

UPBP010003142012



The Court of Additional District Judge/Special Judge (NDPS) Act,
Balrampur.

Presiding Officer - Abhinitam Upadhyay (UPHJS)

Civil Appeal No.- 21/2012

(CNR No.-UPBP010003142012)

1. Bhagvan Prasad Gupta S/o Ayodhya Prasad
1/1 Ramgopal aged about 52 Years S/o Late Bhagvan Prasad
1/2 Dinesh Kumar (insane) Aged about 30 Years S/o Late Bhagvan Prasad
1/3 Nankan aged about 28 Years S/o Late Bhagvan Prasad
1/4 Shanti Devi aged about 72 Years W/o Late Bhagvan Prasad
All R/o Mohalla Stationroad Bairagipurva, Tulsipur, Tehsil Tulsipur, District Balrampur.

----- Appellants.

Versus

1. Nanbacha aged about 47 Years S/o Bhagauti R/o Mohall Bairagipurva, Town, Pargana and Tehsil Tulsipur, District Balrampur.
2. Dharm Karyanidhi Trust by Secretary Dharm Karyanidhi Trust Neel Bag Palace Town, Pargana, Tehsil and District Balrampur.

-----Respondents.

Date of Institution of OS- 16.11.1990
Date of impugned Judgment/Decree - 26.07.2012
Date of Presentation of Civil Appeal- 30.08.2012
Date of Final arguments in Civil Appeal- 14.12.2023
Date of Judgment/Decree in Civil Appeal- 18.12.2023
Counsel of Appellant- Sh. Shatrujeet Singh, Advocate.
Counsel of Respondent No.1-Sh. Ashok Kumar Srivastava, Advocate.
Counsel of Respondent No.2-Sh. Bindeshwari Prasad, Advocate.

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JUDGMENT

01. This Civil Appeal has been preferred by Appellant (plaintiff) against Respondents (defendants) wherein judgment/decreed dated 26.07.2012 (hereinafter referred as "**impugned order**") passed by the then Civil Judge (Senior Division), Balrampur (hereinafter referred as "**Trial Court**") in the matter of **Original Suit No. 452/1990, Bhagvan Prasad Gupta Vs. Musammat Lakhraji and others** has been challenged. The Ld. Trial Court had, vide the impugned order dated 26.07.2012, dismissed the suit.

02. Respondent No. 1 and 2 made separate appearance through Vakalatnama however no written objection has been filed on memo of appeal by any respondent. I have heard oral submissions presented on behalf of Ld. Counsel of appellant as well as Respondent Nos.1 and 2 and perused the records of appeal along with Original Suit.

03. After going through the plaint it is found that initially three defendants were arrayed in the plaint. Defendant No.1 was Musammat Lakhraji, Defendant No.2 was Nanbacha and Defendant No.3 was Dharm Karya Nidhi Trust through its Secretary. However, later on Defendant no.1 died during pendency of the suit. It appears that while making endorsement regarding factum of death of Defendant No.1 the plaintiff had totally stricken off the name of Defendant No.1 and then made Defendant No.2 as Defendant No.1 and Defendant No.3 as Defendant No.2. Such course of action had been adapted after getting approval from the Court. However, this is not the right approach to change the nomenclature of defendants even if any Defendant dies during pendency of suit. The correct practice is to mark "died during pendency of suit" while maintaining the nomenclature and number of the defendants. Due to adaptation of wrong practice by plaintiff at several places there has been problem of understanding of the pleadings of both parties. Therefore, for the purposes of clarity and convenience, the original arrayed defendants are referred in this judgment with their original

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Musammat Lakhraji

number i.e. Defendant No.1 Lakhraji, Defendant No.2 Nanbacha and Defendant No.3 Dharm Karya Nidhi Trust.

04. Plaintiff's averment :- in short, is that disputed property has been shown at the end of the plaint map with letters A,B,C,D which is a building situated at Mohalla Bairagipurva, Kasba, Pargana and Tehsil Tulsipur, District Gonda (now District Balrampur). Plaintiff is owner and possessor of the disputed property since his ancestor's time. The disputed property was *Kacha Makan* till 1966. Thereafter, a *Pakka* building was constructed by plaintiff after getting the map approved by the Local Authority. Defendants have no relationship whatsoever with the disputed property. Plaintiff used to give rent of land to Defendant No.3 Trust. Defendant No.1 became widow about 25-30 Years prior to the institution of suit. Then plaintiff had given shelter to Defendant No.1. But, Defendant No.1 started giving threat that she will transfer the disputed property and make the plaintiff homeless. Defendant No.2 Nanbacha had got some papers written by Defendant No.1 Lakhraji and on this basis Defendant No.2 Nanbacha started giving threat that he will dispossess plaintiff and his family from the disputed property. Thus, on this basis plaintiff seeks reliefs of permanent injunction against defendants restraining them from transferring the disputed property or dispossessing the plaintiff from disputed property by unlawful means.

