

Court No. - 18

Case :- SECOND APPEAL No. - 1201 of 2022

Appellant :- Sadhu And 5 Others

Respondent :- Smt. Kaushilya And 12 Others

Counsel for Appellant :- Ramesh Rai, Mukesh Dhar Dwivedi

Counsel for Respondent :- Vikas Mani Srivastava, Ravindra Kumar Srivastava

Hon'ble Ashutosh Srivastava, J.

Heard Shri Ramesh Rai, learned counsel for the appellants and Shri Vikas Mani Srivastava, learned counsel appearing for the caveator- respondent No. 2/1.

This Second Appeal, at the instance of the defendants/appellants, has been filed against the judgment and order dated 29.10.2022 and decree dated 11.11.2022 passed in Civil Appeal No. 19 of 2021 arising out of judgment and order dated 18.10.2021 and decree dated 30.10.2021 passed in Original Suit No. 101 of 1996 whereby and whereunder the Civil Appeal has been dismissed and the judgment and decree of the Trial Court decreeing the suit for mandatory injunction for removal of construction and handing over possession in respect of land in dispute demarcated as letters Kha, Sa, Da, Aa as well as for permanent injunction restraining the defendants/appellants from interfering with peaceful possession and raising constructions has been upheld.

At the very out set, learned counsel for the defendant/appellants submits that the lower Appellate Court without proper appraisal of the evidence available on record has proceeded to dismiss the appeal and has affirmed the judgment and decree of the Trial Court. He submits that the records of the Court below be summoned at the cost of the defendant/appellants whereafter the appeal be heard on the question of admission. He further submits that the defendant/appellants are in settled possession with title over the suit property since 1961 on the strength of a registered sale deed dated 25.7.1961 executed by the recorded tenure holders i.e. Suryanarain Das, Deep Narayan Das, Sharda Das and Lal Bahadur Das in favour of the Sadhu son of Mohar (since deceased) predecessor in interest of the defendant/appellants. The plaintiff/respondents have no possession over the suit property since 1961 and even the witness of the plaintiff/respondents, namely, Chandrika has admitted in her oral deposition that land bearing Arazi No. 1417 is not the subject matter of sale deed dated 25.5.1965 said to have been executed by the mother of the plaintiff/respondents

Vidya Devi in favour of the plaintiff /respondents which forms the basis of their suit for mandatory injunction and recovery of possession. The Courts below have directed for removal of the constructions made by the defendant/appellants and to hand over vacant possession of the land in dispute.

Let the Lower Court records be summoned at the expenses of the defendant/appellants.

Pending admission, issue notice to the plaintiff/respondents. Notice need not be issued to plaintiff/respondent No. 2/1, namely, Rajesh Patel son of late Rambachan Patel, who has already put in appearance through caveat.

List this appeal for admission after receipt of lower court records.

Considering the submissions advanced by learned counsel for the defendants/appellants the interim order granted earlier shall remain in operation till the next date of listing.

Order Date :- 28.2.2023

Ravi Prakash