. If a person has got a small house somewhere in a plot of 10 acre he can not claim settlement of the entire area of 10 acre with him u/s 9. u/s 9 of U.P.Z.A.L.R. Act firstly the land must be appurtenant to a house secondly it must be necessary for better enjoyment of the constructed portion and should actually be used as such, thirdly it must have a reasonable ratio with the constructed portion and in no case it shall be double the area of constructed portion. Plaintiff failed to prove any of these ingredients. Accordingly, I do not find any error in the judgment and decree passed by the lower appellate court, Second appeal is, therefore, dismissed under Order 41 Rule 11 C.P.C.