

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S) .1744 OF 2008

DEENANATH (DEAD) THROUGH LRS.

Appellant(s)

VERSUS

BASHIRO & ANR.

Respondent (s)

O R D E R

Concurrent finding of fact recorded by the first appellate court in its judgment and order rendered in Appeal Decree No. 71 of 2002 by the learned Additional District Judge No.2, Bikaner, reaffirmed by the second appellate court, was not interfered by the High Court after recording the finding stating that no substantial question of law would arise for its

consideration on Issue Nos. 1, 2 and 4 framed by the trial court, reaffirmed by the first appellate court is under challenged in this appeal.

Mr. M.R. Calla, learned senior counsel appearing for the appellant strongly placed reliance upon the finding of fact recorded by the trial court in the old Suit No. 303 of 1988 between the same parties seeking for grant of permanent injunction with a plea that the appellant herein is the absolute owner of the property, which is described in the plaint. On the basis of the submissions of both parties the following issues were framed by the trial court:

"(1) Whether the house mentioned in para No. 1 of the plaint is under the ownership and possession of the plaintiff?

(2) Whether the defendant has been in possession over the land mentioned in para No.9 of the written statement for 60 years and thus, he has got the ownership on the basis of the adverse possession over this land?

(3) Whether the market price of the suit property is Rs.50,000/- and due to this reason this court has got no jurisdiction to entertain this suit?

(4) What would be relief?"

The trial court decided all the aforesaid issues in favour of the plaintiff-appellant and decreed the suit holding that the house described in para no. 1 of the plaint is in the ownership and possession of the plaintiff-appellant.

After hearing both the parties and perusing the records, the first appellate court has recorded a finding on Issue No.1 partly, viz., whether the house mentioned in Para 1 of the said suit is under the ownership of the appellant herein, in favour of the original plaintiff-appellant herein and held that his ownership with regard to the suit property is found proved. However, having recorded such finding, later part of Issue No. 1 and Issue No. 2 were answered against the appellant holding that the ownership and possession are two different situations and the trial court has committed error in deciding the issues absolutely in favour of the plaintiff-appellant. It held that only ownership of the suit property is found proved in favour of the plaintiff-appellant and the

possession is not found proved, not showing lawful possession as on the date of the institution of the suit. The first appellate court held that the appellant was successful in proving ownership over the suit property. However, it held that since the appellant could not prove possession over the property, he cannot be granted relief of permanent injunction. The appeal was thus, allowed and decree passed by the trial court was set aside.

The finding on the ownership of the scheduled property should have been considered by the courts below while examining the correctness of the concurrent finding recorded on Issue No. 1 in the subsequent Suit No. 85 of 1998 (New No. 23 of 2002) by applying the judgment rendered in the earlier Suit No. 303 of 1988. Both the trial court and the appellate court committed serious error on the fact and evidence on record holding that the title of the property involved in the second suit is not proved by producing the original title deed. The said finding is vitiated both on fact and in law for non-consideration of the finding

recorded on the first part of Issue no. 1 in the earlier judgment in Suit No. 303 of 1988. Therefore, the appellant has rightly filed second appeal framing certain substantial questions of law for consideration of the same and answer in favour of the appellant. The High Court has gravely erred in holding that no substantial question of law would arise in the case. Hence, the present appeal is filed by the appellant seeking for setting aside the impugned judgments and orders passed by the first appellate court as well as the second appellate court.

Learned counsel appearing for the respondents sought to justify the concurrent finding of fact recorded by the first appellate court, reaffirmed by the second appellate court. He submits that it is not a fit case for interference by this Court. He has invited our attention to the plaint presented in both the original suits wherein the description of the property involved in the aforesaid proceedings was given. He submitted that the property involved in the said suits is one and the same. This important factual

aspect of the matter has not been considered by both the first appellate court as well as the second appellate court.

In our considered view, non-consideration of the aforesaid important aspect of the matter and not framing substantial question of law as provided under Section 100 sub-section (4) of the Code of Civil Procedure has not vitiated the impugned judgment. It is an undisputed fact that not framing of substantial question of law vitiates the judgment, however, since it is not a ground urged in this appeal and not the case in the instant appeal, therefore, we need not consider this aspect of the case. It would be unnecessary for us to refer to the boundaries described in both the suits by careful comparison of the said description of the boundaries of the schedule property in the original suits. The finding of fact recorded by the trial court, concurred by first appellate court on Issue Nos. 1, 2 and 4 is perfectly legal and correct. We cannot take a different view than that of what is taken by the first appellate court and second appellate

court in this case. The High Court has not committed any error in law for not framing any question of law that the schedule properties in both the suits are different. Apart from the subsequent suit seeking for declaration of the title to the property in question, the title deed should have been produced to prove the title. Undisputedly, there is concurrent finding of non-production of the title deed viz., the Patta, upon which the right is claimed by the plaintiff. Non-production of the same does not amount to proving of the case of the appellant. The property involved in the suit before the first appellate court and the schedule property involved in the subsequent suit out of which the instant appeal would arise is entirely different, is the finding of fact, which is based on undisputed fact and, therefore, the same cannot be interfered with by this Court.

In our considered view, the concurrent finding of fact recorded by the High Court holding that there is no substantial question of law, does not either suffer from any error in law or erroneous finding. The same is perfectly legal and valid.

In view of the above, we do not find any good reason to interfere with impugned judgment and order. The appeal is devoid of merit, which is dismissed accordingly.

.....J.
(V. GOPALA GOWDA)

.....J.
(R.K. AGRAWAL)

NEW DELHI,
JANUARY 13, 2016

ITEM NO.102

COURT NO.10

SECTION XV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 1744/2008

DEENANATH(DEAD) THROUGH LRS.

Appellant(s)

VERSUS

BASHIRO & ANR.

Respondent(s)

(with interim relief and office report)

Date : 13/01/2016 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE V. GOPALA GOWDA
HON'BLE MR. JUSTICE R.K. AGRAWAL

For Appellant(s) Mr. M.R. Calla, Sr. Adv.
Ms. Pratiksha Sharma, Adv.
Mr. Ankit Acharya, Adv.
Mr. Gaurav Dave, Adv.
Mr. Milind Kumar, Adv.

For Respondent(s) Mr. C. George Thomas, Adv.
Mr. Ejaz Maqbool, Adv.
Ms. Akriti Choubey, Adv.
Mr. Faraz Maqbool, Adv.
Mr. Vinay Banikar, Adv.

Mr. Braj K. Mishra, Adv.
Ms. Aparna Jha, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed
order.

(VINOD KUMAR)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

(Signed order is placed on the file)