

NAGAR PALIKA RAISINGHNAGAR

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v.

RAMESHWAR LAL & ANR.

(Civil Appeal No. 10833 of 2010)

OCTOBER 10, 2017

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[R. K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

Injunction: Suit for permanent injunction filed by plaintiff-respondent on the strength of Patta issued in favour of grand father of the respondent, seeking restraint against the appellant from dispossessing the respondent from the suit land – Trial court dismissed the suit – First appellate court set aside the order of trial court holding that the respondent's grandfather was granted Patta in relation to the suit land by appellant; that the appellant failed to prove that it was cancelled and pursuant thereto the respondent's predecessor refunded the amount; that the Patta granted was in relation to the suit land; and that the respondent was in possession of the suit land – High Court upheld the order of first appellate court – On appeal, held: The respondent was able to make out all the three necessary ingredients for grant of permanent injunction with the aid of evidence, namely, the prima facie case, the balance of convenience and the irreparable loss and injury, if the injunction is not granted to him – Since the respondent held Patta of the suit land, there was a prima facie case in his favour – He was also in possession of the suit land and hence the other two ingredients, namely, the balance of convenience and irreparable loss and injury, were also in his favour – Respondent was rightly held entitled to claim permanent injunction against the appellant in relation to the suit land.

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Dismissing the appeal, the Court

HELD: 1. When two Courts, namely, First Appellate Court and the High Court found no merit in the appeal and confirmed the findings of fact then, such concurrent findings are binding on this Court. It is more so when such findings are neither found to be against the pleadings nor the evidence nor any provisions of law and nor so found perverse to the extent that no judicial person can ever so record. [Paras 16, 17] [137-B]

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A 2. It is not in dispute that the respondent is the grandson
of original allottee. It is also not in dispute that the appellant
(defendant) though took a stand that the Patta in question was
cancelled and money returned but the appellant could not prove
it with the aid of any evidence. It is also not in dispute that though
B the appellant took a stand that the Patta granted to the
respondent's predecessor-in-title did not relate to the suit land
but of some other land, the appellant also failed to prove even
this fact with the aid of any evidence. The said stand taken by the
appellant, was required to be proved by the appellant because
the burden to prove these facts was on them but they failed to
C prove any of the issues though raised. [Paras 18, 19] [137-C-E]

 3. The respondent (plaintiff) was able to make out all the
three necessary ingredients for grant of permanent injunction
with the aid of evidence, namely, the *prima facie* case, the balance
of convenience and the irreparable loss and injury, if the injunction
D is not granted to him. Since the respondent held a Patta of the
suit land, there was a *prima facie* case in his favour. Secondly, he
was also held to be in possession of the suit land and hence the
other two ingredients, namely, the balance of convenience and
irreparable loss and injury, were also in his favour. It is for these
E reasons, the plaintiff was rightly held entitled to claim permanent
injunction against the appellant (defendant) in relation to the suit
land. Therefore, there is no ground to interfere in any of the factual
findings recorded by the two Courts below. [Paras 20, 21] [137-
E-H]

F CIVIL APPELLATE JURISDICTION : Civil Appeal No.10833
of 2010.

 From the final Judgment and Order dated 03.11.2006 passed by
the High Court of Judicature for Rajasthan at Jodhpur in S.B. Civil Regular
Second Appeal No.70 of 1989.

G Puneet Jain, Ms. Gaushika Sharma, Abhinav Gupta, Ms.Priyal
Jain, Harsh Jain (for Ms.Pratibha Jain), Advs. for the Appellant

 Dushyant Parashar, Pranv Vyas, Surya Kant, Advs. for the
Respondents

 The Judgment of the Court was delivered by

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ABHAY MANOHAR SAPRE, J. 1. This appeal is filed by the defendant against the final judgment and order dated 03.11.2006 passed by the High Court of Judicature for Rajasthan at Jodhpur in S.B. Civil Regular Second Appeal No.70 of 1989 whereby the High Court dismissed the appeal filed by the defendant and affirmed the judgment/decreed passed by the first Appellate Court dated 17.04.1989 in Appeal Civil No. 19 of 1988 arising out of Civil Suit No.28 of 1983 decided on 06.09.1988 passed by the Munsif and Judicial Magistrate, Raisinghnagar. A B

2. Facts of the case are simple so also the point involved in the appeal. They, however, need mention in brief infra.

3. The appellant is Nagar Palika Raisinghnagar (Rajasthan). The appellant is the defendant whereas the respondent is the plaintiff in the aforementioned civil suit out of which this appeal arises. C

4. The dispute relates to a small piece of land (100x100 sq. ft.) situated at Gaushala Block, Ward No.10 (earlier known as 'E Block'), Raisinghnagar (hereinafter referred to as "the suit land"). D

5. The respondent (plaintiff) claiming to be the holder and in possession of the suit land on the strength of Patta issued in favour of his grand father - Pokhar Ram by the appellant herein way back in the year 1957 vide Resolution No.7 dated 13.02.1957 filed a suit against the appellant out of which this appeal arises seeking permanent injunction restraining the appellant from dispossessing him from the suit land. E

