(2010) 03 AHC CK 0264

Allahabad High Court

Case No: Second Appeal No. 829 of 2008

State of U.P. and Another		APPELLANT
	Vs	
Ashok Kumar and Another		RESPONDENT

Date of Decision: March 18, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100
- Specific Relief Act, 1963 - Section 41

Citation: (2010) 4 AWC 4061

Hon'ble Judges: Rakesh Tiwari, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Rakesh Tiwari, J.
Heard standing counsel for the plaintiff appellant, Sri K. K. Arora appearing for the defendant-respondents and perused the record.

2. Standing counsel appearing for the appellant submits that plaintiffs appellant-State of U.P. filed a suit in respect of certain constructions and it was alleged that the constructions aforesaid constituted quarter No. 10 and form part of gata No. 57 measuring 0.490, situate in qasba Moradabad and that the property aforesaid was owned by the State of U.P. through Collector, Moradabad and was under the management of the Collector. It was further alleged that the defendants were trying to take possession of the aforesaid house and hence a decree of permanent injunction be passed restraining the defendants from illegally trespassing quarter No. 10 forming part of gata No. 57 and be further restrained from demolishing it or causing any damage thereto or taking illegal possession thereof.

3. He submits that the suit aforesaid was contested by the defendants, who filed their written statement and asserted that the constructions in question did not

constitute quarter No. 10 nor did it form part of gata No. 57 and instead it formed part of gata No. 56, a part whereof was recorded as "abadi janta". It was stated that 0.008 hectares of land forming part of khasra No. 56 was recorded as "abadi janta" in the revenue records and the disputed construction was the said "abadi janta" which measures 82.17 sq. meters (approximately 0.008 hectares). It was also stated that the aforesaid house initially belonged to one Sri S. D. Singh who was Father (in a Church). He had executed a Will dated 20.1.1968 in favour of his daughter Smt. Kamla Negi. Apprehending her eviction by the State, Smt. Kamla Negi had preferred Original Suit No. 705 of 1992 praying for a decree of injunction to restrain the respondent State not to cause any interference in her possession. The suit aforesaid namely Original Suit No. 705 of 1992 was initially contested by the State which had filed written statement also but later on allowed the proceedings to continue ex-parte against them and that the suit aforesaid was decreed by the judgment and decree dated 26.11.1997. It may also be mentioned here that although the suit aforesaid was decreed on 26.1.1997, an application for restoration of the aforesaid ex-parte decree has been made in the year 2003. However, no efforts whatsoever have been made to get the suit aforesaid restored. The restoration application is pending till date.

4. It was further stated that there was another suit being Original Suit No. 427 of 2001, Kamla Devi v. Surendra Singh, wherein Smt. Kamla Negi had claimed her title over the suit property and had sought a declaration and the suit aforesaid was decreed by judgment and decree dated 27.9.2002 and Smt. Kamla Negi was declared owner of the property in dispute. Subsequently Smt. Kamla Negi through a registered sale deed dated 1.9.2003 had transferred the property in dispute to the defendant-respondent. It was also stated that the defendants respondents were in actual and physical possession of the house in dispute and it was the plaintiffs who were trying to cause interference in their possession. In support of the pleadings aforesaid the parties lead their evidence. The defendants brought on record Judgments and decrees passed in Suit No. 705 of 1992 as also 427 of 2001. They also brought on record all the documents relating to their title including the registered sale deed dated 1.9.2003.

5. The trial court framed the following material issues:

(i) Whether the plaintiff was the owner of the property in dispute;

(ii) Whether the property in dispute formed part of gata No. 57 as claimed by the plaintiff appellant State of U.P. or gata No. 56 (as claimed by the defendant-respondent);

(iii) Whether the plaintiff was in possession or not:

(iv) Whether the property in dispute formed part of quarter No. 10 of Tehsil Building;

(v) Whether the boundary of the property in dispute was incorrect;

(vi) Whether the suit in question was barred by principles of estoppal and acquiescence;

(vii) Whether the suit was barred by Section 41 of the Specific Relief Act;

(viii) Whether the suit was barred by principle of resjudicata;

(ix) Whether the suit was under valued and deficiently stamped; and

(xi) What relief plaintiff was entitled.

6. He submits that name of the State has correctly been recorded on gata Nos. 56 and 57 subsequently and hence purchase of land by the defendant-respondent from Kamla Negi by way of registered sale deed is void and no enforceable right could accrue to the defendant-respondent in this case on the sale of said property. He vehemently urged that in view of the aforesaid facts the findings recorded by the court below against the appellant State are perverse and against settled principles of law.

7. Per contra, Sri K. K. Arora, learned Counsel appearing for the defendant-respondent submits that material issue was as to whether the property in dispute constituted quarter No. 10 forming part of Tehsil Bhawan or not and as to whether it formed part of gata Nos. 56 and 57. Both the courts below after taking material and cogent evidence available on record recorded a finding of fact that the property in dispute did not form part of quarter No. 10 of Tehsil Bhawan nor was it part of gata No. 57 and instead it found thus "plaintiff had miserably failed in proving that the property in dispute formed part of gata No. 57." A finding in this regard has been recorded at page 9 of the certified copy of the judgment of the appellate court. At page 12 (second paragraph) of the certified copy of the appellate court judgment the lower appellate court further found that the plaintiff had failed in proving that the property in dispute forms part of quarter No. 10 Tehsil Bhawan. Again in second paragraph at page 14 of the certified copy of the judgment, the Court found that the plaintiff has clearly failed in proving that the quarter in dispute forms part of gata No. 57 or of quarter No. 10 of Tehsil Bhawan. On the same page, i.e., page No. 14 of the certified copy of the appellate court judgment the Court found that the property in dispute forms part of gata No. 56 recorded as "abadi janta" which corresponds to the house in dispute and that the aforesaid property has not been recorded as Government property. The property which has been mentioned to be not Government property within revenue records, is the property in dispute.

