Arjun Lal Gupta And Ors. vs Mriganka Mohan Sur And Ors. on 22 August, 1974

Equivalent citations: AIR1975SC207, (1974)2SCC586, 1974(6)UJ546(SC), AIR 1975 SUPREME COURT 207, 1975 2 SCC 586 1975 SCC(CRI) 695, 1975 SCC(CRI) 695

Bench: A. Alagiriswami, M.H. Beg, P. Jaganmohan Reddy

JUDGMENT

Beg. J.

1. This is defendants' appeal after certification under Article 133(1)(a) of the Constitution

2. The plaintiffs-respondent had brought a suit for recovery of possession after declaration of his title to a plot of land 50 bighas in area, including one bigha area occupied by the defendant appellants, who claimed sub tenancy rights and also set up the pleas of waiver and estoppel to prevent their eviction. The trial court had decreed the suit after repelling the plea of limitation, set up inconsistently with a plea of tenancy right by Bajrang Bali Engineering Company, defendant No. 1 which even alleged to be agents of the plaintiff for letting out lands to others. It also rejected the pleas of waiver and estoppel. It appears that the defendant No. 1 taking advantage of the fact that the plaintiff lived at considerable distance from the land in dispute, had started dumping scrap iron on the land. The plaintiff, immediately after becoming aware of this fact gave notice in writing to defendant No. 1 on 24.3.1950 to 21.5.1951 and then 1.9.52 to 8.5.53. The plaintiff had reserved his rights to sue for eviction later. Compromise decrees had been passed in those suits Defendant No. 1 had agreed to pay for use and occupation. But, the terms of the compromise decrees had not been carried out by defendant No. 1. In the case before us, Bajrang Bali Engineering Company, defendant No. 1 did not appeal against the decree for possession by removal of the structures put up by the defendants and for mesne profits at the rate of Rs. 175/- per day with effect from 25.2.55 and the award of Rs. 2,000 for the court fee paid by the plaintiff.

3. The High Court had also repelled the pleas of the defendants, who mainly relied on waiver and estoppel, but, it modified the decree for mesne profits by awarding only Rs. 3.50 n.p. per day so as to bring the amount awarded to approximately Rs. 100/- per month. Against this decree, the defendants 2 to 5 have come up in appeal to this Court and confined their arguments to the pleas of waiver and estoppel and the bar of Order 2, Rule 2, C.P.C.

4. After having been taken through the pleadings and the relevant facts and the findings in the case, we find ourselves in complete agreement with the views of the trial court and the High Court and that neither estoppel nor waiver nor Order 2, Rule 2, C.P.C. could bar the plaintiff's suit. Defendant No. 1 who had neither appealed in the High Court nor is among the appellants before us, had failed to establish its claim that it has authority from the plaintiff to either use the land for dumping scrap

iron or to let it out to any party as the plaintiff's agent. The defendants-appellants before us relied mainly on the alleged failure to object to structures made by them for the purpose of manufacturing buckets and automobile parts. But, these were not shown to be permanent structures. They were only tin sheds and fittings, which could be and have been ordered to be removed by the contesting defendants appellants The mere fact that defendants-appellants were trespassers and that the plaintiff had brought their suit for eviction in 1955, objection to trespass, could not confer any right upon the defendants-appellants, who were said to have been brought on the land by one Shri Agarwala in 1951. Nothing could be shown to us to hold that the findings of the trial court and the High Court on questions of fact were erroneous. It had been rightly held that there was no evidence to show that the plaintiff had in any way encouraged the defendants to incur any expense or had made any representations to induce them to change their position to their disadvantage. The Plaintiff had asserted his rights within a reasonable time after learning of the trespass. He did not stand by watching valuable constructions being put up on his land, but had sent a notice objecting to the trespass as soon as he learnt of it. The defendants had not shown that they had acquired any right in the land from an owner. They had, very half-heartedly, set up a plea of limitation which was not seriously pressed. The whole stand of the defendants-appellants was lacking in bonafides.

5. The High Court had observed that principles on which pleas of estoppel and acquiescence can succeed have been laid down in : Ariff v. Jadunath Majumdar 58 I.A. 211. A.H. Forbes v. Sir L E Ralli and Ors. L.R. 52 I.A. 178., Ahmed Tar Khan and Ors. v. Secretary of State for India in Council and Anr. K.R. 28 I.A. 211. Lala Beni Ram and Anr. v. Kundan Lall and Ors. 26 I.A. 58 at pp. 63-64. Subodh Chand Mitter v. Bhagwandas Saha 50 Calcutta Weekly Notes p. 129 at pp. 856 & 863. Sir J.W. Ramsden v. Lee Dyson and Joseph Ithornton 1966 (1) House of Lords p. 129 at p. 1401. Willmott v. Barber (7) The appellants could not bring their case, on facts found, within the principles laid down in these cases.

6. There is no question of applying order 2, Rule 2, C.P.C. when the cause of action for the suit before us is different from the causes of action in the suit which were compromised. The failure of the defendants to carry out the terms of the compromise decrees constitutes a part of the cause of action in the suit before us. We, therefore, finding ourselves in agreement with the High Court and trial court, dismiss this appeal, but in the circumstances of the case, the parties will bear their own costs in this Court.