6. In substance, the case of the respondent, as set out in the plaint, was that the appellant - Nagar Palika had originally allotted the suit land to the respondent's grandfather - Pokhar Ram as back as in 1957 against the payment of consideration which had duly paid by Pokhar Ram to the appellant vide receipt No.51 dated 18.03.1957. F

7. It was alleged that Pokhar Ram then constructed his hut on the suit land and continued to live therein during his lifetime. On his death, the respondent's father continued to live therein during his lifetime and then on his death, the respondent inherited the suit land/hut and continued to remain in its occupation till the date of filing of the suit. G

8. According to the respondent, the need to file the suit arose because he had some apprehension that the appellant-Nagar Palika which had taken out a drive to oust some encroachers from the land belonging to Nagar Palika in the Municipal area may dispossess the H

A respondent also from the suit land treating him as an encroacher on the suit land. It was for this reason, the respondent filed the civil suit to seek permanent injunction against the appellant in relation to the suit land on the strength of Patta already granted in favour of his predecessor-in-title by the appellant.

B 9. The appellant filed its written statement. While denying the respondent's claim, the appellant *inter alia* alleged that the respondent's grandfather was given some other land, that the grant so made in relation to the said land was cancelled and the money received was also refunded to him, that the suit land is a Nagar Palika land and the respondent with the help of some employees of the Nagar Palika got the suit land un-
C authorizedly allotted to him, and lastly, the suit land is needed for public purpose.

D 10. Issues were framed. Parties adduced evidence. The Trial Court, vide judgment dated 06.09.1988, dismissed the suit. The respondent (plaintiff), felt aggrieved, filed first appeal before the First Appellate Court. The First Appellate Court, vide judgment/decree dated 17.04.1989, allowed the appeal and while setting aside of the judgment/decree of the Trial Court decreed the respondent's suit and accordingly granted permanent injunction, as prayed by the respondent, against the appellant in relation to the suit land.

E 11. The First Appellate Court held that the respondent's grandfather was granted Patta in relation to the suit land by the appellant; that the appellant failed to prove that it was cancelled and pursuant thereto the respondent's predecessor refunded the amount, that the Patta granted was in relation to the suit land, that the respondent was in possession of
F the suit land.

G 12. The appellant filed second appeal before the High Court. The High Court, by impugned judgment, dismissed the appeal and upheld the judgment/decree of the First Appellate Court giving rise to filing of the present appeal by way of special leave before this Court by the defendant, i.e., Nagar Palika.

13. Heard Mr. Puneet Jain, learned counsel for the appellant and Mr. Dushyant Parashar, learned counsel for the respondent.

14. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in the appeal.

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15. This is a case, which does not involve any question of law much less substantial question of law what to say any question relating to public importance. A

16. When two Courts, namely, First Appellate Court and the High Court found no merit in the appeal and confirmed the findings of fact then, in our opinion, such concurrent findings are binding on this Court. B

17. It is more so when such findings are neither found to be against the pleadings nor the evidence nor any provisions of law and nor so found perverse to the extent that no judicial person can ever so record.

18. It is not in dispute as now one can say that the respondent's predecessor-in-title was granted Patta in relation to the suit land on payment. It is also not in dispute that the respondent is the grandson of original allottee. It is also not in dispute that the appellant (defendant) though took a stand that the Patta in question was cancelled and money returned but the appellant could not prove it with the aid of any evidence. It is also not in dispute that though the appellant took a stand that the Patta granted to the respondent's predecessor-in-title did not relate to the suit land but of some other land, the appellant also failed to prove even this fact with the aid of any evidence. C D

19. The aforementioned stand taken by the appellant, in our view, was required to be proved by the appellant because the burden to prove these facts was on them but they failed to prove any of the issues though raised. E

20. In our opinion, the respondent (plaintiff) was able to make out all the three necessary ingredients for grant of permanent injunction with the aid of evidence, namely, the *prima facie* case, the balance of convenience and the irreparable loss and injury, if the injunction is not granted to him. Since the respondent held a Patta of the suit land, there was a *prima facie* case in his favour. Secondly, he was also held to be in possession of the suit land and hence the other two ingredients, namely, the balance of convenience and irreparable loss and injury, were also in his favour. It is for these reasons, in our view, the plaintiff was rightly held entitled to claim permanent injunction against the appellant (defendant) in relation to the suit land. F G

21. We, therefore, find no ground to interfere in any of the factual findings recorded by the two Courts below nor we find any merit in any H

A of the arguments of the learned counsel for the appellant, which were only based on facts and evidence.

22. This Court cannot appreciate the evidence again *de novo* while hearing this appeal. Though it is not permissible, yet we probe the evidence with a view to find out any error in the impugned judgment
B calling our interference. We, however, find it none.

23. In the light of foregoing discussion, we find no merit in the appeal, which fails and is accordingly dismissed.

Devika Gujral

Appeal dismissed.