05. Defendant No.1 Lakhraji did not file any WS during the trial court proceedings. Defendant No.2 Nanbacha @ Laxmi Narayan filed his WS dated 14.07.2000 wherein it was basically averred that plaintiff has no relationship whatsoever with the disputed property which belonged to Defendant No.3 Trust. Defendant No.1 Lakhraji was tenant of Defendant No.3 Trust in the disputed property. Defendant No.1 Lakhraji executed a registered will deed dated 28.08.1991 in favour of Defendant No.2 in respect of her movable and immovable properties as Defendant No.2 Nanbacha is son of cousin of Defendant No.1 Lakhraji and used to look after her till her death. Plaintiff did not have possession over the disputed

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property or any part thereof at any point of time. On this basis Defendant No.2 prayed for dismissal of the suit.

06. Defendant No.3 Dharm Karya Nidhi Trust filed WS dated 06.05.2008 wherein it was basically alleged that Defendant No.3 is owner of the disputed property. Plaintiff had given wrong map of the disputed property in his plaint. Disputed property is in the nature of shop in which the original tenant was Kishan S/o Bhagvan Deen. Thereafter, Defendant No.2 Nanbacha S/o Bhagauti had been tenant of the disputed property shop since 15.09.2004. However, due to non payment of rent Defendant No.2 Nanbacha had become defaulter. Plaintiff had never been tenant or owner of the disputed property.

07. Plaintiff filed replication on written statement of Defendant No.3 wherein it was reiterated that the plaint map is correct and plaintiff is owner and possessor of the disputed property in which the original tenant was father of plaintiff Ayodhya Prasad who used to pay rent to Defendant No.3. Father of plaintiff had now died. Thereafter, plaintiff became possessor of the disputed property and had used to pay rent to Defendant No.3.

08. On the basis of pleadings of the parties Ld. Trial Court framed following issues :-
 (i) Whether plaintiff is owner of disputed property?
 (ii) Whether plaintiff has right to present the suit?
 (iii) Whether plaint is improperly valued and insufficiently stamped?
 (iv) Relief, if any, to which plaintiff is entitled?

09. Oral Evidence :- Oral witnesses examined on behalf of plaintiff are PW1 Bhagvan Prasad, PW2 Dashrath Lal and PW3 Bekaru. All the witnesses had been cross-examined. On behalf of defendants DW1

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Nanbacha, DW2 Dharm Prakash, DW3 Sitaram and DW4 Mohd. Ameen had been examined. All these witnesses had been cross-examined by plaintiff.

10. Documentary Evidence :- On behalf of plaintiff - Map approved by Local Authority Tulsipur and receipts issued by Trust were filed as documentary evidence whereas on behalf of defendants - receipts issued by Defendant No.3 Trust as well as Original Registered Will- Deed dated 28.08.1991 along with Rashan card and Power of Attorney issued by Defendant No.3 through its Secretary had been filed as documentary evidence.

11. Findings of Ld. Trial Court :- Ld. Trial Court had found that plaintiff has failed in proving that he was owner or possessor of the disputed property and that plaintiff had right to institute the present suit and that suit is properly valued and sufficiently stamped but plaintiff is not entitled to get any relief.

12. Grounds of Appeal :- in brief, are that the Ld. Trial Court has failed to appreciate the fact that plaintiff has prayed for relief of perpetual injunction only for which the main point of determination was possession of plaintiff over disputed property on the date of institution of suit. Ld. Trial Court should have framed the issue that whether plaintiff was possessor of the disputed property whereas the issue framed was that whether plaintiff is owner of the disputed property. Ld. Trial Court has failed to appreciate the documentary evidence filed on behalf of plaintiff i.e. Map approved by Local Authority Tulsipur and rent receipts issued by Defendant No.3 Trust. Ld. Trial Court has not properly appreciated the oral evidence available on the record.

