

Gujarat High Court

Indubhai vs Mohanbhai on 6 December, 2010

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Gujarat High Court Case Information System

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SA/248/2009 5/ 5 JUDGMENT

IN
THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND
APPEAL No. 248 of 2009

With

CIVIL
APPLICATION No. 10106 of 2009

In
SECOND APPEAL No. 248 of 2009

For
Approval and Signature:

HONOURABLE
MR.JUSTICE RAJESH H.SHUKLA

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1

Whether

Reporters of Local Papers may be allowed to see the judgment ?

2

To be

referred to the Reporter or not ?

3

Whether

their Lordships wish to see the fair copy of the judgment ?

4

Whether

this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5

Whether

it is to be circulated to the civil judge ?

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INDUBHAI

LALJIBHAI PATEL - Appellant(s)

Versus

MOHANBHAI

CHHOTABHAI THAKORE & 1 - Defendant(s)

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Appearance :

MR

MRUGEN K PUROHIT for

Appellant(s) : 1,

MR JA ADESHRA for Defendant(s) : 1 -

2.

=====

CORAM

:

HONOURABLE

MR. JUSTICE RAJESH H. SHUKLA

Date

: 06/12/2010

ORAL

JUDGMENT

1. Present second appeal has been filed by the appellant - original defendant posing the substantial questions of law as follow on the grounds set out in the memo of appeal:

(1) Whether there is proper appreciation of evidence by the lower Court?

(2) It is the duty of either party to aid the Court in ascertaining the true boundaries?

(3) Whether the boundaries would prevail over the revenue records and/or survey number?

(4) Whether the possession of the property can be decided on the basis of the boundaries or on the basis of Survey Number?

(5) Whether the plaintiff is entitled to a decree of protection of possession in absence of showing the description and/or mentioning of the boundaries?

(6) Whether it is mandatory under Order VII Rule 3 of the Code of Civil Procedure for the plaintiff to narrate the boundaries in the plaint under the rules of pleadings, and in absence of it, can the decree for protection of possession be passed?

(7) Whether the Court below erred in passing the decree for protection of possession of the plaintiff, when he himself has admitted the possession of the defendant, which is shown in the Written Statement?

(8) Whether under Section 34 of the Specific Relief Act, can the decree for protection of possession be passed when the plaintiff is not in possession of the suit property?

(9) Whether the title of the property is decided on the basis of the revenue record, more particularly when the revenue record is not a document of title?

(10) Whether the decree for protection of possession is passed where the trial Court has not properly framed the issues?

(11) Whether the judgment and decree passed by the trial Court is legal and proper?

2. The facts of the case briefly stated are that the respondent - original plaintiff filed a Civil Suit No. 175 of 1998 before the Court of Joint Civil Judge (J.D.), Nadiad, which came to be decreed by holding that the land bearing survey No. 891/4 belongs to the plaintiff and he is the owner and in possession of the said land and defendant has no right title or interest in the said land. The said order was challenged by way of Regular Civil Appeal No. 34 of 2004 which also came to be dismissed by the Additional District Judge, Nadiad. Therefore, the present Second Appeal has been preferred.

3. Heard the learned counsel Mr. Mrugen Purohit for the appellant and learned counsel Mr. Adeshra for the respondents. As it transpires from the facts and the contentions raised, the substantial questions of law, which have been posed, cannot be said to be any questions of law much less any substantial questions of law. It is not in dispute that the appellant is the owner of land bearing survey No. 891/2 and the respondents original plaintiffs are the owners of land bearing survey No.891/4. From the evidence including the Panchnama made before the Civil Court and the testimonies of both the plaintiffs and the defendant are not disputed on this aspect. However, the dispute which has been raised, as submitted by learned counsel Mr. Mrugen Purohit, is with regard to identification of the land bearing survey No. 891/2 and 891/4. In view of the evidence brought on record which is also discussed by the lower Appellate Court on the basis of the material and evidence, this aspect about the boundary of the particular land cannot be said to be a question of law much less any substantial question of law. In the name of the boundaries or the identification of the particular plot the issue cannot be re-agitated in the second appeal when the facts are in narrow compass based on the factual evidence. Therefore, as there is no substantial question of law which could be said to have been involved the concurrent findings given by the two courts below do not call for any interference.

4. Having regard to the aforesaid facts and circumstances, the present second appeal cannot be entertained in light of the settled legal position that scope of second appeal under Section 100 of Code of Civil Procedure is very limited and unless any substantial question of law involves, the Court need not entertain such second appeal as observed by the Hon'ble Apex Court in the judgment reported in (2007) 1 SCC 546 in the case of Gurdev Kaur & Ors. v. Kaki & Ors. The same view has been reiterated in the judgment reported in (2008) 8 SCC 92 in the case of State Bank of India & Ors. v. S.N. Goyal and also in the judgment reported in (2009) 5 SCC 264 in the case of Narayanan Rajendran & Anr. v. Lakshmy Sarojini & Ors. Therefore, present second appeal deserves to be dismissed and accordingly stands dismissed. Notice discharged.

5. In view of the order passed in main matter, Civil Application does not survive and accordingly stands disposed of.

(RAJESH H. SHUKLA, J.) jani Top