

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

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JUDGMENT

Deenanath.

vs.

Bashiro and another.

S.B.CIVIL SECOND APPEAL NO.280/2004
UNDER SECTION 100 CPC AGAINST THE
JUDGMENT AND DECREE DATED 18.5.2004
PASSED BY SHRI KRISHAN JOSHI,
ADDITIONAL DISTRICT JUDGE NO.2,
BIKANER IN APPEAL DECREE NO.71/2002.

DATE OF JUDGMENT :: 20.12.2005

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. BK Vyas, for the appellant.

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BY THE COURT:

Heard learned counsel for the appellant.

The plaintiff/appellant is aggrieved against the judgment and decree passed by the trial court dated 25.10.2002 and dismissal of his appeal by the appellate court vide judgment and decree dated 18.5.2004.

Brief facts of the case are that the plaintiff earlier filed a suit for injunction only against the defendants which was decreed by the trial court but the first appellate court dismissed the suit of the plaintiffs after holding that the plaintiff failed to prove the possession over the property in dispute. Without challenging the judgment and decree of the first appellate court, the plaintiff filed the present suit for possession of the suit property on the basis of title i.e. Patta which was issued in favour of the plaintiff. The plaintiff did not produce the patta in the present suit and, therefore, both the courts below concurrently found that the plaintiff failed to prove the title of the property and, therefore, is not entitled for decree of possession against the defendants.

According to the learned counsel for the appellant, the plaintiff produced the patta in the earlier suit and issue about title was decided in favour of the plaintiffs but the suit was dismissed on account of the plaintiff not being in possession. According to learned counsel for the appellant, the appellant produced copy of judgment given in the earlier suit and also produced his patta before the Commissioner who was appointed to inspect the site and the Commissioner produced copy of patta before the trial court.

Learned counsel for the appellant also submitted that the appellant has submitted an application under Order 41 Rule 27 CPC before this Court seeking permission to produce additional evidence and by this, the appellant wants to produce the patta of the property in dispute.

I have considered the submissions of learned counsel for the appellant and perused the record.

It will be worthwhile to mention here that the earlier suit bears no.303/1988 and that was decided by the trial court on 19.3.1996. The appeal against the said judgment and decree was preferred by the defendants and the appeal was decided by the appellate court on 5.12.1997. The plaintiff was well aware that his suit was dismissed on the ground that he failed to prove his possession and he sought only relief of injunction in his earlier suit no.303/1988. The consequence of dismissal of the suit might have prompted the plaintiff to file the present suit and apparently it is clear that this suit could have been filed only on the basis of claim of title of the plaintiff. The plaintiff for the reasons best known to him did not produce the patta before the trial court knowing it well that he has to prove his title over the property. Not only this, even after the decision of the trial court, the plaintiff did not produce the patta before the first appellate court and face the natural consequences of dismissal of his appeal by upholding the issue decided by the trial court about lack of title of the plaintiff.

In the application which has been filed before this Court also, the plaintiff failed to give any reason why the plaintiff did not produce patta before the trial court or even before the first appellate court and the plaintiff has filed the application under Order 41 Rule 27 CPC without disclosing what to say of sufficient cause not a cause for

namesake. In these circumstances, there appears to be no reason to allow the plaintiff to reopen the proceedings of the suit which are terminated by the concurrent findings recorded by the two courts below. Apart from it, it will be worthwhile to mention here that even before this Court also, the plaintiff failed to produce the original patta but has produced the photostat copy of patta which is alleged to have been issued in the year 1958.

I do not find any reason to allow the appellant to produce the evidence at this belated stage in a case where the plaintiff's earlier suit was dismissed by the court below as the plaintiff failed to prove his possession and that the plaintiff has lost the possession long back much before he filed the earlier suit in the year 1988. Hence, the application of the appellant under Order 41 Rule 27 CPC is dismissed.

In view of the fact that the plaintiff failed to prove his title over the property, the courts below were right in dismissing the suit of the plaintiff/appellant.

In view of the above, I do not find any merit in the appeal. No substantial question of law is involved in this appeal, therefore, this appeal deserves to be dismissed, hence, dismissed.

(PRAKASH TATIA), J.
S. Phophaliya