

## **Lal Chanda And 9 Others vs Jagdamba Prasad And Another on 2 January, 2025**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:463

Court No. - 36

Case :- SECOND APPEAL No. - 688 of 2024

Appellant :- Lal Chanda And 9 Others

Respondent :- Jagdamba Prasad And Another

Counsel for Appellant :- A.L.Gupta,Satya Prakash Gupta

Counsel for Respondent :- Kalp Nath

Hon'ble Kshitij Shailendra,J.

1. Supplementary affidavit filed today is taken on record.
2. Heard learned counsel for the parties.
3. The appellants were plaintiffs in Original Suit No.657 of 2002, which has been dismissed by the trial court and Civil Appeal No.161 of 2013 arising therefrom has also been dismissed.
4. Suit was instituted claiming a decree for permanent prohibitory injunction. Both the courts below have found that the plaint case is vague and the plaintiffs have not given any measurements or details of the property sufficient to identify the same.
5. Learned counsel for the appellants submits that the courts below have not carefully examined the documents filed by the appellants and findings recorded are perverse in nature. Further submission

is that the respondents' property being located far away from the appellants' property, claim for injunction should have been accepted.

6. Per contra, learned counsel for the respondents submits that the plaintiffs have utterly failed to prove their plaint case and even PW-2, namely, Ramhit, clearly stated in his cross-examination that the appellants are not in possession of the property and that the same is in possession of the defendant-respondents.

7. Having heard learned counsel for the parties, I find that no plot number was mentioned in the plaint. The entire case was based upon marking the property by letters 'a' 'b' 'c' 'd'. A plea of settlement of property in dispute as per Section 9 of U.P. Zamindari Abolition and Land Reforms Act, 1950 was also taken in the plaint, however, the courts below have found that the plaintiffs have failed to prove their case of settled possession since the time before abolition of zamindari. The Courts below have also discussed the documentary evidence led by both sides in relation to different proceedings covered by Original Suit No.48 of 1981 and, thereafter, have arrived at a conclusion that there is a decree in favour of the respondents in relation to the property involved in that lis, however, the properties involved in both proceedings were different.

8. The Court is of the view that in order to establish a claim for injunction, the plaintiff must establish beyond reasonable doubt his title and possession over the property in dispute and in a case where the plaint case is vague and sufficient oral and documentary evidence is not led sufficient to identify the property in dispute, the Court, in the facts of this case coupled with the map attached to the plaint where the house of the defendant-respondents has been described by the plaintiff-appellants as adjacent to the house of the plaintiffs and PW-2 has admitted the possession of the respondents, is of the view that the findings recorded by both the courts below being based upon proper appreciation of oral and documentary evidence and the pleadings of the parties do not require any interference in second appellate jurisdiction.

9. In *Kamti Devi (Smt.) and Anr. v. Posh Ram* (2001) 5 SCC 311, the Supreme Court came to the conclusion that the finding reached by the first appellate court cannot be interfered with in a second appeal as no substantial question of law would have flowed out of such a finding. In *Thiagarajan v. Sri Venugopalaswamy B. Koil*, (2004) 5 SCC 762, the Supreme Court has held that the High Court in its jurisdiction under Section 100 C.P.C. is not justified in interfering with the findings of fact and that it is the obligation of the courts of law to further clear intendment of the legislature and not frustrate it by excluding the same and where findings of fact by the lower appellate Court are based on evidence, the High Court in second appeal cannot substitute its own findings on reappraisal of evidence merely on the ground that another view was possible.

10. Similar view has been taken in *Kondiba Dagadu Kadam vs Savitribai Sopan Gujar and others*, (1999) 3 SCC 722 by observing that disturbance in findings of fact would be contrary to limitations imposed by section 100 C.P.C. The Supreme Court again reminded in *Commissioner, Hindu Religious & Charitable Endowments vs. P. Shanmugama* (2005) 9 SCC 232 that the High Court has no jurisdiction in second appeal to interfere with the findings of fact. The Apex Court, in *State of Kerala v. Mohd. Kunhi* (2005) 10 SCC 139 reiterated the same principle by observing that by such

interference, the High Court would go beyond the scope of Section 100 of the Code of Civil Procedure.

11. In *Madhavan Nair v. Bhaskar Pillai* (2005) 10 SCC 553, the Supreme Court observed that even if the first appellate court commits an error in recording a finding of fact, that itself will not be a ground for the High Court to upset the same. In *Harjeet Singh v. Amrik Singh* (2005) 12 SCC 270, the Apex Court, with anguish, observed that the High Court had no jurisdiction to interfere with the findings of fact arrived at by the trial Court and the lower appellate Court regarding readiness and willingness to perform part of contract in its jurisdiction under Section 100 C.P.C.

12. The view taken in the aforesaid decisions has been reiterated by the Apex Court in *Gurdev Kaur and others vs. Kaki and others*, 2007 (1) SCC 546.

13. No substantial question of law arises for consideration in this appeal.

14. The appeal fails and is, accordingly, dismissed under Order 41 Rule 11 CPC.

Order Date :- 2.1.2025 AKShukla/-