8. At para 15 of the certified copy of the judgment the Court also considered issue relating to title of the property in dispute and at page 16 (last paragraph) the appellate court concluded that the plaintiff appellant had grossly failed in proving its title. Final finding in this regard has been recorded at page 18 of the certified copy of the appellate court judgment. The Court then considered the issue relating to

possession and at page 19 it recorded a finding that it was even admitted to the plaintiff appellant that it was the defendants who were in possession of the property in dispute on the basis of the sale deed dated 1.9.2003 executed in their favour by the original owner Smt. Kamla Negi. At page 20 of the certified copy of the appellate court judgment, the appellate court referred to the proceedings under the Indian Stamp Act which was drawn by Smt. Kamla Negi in favour of the defendants-respondents and in the stamp proceedings aforesaid the State has even demanded additional stamp duty from the defendants-respondents.

9. He next submits that at the fag end of the proceedings the State authorities also tried to make changes in the revenue records by mentioning that the land which was mentioned as "abadi janta" in khatauni of fasli year 1386 to be changed and as against "abadi Janta" it was sought to be recorded as "Janana shafakhana". This exercise was absolutely mala fide as this amendment was made by the State Government itself (by S.D.M., Moradabad) during the discontentment and held that this could not and should not have been done at that stage of the proceedings and that too without affording any opportunity of hearing to the aggrieved party. The findings aforesaid are concurrent in nature and both the courts below have concurrently held that neither the plaintiffs appellants are owners of the house in dispute nor are they in possession thereof. It has also been held that the disputed property does not form part of quarter No. 10 of Tehsil Bhawan and that it is not part of gata No. 57 and it forms part of gata No. 56 which has been recorded as "janta abadi". Both the courts below having concurrently found aforesaid, the suit of the plaintiffs appellants has been rightly dismissed.

10. After hearing the submissions advanced by learned Counsel for the parties, it appears that the plaintiffs appellants have assailed the aforesaid two judgments on highly insufficient grounds and substantial questions of law. Substantial questions of law Nos. 1 and 2 as framed are not applicable in the facts and circumstances of the case as the appeal in question has been primarily decided on the ground that the property in dispute does not form part of quarter No. 10 of Tehsil Bhawan and also not gata No. 57 as claimed by the State. Substantial question of law Nos. 4 and 5 as framed are also not applicable in the facts and circumstances of the case. As regards substantial question of law No. 3 as framed in the appeal, both the courts below have clearly found that the property in dispute forms part of gata No. 57 measuring 0.008 hectares (2 decimals) which has been so recorded as "abadi janta" in all the revenue records including khatauni of fasli year 1386. Specific finding of fact in this regard has been recorded at page 14 of the certified copy of the appellate court judgment. The aforesaid is a pure finding of fact which cannot be said to be substantial question of law calling for any interference. In this view of the matter the present second appeal lacks merit and is liable to be dismissed.

11. The question is to what constitutes a substantial question of law has been answered in various judgments of Hon''ble Supreme Court. In cases in Santosh

Hazari v. Purushottam Tiwari (Decd.) through LRs. 2001 (1) AWC 824 (SC) and Veerayee Ammal v. Seeni Ammal 2002 (1) AWC 97 (SC), the Hon''ble Supreme Court has described as to what constitutes substantial question of law and it has been answered in para No. 14 of the judgment in Santosh Hazari case (supra) and in para 9 of the Veerayee case (supra). The aforesaid two judgments has been followed by a judgment of this Hon''ble Court in Manjoo v. Tara Chand 2003 (1) AWC 430.

12. The aforesaid question as to what constitutes a substantial question of law has been answered paragraph No. 14 of the judgment in 2001 (1) AWC 824 (SC), thus:

14. A point of law which admits of no two options may be a proposition of law but cannot be substantial question of law. To be ''substantial'', a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law ''involving in the case'', there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by Court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstances of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stage and impelling necessity of avoiding prolongation in the life of any lis.

13. Paragraph No. 25 of the Judgment in Majnoo Vs. Tara Chand, reads as follows:

25. It may further be noticed that the Apex Court in its decision in the case of Santosh Hazari v. Purushottam Tewari 2001 (1) AWC 824 (SC) : 2001 (1) JLJ 401, rendered by the Bench of three Hon''ble Judges had indicated that the phrase ''substantial question of law'', as occurring in the amended Section 100 of the C.P.C. is not defined in the Code. However, it was pointed out that the word substantial, as qualifying question of law'', means, ''of having substance'', ''essential'', ''real'', ''of sound worth'', ''important'' or ''considerable''. It was further pointed out that it is to be understood as something in contradistinction with technical, or no substance or consequence, or academic merely. A point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be ''substantial'' a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, in so far as the rights of the parties before it are concerned.

14. Similar view was also taken in the judgment in Rajendra Kumar Verma Vs. Triyugi Narain Verma, In the aforesaid judgment this Court while placing reliance upon a

Judgment of Hon''ble Supreme Court in 2002 (1) AWC 97 (SC), further held that no finding of fact can be interfered unless there is substantial question of law involved. It further held that the High Court in second appeal cannot go into questions of fact howsoever erroneous finding of fact may be.

15. Thus, viewed from any angle the present second appeal has no substance as no substantial question of law arises for consideration.

16. As a result of aforesaid discussion, the present second appeal fails and is accordingly dismissed. No order as to costs.