13. Submissions of Appellant :- Ld. Counsel of appellant basically submitted that the relief of permanent injunction is primarily based on the factum of the possession of the disputed property. Plaintiff has been able to prove that plaintiff was in the possession of disputed property

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Bhagvan Prasad

eventhough it is admitted that disputed property is owned by Defendant No.3 Dharm Karya Nidhi Trust. Ld. Counsel of appellant further submitted that tenancy rights could not be transferred by Will and therefore Defendant No.2 Nanbacha will not get any benefit from the registered Will-Deed executed by Defendant No.1 Lakhraji in his favour.

14. Submissions of Respondents :- Ld. Counsel of Respondent No.1 Nanbacha (Defendant No.2) submitted basically that it is admitted that the disputed property is owned by Defendant No.3 Trust but was and is possessed by Defendant No.2 Nanbacha which is also admitted by Defendant No.3 Trust. If there is any dispute in respect of the disputed property then it is between Defendant No.2 and Defendant No.3 and that plaintiff has no right, title or interest whatsoever with respect to the disputed property as plaintiff is neither owner nor possessor of the disputed property at any point of time. Ld. Counsel of Respondent No.2 (Defendant No.3 Trust) also submitted that plaintiff has no right, title or interest with respect to the disputed property as plaintiff is neither owner nor possessor of the disputed property which is owned by Defendant No.3 Trust and had been rented to Defendant No.2 Nanbacha.

15. On the basis of pleadings of the parties, issued framed and disposed by Ld. Trial Court, grounds taken in this Civil Appeal and submissions made by Ld. Counsels of both the parties, following two points of determination arise for consideration before this Court :-

- (I) Whether plaintiff is owner and/or possessor of the disputed property?
- (II) Relief, if any, to which plaintiff is entitled?

16. Point of Determination No.- (I) :- there is merit in the submission put forward by Ld. Counsel of appellant that relief of permanent injunction is primarily based on the factum of possession of the disputed property and that the proper Issue of possession should have been framed by the Ld. Trial Court whereas issue of only ownership had been framed. Therefore, this point of determination has been framed with respect to

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Abhinav Upadhyay

ownership and/or possession of the disputed property. Ld. Trial Court has in the impugned order dated 26.07.2012, analyzed in detail the evidence available on the record by mentioning that on behalf of plaintiff only a map approved by Local Authority Tulsipur and rent receipts issued by Defendant No. 3 Trust in favour of Ram Kishun S/o Bhagvan Deen (and not in favour of plaintiff Bhagvan Prasad or his father Ayodhya Prasad) had been filed. Therefore, no benefit of the rent receipts could be given to plaintiff. The map of house approved by Local Authority Tulsipur is in favour of Ayodhya Prasad (father of plaintiff) in Year 1996 however it is not clear that this approved Map belongs to which property. Even otherwise it is settled law that House Map approved by any Local Authority is not relevant for proving either ownership or possession of any property. Apart from these two documents, three oral witnesses had been examined on behalf of plaintiff. PW1 is plaintiff is himself who had admitted in his cross-examination that the disputed property is owned by Defendant No.3 Trust with further admission that Ram Kushun S/o Bhagvan Deen had been tenant in the disputed property. PW1 further admitted that Defendant No.1 Lakhraji was living in the disputed property till her death and that last rights of Defendant No.1 Lakhraji had been performed from this disputed property in which the plaintiff/(PW1) had not participated. It is ironical that PW1 (plaintiff) has stated in his cross-examination that PW1 had not read and understood the contents of the plaint and had only put his signatures on the plaint. PW2 Darshan Lal had also admitted that Defendant No.1 Lakhraji was living till her death in the disputed property and that her last rights were also performed from the disputed property. PW2 further admitted that Defendant No.2 Nanbacha is residing in the disputed property and that the disputed property is owned by Defendant No.3 Trust. PW2 further stated that PW2 had no knowledge that when the disputed property was leased out. PW3 Bekaru has outrightly denied (in his cross-examination) that he had filed the evidence affidavit or he had put his thumb impression on the evidence affidavit. Therefore, Ld. Trial Court has rightly discarded the testimony of PW3. DW1 has supported his pleading in his oral evidence with further admission that disputed property is owned by Defendant No.3

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Trust. DW2 Dharm Prakash has also stated that disputed property is owned by Defendant No. 3 Trust. Earlier Defendant No.1 Lakhraji was tenant and presently Defendant No. 2 Nanbacha is residing in the disputed property. DW2 further stated that plaintiff has no relationship whatsoever at any point of time with the disputed property. DW3 Seeta Ram has been examined on behalf of Defendant No.3 Trust who is manager of the Trust. DW3 has stated that the disputed property is owned by Defendant No.3 Trust. Similarly, DW4 Mohd. Ameen had also been examined by Defendant No.3 who had stated that the disputed property is owned by Defendant No.3 Trust and that plaintiff has no relationship whatsoever at any point of time with the disputed property.

