

**HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT
JAIPUR**

S.B. Civil Second Appeal No. 741 / 2011

1. Om Prakash Pareek (since deceased) through legal representatives-
- 1/1. Smt. Kamlesh Pareek W/o Late Shri Omprakash B/c Brahman, Aged About 60 Years, Behind Chaturbhuj Mandir, Manoharpur, Teh. Shahpura, Distt. Jaipur (Raj.)
- 1/2. Aman Pareek S/o Late Shri Omprakash B/c Brahman, Aged About 30 Years, Behind Chaturbhuj Mandir, Manoharpur, Teh. Shahpura, Distt. Jaipur (Raj.)
2. Anop D/o Ramgopal B/c Pareek, Manohar Pur, Distt. Jaipur
3. Munni D/o Ramgopal B/c Pareek, Manohar Pur, Distt. Jaipur
4. Baskanwar D/o Ramgopal B/c Pareek, Manohar Pur, Distt. Jaipur

----Appellants/plaintiffs

Versus

1. Jagdish S/o Ramnath Mahajan, Manohar Pur, Distt. Jaipur
2. Shanti Devi D/o Ramnath W/o Ramkaran, Maharkhurd
3. Murari Lal S/o Shri Ramnath, Manohar Pur, Distt. Jaipur
4. Rajendra Kumar S/o Shri Ramnath, Manohar Pur, Distt. Jaipur
5. Shri Kishan S/o Shri Ramnath, Manohar Pur, Distt. Jaipur
6. Kishori Lal S/o Shri Bhuramal, Manohar Pur, Distt. Jaipur
7. Babu Khan S/o Deenu Khan, Manoharpur
8. Nagar Palika, Mandal Manoharpur At Present Gram Panchayat Manoharpur Through Sarpanch Gram Panchayat Manoharpur

----Respondents/defendants

For Appellant(s) : Mr. Anoop Agarwal

HON'BLE MR. JUSTICE PRAKASH GUPTA

Judgment

28/02/2018

The present second appeal is directed against the judgment and decree dated 25th July, 2011 passed by learned Additional District Judge, Shahpura, District Jaipur whereby the First Appeal filed by the plaintiffs-appellants against the judgment and decree dated 2nd May, 2003 passed by the learned Addl. Civil Judge (Jr.Div.) Shahpura, District Jaipur was dismissed and the judgment and decree of the learned trial court dismissing the civil suit filed by the plaintiffs-appellants was upheld.

Brief facts giving rise to the present appeal are that the plaintiffs-appellants filed a civil suit in the trial court for possession, mesne profit and cancellation of Patta with the averments that Abadi land situated in ward No.2, Manoharpur which is known as 'Kotadi Purohiton wali' belongs to the plaintiffs wherein the plaintiffs are in possession since their forefathers. In their absence, the respondents-defendants encroached upon the land and raised pucca construction. Respondents-defendants Jagdish, Shanti Devi and Murari Lal with the connivance of respondent No.8 Nagar Palika, Manoharpur got issued 3 pattas on 12th March, 1982 in their names. Despite legal notice to the private respondents neither they vacated the land nor the pattas were cancelled, therefore, the suit was filed against the defendants for possession, mesne profit and cancellation of pattas.

The defendants-respondents except respondents Nos. 2,4,7 and 8 and other respondents resisted the suit by filing written statement wherein it was stated that the Nohra belongs to them

and the plaintiffs have no right over the disputed property and question of cancellation of pattas does not arise.

On the basis of pleadings of the parties, learned trial court framed the necessary issues.

To prove their case, plaintiffs examined PW.1 Om Prakash, PW.2 Chhaju Lal, PW.3 Ramdas, PW.4 Phool Chand and PW.5 Girija Shanker. From the side of the defendants, DW.1 Suwa Lal and DW.2 Rajendra Kumar were examined.

After recording evidence of the parties and hearing arguments, the learned trial court dismissed the suit vide judgment and decree dated 2nd May, 2003. Against which Civil First Appeal filed by the plaintiffs-appellants before the lower appellate court was also dismissed vide judgment and decree dated 25th July, 2011. Hence, the present Second Appeal.

Heard the learned counsel for the plaintiffs appellants.

Learned counsel for the appellants has argued that the trial court has not considered (Ex.1) and (Ex.2) in right prospective. From these documents it is proved that the plaintiffs are in possession over the disputed property since their forefathers. There is nothing on the record to show that the land belongs to the Nagar Palika, Manoharpur. Both the courts below have erred in not considering these aspects of the matter. Hence, the appeal deserves to be admitted on the substantial questions of law framed in the memo of appeal.

I have considered the submissions made by the learned counsel for the appellants.

A perusal of the record reveals that the plaintiffs have not produced any document relating to title of the disputed land. A certified copy of the order passed by the Gram Panchayat on 22.4.1965 has been produced as (Ex.1) but it is not proved from this document that it relates to the disputed land. It is also not clear from (Ex.1) that the plaintiffs have any ownership over the disputed land. Therefore, in the absence of any documentary proof, there remains only the oral evidence of the plaintiffs given by PW.1 to PW.4. Their statements have been rebutted by DW.1 and DW.2. Even otherwise in the absence of relief of declaration regarding ownership of the suit land where a cloud was raised over the plaintiff title, mere suit for possession and cancellation of pattas was not maintainable.

A perusal of the impugned judgments of both the learned courts below would reveal that while recording their findings both the courts below have properly appreciated the evidence available on record in accordance with law. Learned counsel for the appellants has not been able to satisfy the Court as to how the findings recorded by the learned courts below are perverse. The findings recorded by both the courts below being findings of facts require no interference of this Court in second appeal. This court is of the considered view that no question of law much less any substantial question of law is involved in this second appeal.

The second appeal is dismissed accordingly.

(PRAKASH GUPTA) J.