

CASE NO.:

Appeal (civil) 2836 of 2006

PETITIONER:

SUBHAGA & ORS.

RESPONDENT:

SHOBHA & ORS.

DATE OF JUDGMENT: 07/07/2006

BENCH:

S.B. SINHA & P.K. BALASUBRAMANYAN

JUDGMENT:

J U D G M E N T

(ARISING OUT OF S.L.P. (C) NO.13705 OF 2003)

P.K. BALASUBRAMANYAN, J.

1. Leave granted.

2. This Appeal by Special Leave is by the legal representatives of the original plaintiff in O.S. No.1326 of 1957 on the file of the Munsif, Mohammadabad Gobarn at Azamgarh. The suit was one for a mandatory injunction directing the defendants in the suit to demolish further constructions put up by them and to fill up a well dug by them in the property claimed to belong to the plaintiff. The plaintiff claimed title and possession over the suit property which was described in the plaint and got demarcated in a sketch. The claim of the plaintiff was that the construction had been put up in plot No. 1301/1 Ba in Village Sarhan Kolla Pargana Mahal, District Azamgarh. The defendants resisted the suit essentially on a plea that the constructions put up by them did not lie in plot No. 1301. They, of course, denied the title and possession claimed by the plaintiff over the portions in which the constructions and the well stood.

3. The suit had a chequered career. There were repeated remands of the suit. What is seen is that ultimately the question boiled down to that of identification of the suit property with reference to the disputed portion. Ultimately, in the present round, the trial court decreed the suit holding that the plaintiff was the owner of the suit land which had been identified on the spot and was hence entitled to the reliefs claimed. An appeal filed by the defendants was dismissed holding that the disputed constructions lay in the suit property described in the plaint, that the plaintiff had title to it and that the trial court was hence right in decreeing the suit. Thus, the appeal filed by the defendants was dismissed. The defendants filed a Second Appeal before the High Court of Allahabad. The High Court upheld the finding rendered by the courts below that the plaintiff was the exclusive owner of plot No. 1301/1 Ba. The High Court found that there was no illegality in the approach made by the courts below in arriving at that finding and the finding was based on the evidence on record. But in spite of this finding, the High Court reversed the judgment and decree of the first appellate court and dismissed the suit on a finding that there was no proper identification of the suit property by the plaintiff either in the plaint or at the spot and since the boundaries cannot be ascertained without surveying the adjoining plots, no decree could be granted to the plaintiff as was done by the courts below. The Second Appeal was thus allowed and the suit was dismissed. This is challenged in this appeal by the

legal representatives of the plaintiff.

4. It is contended on behalf of the appellants, that the High Court had exceeded its jurisdiction under Section 100 of the Code of Civil Procedure, 1908 in interfering with the finding of fact rendered by the courts below that the suit property had been adequately identified and it has been shown that the disputed constructions were in the portion that belonged to the plaintiff. Though we find some merit in this submission raised on behalf of the appellants, we do not think it necessary to rest our decision on this ground.

5. We find that a commission was issued for demarcating the suit plot No. 1301/1 Ba and the Commissioner showed the disputed area in the map prepared by him. The lower appellate court while considering the question of identification had referred to the description of the boundaries in the plaint, the admissions of one of the defendants as DW1 and the report and plan submitted by the Commissioner. That Court also noticed that the plaintiff had given specific boundaries of the suit land and it was clear from the sketch prepared by the Commissioner that the disputed constructions lay in the suit land and that it belonged to the plaintiff. This was the basis of the affirmance of the decree in favour of the plaintiff by the lower appellate court. In Second Appeal, the learned Judge of the High Court, after referring to the description of the boundaries in the plaint, simply discarded the sketch prepared by the Commissioner in the presence of the parties after ascertaining the plots lying as boundaries of the suit property. It also appears to have taken the view that without a survey of the adjoining plots, it cannot definitely be said that the disputed structure lies in the plot belonging to the plaintiff, namely, plot No. 1301/1 Ba. We think that the High Court was not justified in interfering with the finding of the lower appellate court and in discarding the identification made by the Commissioner. It must be noticed that the suit had been remanded twice for the purpose of identifying the suit property and such identification had been done by the Commissioner and such identification had been accepted by the trial court and the first appellate court in the light of the admissions of DW1. The vague and general reasons given by the High Court for interfering with the decision of the first appellate court are clearly insufficient to upset the finding on identification. There was nothing to show that the Commissioner had not properly identified the suit property.

6. The High Court has also upheld the title claimed by the plaintiff over the plot, Plot No. 1301/1 Ba. Once we accept the identification made by the Commissioner as was done by the first appellate court, it is clear that the plaintiff has the right to have the disputed construction removed and the well filled up. That a property can be identified either by boundary or by any other specific description is well established. Here the attempt had been to identify the suit property with reference to the boundaries and the Commissioner has identified that property with reference to such boundaries. Even if there was any discrepancy, normally, the boundaries should prevail. There was no occasion to spin a theory that it was necessary in this suit to survey all the adjacent lands to find out whether an encroachment was made in the land belonging to the plaintiff. In this situation, we are satisfied that the judgment and decree of the High Court calls for interference. We are also satisfied that the lower appellate court was justified in affirming the decree granted in favour of the plaintiff on the pleadings and the evidence in the case.

7. We, therefore, allow this appeal and setting aside the judgment and decree of the High Court in S.A. No. 1782 of 1976, restore the judgment and decree of the trial court in O.S. No. 1326 of 1957 as affirmed in Civil Appeal No. 112 of 1973 on the file of the Additional Civil Judges Court, Azamgarh. We make no order as to costs in this Appeal but the appellants would be entitled to their costs in the courts below.