17. Ld. Counsel of respondents placed reliance on State of **Madhya Pradesh Vs. Maharani Usha Devi** [2015 SCCR 854] in which **Hon'ble Apex Court** held that parties are governed by their pleadings and that burden lies on the person who pleads to prove the facts and that plaintiff has to succeed basing on strengths of his case and can not depend upon weakness of defendant's case. In **Laxman Prasad Vs. Ram Kumar Singh** [Second Appeal No.191 of 1984, decided on July 12, 1993] **Hon'ble Allahabad High Court** while referring to Section 101 and 102 of Evidence Act held that in a suit for possession and injunction, the plaintiff is required to stand on its own legs and burden of proof lies on the plaintiff to establish his title and possession over the disputed property as well as cause of action for filing of the suit for injunction. Ld. Counsel of respondents also referred to the judicial authority of **Raj Kumar and others Vs. Ashok Kumar Chaurasiya and others** [2016 (34) LCD 62] wherein **Hon'ble Allahabad High Court** held that omission to frame an issue in particular terms does not vitiate the proceedings where parties were aware of the issues and led evidence accordingly.

18. The rent receipts filed on behalf of plaintiff is not in favour of plaintiff or his father or his predecessor in title. The approved Map has no relevancy to prove ownership or possession over any property. All the

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oral witnesses examined on behalf of plaintiff as well as defendants had unequivocally admitted that the disputed property is owned by Defendant No.3 Trust and also admitted that Defendant No.1 Lakhraji was residing in the disputed property till her death and thereafter Defendant No.2 Nanbacha is residing in the disputed property. All the oral witnesses (except PW1) have also stated that plaintiff has no relationship whatsoever with the disputed property at any point of time. Thus, apart from an oral statement given by only PW1 (plaintiff) that plaintiff is residing in the disputed property, there is no other evidence available on the record to support the claim of the plaintiff. Even this oral statement of PW1 (plaintiff) is negated by another statement of PW1 himself that PW1 (plaintiff) had not even read and understood the contents of the plaint. In such circumstances, there is no requirement for this Court to give any finding relating to the validity and impact of the registered Will-Deed executed by Defendant No.1 Lakhraji in favour of Defendant No.2 Nanbacha with respect to the disputed property because it is clearly found that plaintiff has totally failed in proving his case that plaintiff was possessor of the disputed property at the time of the institution of the suit. Hence, there is no error in findings recorded by Ld. Trial Court in this respect that plaintiff is neither owner nor possessor of the disputed property. As regards the submission of non framing of issue of possession of Ld. Trial Court the legal position becomes clear in view of **Raj Kumar's case (Supra)** that such omission will not vitiate the proceedings where parties were aware of the issues and led evidence accordingly. **Thus Point of Determination No.- (I) is decided against the appellant.**

19. Point of Determination No.- (II) :- In view of the disposal of Point of Determination No. I, it is clear that plaintiff (appellant) is not entitled to any relief and therefore, this Civil Appeal is liable to be dismissed.

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Abhul Chandra Upadhyay

ORDER

20. The Civil Appeal No. - 21/2012, Bhagvan Prasad Vs. Nanbacha and others is dismissed. Costs easy. Decree be prepared as per rules. The records of this Civil Appeal along with the Original Suit be sent to concerned Court of Civil Judge (Senior Division), Balrampur for further consignment of records to Record Room after usual compliance as per rules.

Dated: 18.12.2023.

sd/-
(Abhinitam Upadhyay)
J.O. Code-UP6192
Additional District Judge/
Special Judge (NDPS) Act,
Balrampur.

This judgment is signed, dated and pronounced by me today in open court.

Dated: 18.12.2023.

sd/-
(Abhinitam Upadhyay)
J.O. Code-UP6192
Additional District Judge/
Special Judge (NDPS) Act,
Balrampur.

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