

Allahabad High Court

Shiv Shankar vs Amrit Lal & Ors. on 28 January, 2010

Court No. - 7

Case :- WRIT - C No. - 71126 of 2009

Petitioner :- Shiv Shankar

Respondent :- Amrit Lal & Ors.

Petitioner Counsel :- Madan Lal Srivastava, Ratnesh Kr. Srivastava

Hon'ble Ran Vijai Singh, J.

This writ petition has been filed for issuing a writ of certiorari quashing the order dated 12.11.2009 passed by Additional District Judge, Court No. 1, Bhadohi Gyanpur in Misc. Appeal No. 28 of 2002 (Amrit Lal Vs. Nirpati and others), by which, the appeal filed by the plaintiff/respondent against the judgment and order dated 7.5.2002 passed in O.S.No. 253 of 2000 (Amrit Lal Vs. Nirpati and others) rejecting the petitioner's 6-C application for injunction, has been set-aside and petitioner has been directed to maintain status-quo with regard to the disputed property.

The facts giving rise to this case are that the plaintiff/respondent has filed Original Suit No. 253 of 2000 in the court of Civil Judge (Junior Division) Badohi, Gyanpur seeking injunction restraining the defendant/petitioner not to make any construction over the property in suit shown by letters A, B, C, D in the plaint map. It was also prayed that the defendant/petitioner be restrained from interfering in the use and occupation of the disputed property on the ground that the land in suit is old abadi and the plaintiff passes through the aforesaid land and this is in use and occupation of the plaintiff but the defendant/petitioner forcefully wants to make construction over it and to close the plaintiff's egress. The plaintiff has filed an application seeking temporary injunction no. 6-C. The petitioner has filed his objection to the injunction application denying the allegations made in the application. In due course, Amin report was also sought for and the Court Amin has submitted his report contrary to the plaintiff's allegation to which plaintiff/respondent has filed objection. The trial court after considering the material available on record has rejected the plaintiff's application for injunction on the ground that the plaintiff/respondent is not in possession over the land in dispute. In recording this finding the learned Judge has held that as the plaintiff has two more brothers and the share of each brother is not demarcated on the spot and other two brothers are not party to the suit, therefore it cannot be inferred that who is in possession over the disputed land.

Aggrieved by the judgment of the trial court the plaintiff has filed appeal which was numbered as Misc. Civil Appeal No. 28 of 2002. The said appeal was allowed by the learned Additional District Judge Court No. 1 Bhadohi Gyanpur vide order dated 12.11.2009. The learned Judge has come to the conclusion that in case any construction is made the petitioner's egress be stopped.

Sri Madan Lal Srivastava, learned counsel for the petitioner has submitted that the finding of the appellate court with regard to existence of path way is beyond the pleadings as it was never pleaded that there is a path way over the land in dispute.

In support of his submissions he has placed reliance upon the judgment of this Court reported in 2009 (6) ADJ 404 State of U.P. Vs. Bahuri Alp Sankhyak Balika Inter College where it has been held that finding cannot be recorded beyond the pleadings.

I have heard learned counsel for the parties.

In paragraph nos. 6 and 7 of the plaint which has been brought on record by the petitioner as Annexure 1 to the writ petition it is specifically pleaded that land shown by letters A,B,C,D is the old abadi of the plaintiff and the defendant wants to close the egress of the plaintiff over the land in dispute by making forceful construction therefore even if in the plaint no word like 'path' has been used that will not make any difference as the word used Nikas is prima facie sufficient to infer that the petitioner has right of passage through that land.

In view of that, I do not find any illegality in the impugned judgment. The writ petition lacks merit and it is hereby dismissed.

In the last, Sri Srivastava has submitted that the direction be issued to the trial court to decide the suit expeditiously. I find it appropriate to observe that the suit itself be decided expeditiously if possible within a period of one year keeping in mind the pendency of the cases of that very year.
Order Date :- 28.1.2010 Pratima