

Chandrika Prasad Agnihotri vs Raj Kishore Shukla And Ors. on 28 February, 2025

Author: Rajnish Kumar

Bench: Rajnish Kumar

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:12245

Court No. - 4

Case :- SECOND APPEAL No. - 347 of 2011

Appellant :- Chandrika Prasad Agnihotri

Respondent :- Raj Kishore Shukla And Ors.

Counsel for Appellant :- Shyam Mohan, Avinash Kumar Srivastava, Shyam Mohan Pradhan, Sushil

Counsel for Respondent :- Raj Kumar Bajpai, Anjani Kumar Srivastava, Bireswar Nath, Shivam

Hon'ble Rajnish Kumar, J.

1. Heard, Shri Avinash Kumar Srivastava, learned counsel for the appellant and Shri Jai Prakash Yadav, learned counsel for the respondent nos.1 and 2. None appeared on behalf of other respondents.

2. Learned counsel for the appellant submits that the appellant had filed a suit for permanent injunction and has proved the possession on the land in dispute but without considering the same, the suit has been dismissed and the appeal filed by the appellant has also been dismissed without considering the same and grounds taken by the appellant. Thus, the impugned judgments and decrees are liable to be set-aside.

3. Per contra, learned counsel for the respondent nos.1 and 2 submits that the appellant has failed to prove his ownership and possession on the land in dispute and after considering the pleadings, evidence and material on records, courts below have recorded findings, therefore even if, the respondents could not prove their case, it will not give any benefit to the appellant.

4. Having considered the submissions of learned counsel for the parties, I have perused the documents placed on records of this appeal.

5. The suit for permanent injunction was filed by the appellant, which was contested by the respondents by filing written statement and claimed that he is in possession of land in dispute. The trial court as well as appellate court, after considering the pleadings, evidence and material on records, recorded a finding that the claim of the appellants is that the land in dispute was given by the Zamindar in the year 1925 to the predecessor-in-interest of the appellants, however, admittedly no construction was made up to the year 1994, when the suit was filed. The appellant also could not prove the ownership of the trees on the land in dispute. The land in dispute is recorded in the name of Gram Samaj but it appears that no objection was ever filed by the appellant. The claim of the respondents is that the land in dispute was allotted to them by Gram Samaj thereafter they are in possession on the land in dispute. On the basis of evidence of PW-1 i.e. the appellant, a finding has also been recorded by the courts below that the appellant is not in possession of the land in dispute.

6. This Court does not find any illegality, error or perversity in the findings recorded by the courts below and no contrary evidence or material is shown to this court to take a different view than the view taken by the courts below.

7. It is also settled law that findings of facts recorded by two Court's below cannot be interfered in second appeal unless they are totally perverse. A coordinate Bench of this Court, in the case of Suryakunwari versus Nanhu and Others; 2019(37) LCD 2346, considering several judgments has held that the concurrent findings of fact recorded by the two courts are not liable to be set aside unless and until the findings are perverse. The relevant paragraphs 11 to 16 are extracted here-in-below:-

"11. In this case, there are concurrent findings on facts by both the courts below. The Hon'ble Apex Court in catena of judgments has laid down the law that the concurrent findings of fact recorded by two courts below should not be interfered by the High Court in Second Appeal, unless and until the findings are perverse.

12. In a recent case of Shivah Balram Haibatti Vs. Avinash Maruthi Pawar (2018)11 SCC 652 the Apex Court has held as under:-

"..... These findings being concurrent findings of fact were binding on the High Court and, therefore, the second appeal should have been dismissed in limine as involving no substantial question of law."

13. In another recent case of Narendra and others Vs. Ajabrao S/o Narayan Katare (dead) through legal representatives, (2018) 11 SCC 564 the Hon'ble Apex Court held as under:-

"...interference in second appeal with finding of fact is permissible where such finding is found to be wholly perverse to the extent that no judicial person could ever record such finding or where that finding is found to be against any settled principle of law or pleadings or evidence. Such errors constitute a question of law permitting interference in Second Appeal."

14. In one more recent case Dalip Singh Vs. Bhupinder Kaur, (2018) 3 SCC 677 the Hon'ble Apex Court has held that if there is no perversity in concurrent findings of fact, interference by the High Court in Second Appeal is not permissible.

15. In Gautam Sarup v. Leela Jetly and Ors. [(2008) 7 SCC 85], the Apex Court held that a party is entitled to take an alternative plea. Such alternative pleas, however, cannot be mutually destructive of each other.

16. In State Bank of India and others Vs. S.N. Goyal; (2008) 8 SCC 92 the Hon'ble Supreme Court has held as under :-

"Second appeals would lie in cases which involve substantial questions of law. The word 'substantial' prefixed to 'question of law' does not refer to the stakes involved in the case, nor intended to refer only to questions of law of general importance, but refers to impact or effect of the question of law on the decision in the lis between the parties. 'Substantial questions of law' means not only substantial questions of law of general importance, but also substantial question of law arising in a case as between the parties. In the context of section 100 CPC, any question of law which affects the final decision in a case is a substantial question of law as between the parties. A question of law which arises incidentally or collaterally, having no bearing in the final outcome, will not be a substantial question of law. Where there is a clear and settled enunciation on a question of law, by this Court or by the High Court concerned, it cannot be said that the case involves a substantial question of law."

8. In view of above, the appeal has been filed on misconceived and baseless grounds. No substantial question of law arises in this appeal.

9. The appeal is, accordingly, dismissed at the admission stage.

.....(Rajnish Kumar, J.) Order Date :- 28.2.2025 Haseen U.