

(2016) 02 AHC CK 0030

ALLAHABAD HIGH COURT

Case No: Second Appeal Defective No. 338 of 2015

Beedha

APPELLANT

Vs

Chainu (Deceased) & 4
Others

RESPONDENT

Date of Decision: Feb. 18, 2016

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100

Citation: (2016) 1 ARC 656

Hon'ble Judges: Pramod Kumar Srivastava, J.

Bench: Single Bench

Final Decision: Dismissed

Judgement

Pramod Kumar Srivastava, J. - Heard counsel for the appellant on admission of second appeal and perused the record.

2. Original Suit was filed by the plaintiff with averment that he is owner of disputed property but defendant had dispossessed him. Therefore, he has sought relief for recovery of compensation from the defendant.

3. After admitting written statement, framing issues and accepting the adduced evidences, Additional Civil Judge (S.D.), Anoop Shahar, district Bulandshahr has decreed suit by its judgment dated 7.10.2004. In this judgment trial court had decided the issue no. 1 regarding ownership of disputed property in favour of plaintiff, then it consider theed issue no. 2 regarding eviction of plaintiff by defendant on 22.6.1990, and again decided this issue in affirmative and in accordance with the plaint case. By this judgment the trial court had directed the defendant to vacate the disputed property and handover its possession to the plaintiff.

4. Against the judgment of the trial court defendant had preferred Civil Appeal No. 138/2004 which was heard and dismissed by the judgment dated 30.4.2011 passed by Additional District Judge, Anoop Shahar, Bulandshahr. In this judgment the first appellate court had appreciated evidences and gave its own finding to the effect that plaint case regarding dispossession of plaintiff-respondent is proved and that plaintiff was illegally dispossessed from disputed property of defendants, so he is entitled for its possession. By this judgment the first appellate court had confirmed finding of trial court.

5. Aggrieved by the judgment of the trial court as well as first appellate court, the present second appeal has been preferred by defendant of original suit. This appeal was filed beyond period of limitation, so along with the memorandum of appeal application for condonation of delay in filing appeal under section 5 of the Indian Limitation Act was also moved.

6. At the time of admission, the appellants were directed by this Court to satisfy on following to grounds:

(1) Whether on the ground mentioned by appellant, the delay in filing the appeal may be condoned ?

(2) If delay condonation application of appellant is allowed, then whether the second appeal preferred under section 100 CPC may be admitted ?

7. So far first ground on reasons of delay condonation in filing appeal is concerned, it is mentioned in affidavit annexed with application of the appellant that delay of about 4 years was caused because his counsel Mr. Kanchhi Singh had died and he could not have knowledge of the judgment of the first appellate court. He further stated that during proceedings of execution, he came to know about the judgment of the first appellate court when Amin of the court visited the spot. From perusal of the record this ground appears incorrect and insufficient. Certified copy of the plaint has been filed in which name of Mr. Kanchhi Singh neither there in plaint, nor in decree of trial court or in decree of first appellate court. The name of other lawyer on behalf of defendant-appellant was mentioned in these records, but the name of Kanchhi Singh was nowhere mentioned. These facts shows the ground of delay condonation application are not believable and incorrect.

8. The appellant alleges to have received the knowledge of judgment of first appeal during execution proceedings when the Amin of the Court had visited on spot. But he had not explained that why had he not appeared before the execution court, because no proceedings of eviction is carried out without first serving the notice to judgment debtor.

9. The alleged lawyer Sri Kanchhi Singh is said to have died on 15.1.2013. The grounds mentioned in affidavit and application moved for condonation of delay, after two years, are found not sufficient. The delay of 4 years and 96 days in filing

memorandum of appeal could not be explained satisfactorily. Therefore, the delay application is liable to be dismissed.

10. Apart from it the perusal of record reveals that the dispute between parties related to determination of fact as to whether the plaintiff is owner of disputed property and was illegally evicted from it by defendant. These are question of fact and not of law. Such question can be decided by on the basis of evidence only, as has been done by the lower courts. Therefore, the judgments on facts in present case are based on appreciation of evidences, and findings are apparently acceptable. Such concurrent findings should not be interfered in second appeal by re-appreciation of evidence.

11. On examination of the reasonings recorded by the trial court, which are affirmed by the learned first appellate court in first appeal, I am of the view that the judgments of the trial court as well as the first appellate Court are well reasoned and are based upon proper appreciation of the entire evidence on record. No question of law, much less a substantial question of law, was involved in this case before the High Court. No perversity or infirmity is found in the concurrent findings of fact recorded by the trial court that has been affirmed by the first appellate court to warrant interference in this appeal. None of the contentions of the learned counsel for the appellant-plaintiffs can be sustained.

12. In view of the above, this Court finds that no substantial question of law arises in this appeal. The second appeal is dismissed.

13. Let a copy of this order be sent to the court concerned.