

MAKHAN LAL
v.
ASHARFI LAL AND ORS.

A

MARCH 25, 1997

[K. RAMASWAMY AND D.P. WADHWA, JJ.]

B

Code of Civil Procedure, 1908 :

*S.100—Second appeal—Concurrent findings of fact—Interference with—
Suit between family members for injunction, possession and damages—
Plaintiff claiming that defendant were licensees of apart of the house and
had no right to be in possession after revocation of licence—Defendants
claiming to have contributed half of the amount in construction of the house
and house got mutated in 1957 in joint names—Trial Court and appellate
Court on considering oral and documentary evidence dismissed the
suit—High Court in second appeal went into questions of fact and recorded
the findings against plaintiffs and reversed the decree—Held, trial court and
the first appellate court having appreciated the evidence came to the findings
of fact which cannot be characterised to be surmises; nor can they be said to
have ignored the material evidence—In the circumstances, High Court erred
in interfering with the concurrent findings of fact—Judgment of High Court set
aside and that of first appellate Court and trial court confirmed.*

C

D

E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2594 of
1997.

From the Judgment and Order dated 9.7.96 of the Allahabad High
Court in S.A. No. 1407 of 1990.

F

Arvind Minocha for the Appellant.

B.D. Agarwal and Shrish Kr. Misra for the Respondents.

G

The following Order of the Court was delivered :

Leave granted.

The respondent Nos. 1 and 2 had filed a suit for permanent injunc-
tion, possession and damages against the appellant and the proforma

H



A respondent No. 3 on the premise that they were licensees in respect of part of the house belonging to Baij Nath and, therefore, had no manner of right whatsoever to be in possession after the revocation of the licence. The appellant set up the plea that the contributed half of the amount in the constriction of the house along with Baij Nath and that he has has been residing therein ever since. The house also was got mutated in 1957 in the Joint name of himself and Baij Nath and, therefore, the injunction sought for could not be granted. Both the trial Court as well as the first appellate court had negated the case of the respondents and dismissed the suit. In the second appeal, the learned single Judge of the High Court framed two questions for consideration, namely, whether merely by contributing some amount towards construction of the disputed house, the appellant can claim half share in the house and whether the judgment of the two courts below are the result of total mis-reading the evidence and of recording the finding while ignoring the oral as well as documentary evidence on record? Pursuant to framing the above questions, the learned Judge, as if he were the First Appellate Court, has gone into the questions of fact and recorded the findings against the appellant. Thus, he reversed the decree of the trial court and the appellate Court.

E It is contended for the appellant, on the basis of the documentary evidence adduced in proof of the mutation and his enjoyment ever since 1957 during the life time of Baij Nath, who did not even object to his being in possession and enjoyment of the half share in the house, that the view taken by the High Court is not correct. He also pointed out that the finding of the High Court that the material evidence was ignored by the courts below is not correct as the evidence has been appreciated and the High Court came to the conclusion that the respondents had not established their case.

G It is contended for the respondents/plaintiffs, on the other hand, that the evidence of Ram Pyari, the mother of the parties was not properly considered. She was the best person to show how the property was enjoyed and the other evidence also was not properly considered. On the basis of surmises, the trial Court and the appellate Court had come to a wrong conclusion. Therefore, it is a substantial mistake of law which the High Court has rightly corrected.

H Having considered the respective contention, the question that arises

for consideration is whether the High Court is right in disturbing the concurrent findings of fact recorded by the trial Court and the appellate Court? It is not in dispute that material documents had been filed, as indicated in the judgment of the first appellate Court itself. It is also not in dispute that the mutation proceedings having taken place during the life-time of Baij Nath of the municipality do indicate that the property was mutated in the joint names of Baij Nath and the appellant. During the life time of Baij Nath, no demur of the right to residence and continuance in half share of the property was controverted nor ever impeded by Baij Nath. The administrated facts are that the appellant is the son of first husband of the Ram Pyari and the respondents are the children born to Baij Nath in the second marriage. In view of the fact that the parties are closely inter-related and having lived jointly at least from 1957, the obvious inference that they had been inducted into possession by Baij Nath even treating them as members of the family, is irresistible. Under these circumstances, the suit of injunction etc. against them is unsustainable in law. The trial Court and the appellate Court having gone into the evidence and having appreciated the same came to the finding of fact. The said findings cannot be characterised to be surmises; nor can they be said to have ignored the material evidence. Under these circumstances, the High Court was wrong in interfering with the concurrent findings.

The appeal is accordingly allowed. The judgment of the High Court stands set aside and that of the appellate Court and the trial Court stands confirmed. No costs.

R.P.

Appeal allowed.