

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

JUDGMENT

Civil Second Appeal No.222/2010

Raghunath & Ors.
Vs.
Ramchandra & Ors.

Date of order : 31.5.2011

HON'BLE MR.JUSTICE A.M.SAPRE

Mr. N.M.Lodha, Sr.Advocate assisted by Mr.V.D.Dadhich, for the appellants.

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This is a second appeal filed by the plaintiff under Section 100 of Civil Procedure Code against the judgment and decree dt 19.11.2010 passed by District Judge, Merta in civil appeal No.32/06 which reverses the judgment and decree dt 7.10.2006 passed by Civil Judge (SD), Merta in civil suit No.88/05 (18/01).

3. By impugned judgment/decrees, the first appellate court allowed the appeal filed by the defendant and in consequence dismissed plaintiff's suit by reversing the judgment and decree passed by the trial court which had decreed it.

4. So the question arises for consideration in this appeal is whether first appellate court was justified in allowing the defendant's appeal and in consequence was justified in dismissing the plaintiff's suit. In other words, the question arise for consideration in this appeal is whether appeal involves any substantial question of law within the meaning of

Section 100 *ibid* and if so whether it is worth admitting on such question?

5. Having heard the learned counsel for the appellant and on perusal of the record of the case, I am of the considered opinion that this second appeal does not involve any question of law much less substantial question of law within the meaning of Section 100 *ibid* and hence it is liable to be dismissed as involving no substantial question of law.

6. The appellant (plaintiff) filed a suit essentially to protect his possession over the suit land against the respondent (defendant). It was a suit out of which this second appeal arises against the respondent for an injunction restraining the respondent from interfering in plaintiff's possession over the suit land. The plaintiff asserted that he is and has been in possession over the suit land, whereas the case of respondent (defendant) was that since the plaintiff was an encroacher on the suit land hence he has to vacate the suit land. It is essentially this issue that was gone into on the basis of pleadings and evidence adduced by the parties in the suit. The trial court decreed the suit but the lower appellate court reversed it and dismissed the suit by allowing the defendant's appeal.

7. In my opinion, firstly the question as to whether the plaintiff is an encroacher on the land or not is of fact. Secondly, plaintiff has failed to prove his ownership rights over the suit land. In other words, he has failed to show his nature of possession over the suit land i.e. whether as owner, or as licensee or lessee etc? In the absence of any evidence much less documentary evidence to prove his lawful interest over the land in suit, the lower appellate court was justified in dismissing the suit holding him to be an encroacher over the disputed land.

8. It is not the case, where the lower appellate court while dismissing the suit has failed to take into consideration

any evidence adduced by the plaintiff or has wrongly interpreted the evidence adduced or has failed to take into consideration any pleading or has recorded a finding that no judicial man of average acumen can record.

9. In the light of these well settled parameters, which are required to be taken into consideration while hearing second appeal, I am of the view that the second appeal does not involve any substantial question of law.

10. Though learned counsel for the appellant made attempt to argue the issues but in my view all were on facts and hence did not impress me.

11. In the light of foregoing discussion, the appeal fails and is accordingly dismissed in limine as involving no substantial question of law within the meaning of Section 100 ibid.

(A.M.SAPRE),J.

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