



2026:AHC:174029

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL No. - 251 of 2005

Kanpur Development Authority

.....Appellant(s)

Versus

Sri Nathu Lal Gupta And Others

.....Respondent(s)

Counsel for Appellant(s)

:

Counsel for Respondent(s)

:

Court No. - 54

HON'BLE ANIL KUMAR-X, J.

1. Heard Sri M.C. Chaturvedi, learned Senior Counsel assisted by Sri Abhinav Krishna Srivastava, learned counsel for the appellant and Sri Atul Dayal, learned Senior Counsel assisted by Sri Abhishek Tiwari, learned counsel for respondents.

2. This instant appeal has been preferred with a prayer to set aside the judgment and order dated 9.11.2004 passed by Additional Civil Judge (Senior Division) Kanpur Nagar, in O.S No. 2001 of 1984. For the sake of convenience, the parties shall be referred to by their nomenclature before the Trial Court. Respondents shall hereinafter be referred to as the plaintiffs, while the appellant shall be referred to as defendant No. 1.

3. The plaintiffs instituted a suit seeking a decree of permanent injunction restraining defendant No. 1 from interfering with his peaceful possession over House No. 127/W/1807-A, situated over part of Arazi No. 1807 and numbered by Kanpur Nagar Mahapalika, as well as over the entire Arazi No. 1807, measuring 23 bighas and 12 biswas. The plaintiff pleaded that he had obtained Arazi No. 1807, measuring 23 bighas and 12 biswas, situated at Mohal Dilip Singh, Village Juhi Kala, Kanpur, by virtue of a lease deed dated 07.05.1945 executed in his favour by the erstwhile Zamindar, Late Smt. Shiv Rani Kunwar. The land was taken on lease for establishing a brick kiln. However, the proposed business could not be started as the soil of the land was found to be alkaline and unsuitable for the purpose.

4. The plaintiff further pleaded that thereafter he raised huts and constructed a boundary wall over the land and started carrying on the business of building materials. He claimed to have remained in possession of the land

since 01.07.1952. According to him, by virtue of his long-standing possession, the land is vested in him under Section 9 of the Uttar Pradesh Vileya Abadi Adhiniyam, 1948. It was also pleaded that neither the land in question nor any construction existing thereon was ever acquired by the State Government and, therefore, the same never vested either in the State Government or in defendant No. 1, Kanpur Development Authority. The plaintiff further claimed that on enforcement of the U.P. Zamindari Abolition and Land Reforms Act, his rights in the land stood protected.

5. The plaintiff further pleaded that the house existing over the land had been assigned municipal number by Kanpur Nagar Mahapalika. According to him, a person claiming to be a Junior Engineer of defendant No. 1 came to the property, measured the land and directed him to remove the alleged illegal constructions, stating that the land was required for auction proceedings. The plaintiff claimed that no notice had been served upon him by defendant No. 1 regarding any such proceedings or proposed action. He, therefore, pleaded that defendant No. 1 had no right to interfere with his peaceful possession, giving rise to the cause of action for the suit.

6. Defendant No. 1 contested the suit and denied the plaintiff's claim. It was pleaded that the land in question had never belonged to Late Smt. Shiv Rani Kunwar. It was further pleaded that the disputed land was not situated at Mohal Dilip Singh, Village Juhi Kala, as alleged by the plaintiff, but at Mohal Ram Charan. The alleged lease deed dated 07.05.1945 was denied and described as forged and fabricated. Defendant No. 1 also questioned the plaintiff's claim that such a large tract of land could have been leased by a Zamindar. It was further pleaded by defendant No. 1 that Arazi No. 1807, stated to comprise 40 bighas, had been acquired on 18.10.1958 pursuant to Award No. 1 dated 16-10-1958. According to defendant No. 1, possession of the acquired land was thereafter taken on 18.10.1958 and the defendant had remained in possession since then.

7. The other private defendants, in their respective written statements, also denied the averments made in the plaint. They pleaded that the name of the plaintiff had been wrongly recorded in respect of Arazi No. 1807 and that the plaintiff had got his name recorded by practising fraud.

8. On the basis of the pleadings of the parties, the learned Trial Court framed nine issues. Out of them, four issues are relevant for the controversy involved in the present appeal, while the remaining issues are formal in nature and relate to court fees, valuation of the suit, maintainability and other such matters. The relevant issues were framed as follows:

Issue No. 1: Whether the plaintiff is the owner and in possession of the

disputed Arazi No. 1807, measuring 23 bighas and 12 biswas, situated at Juhi Kala, Kanpur Nagar?

Issue No. 2: Whether the disputed land was acquired pursuant to Award No. 1 dated 16.10.1958?

Issue No. 8: Whether the entries in the revenue records in favour of the plaintiff are forged?

Issue No. 9: Whether the lease deed relied upon by the plaintiff in his favour is void?

Findings of the Trial Court

9. The learned Trial Court considered Issue No. 8 first. It examined the records of rights produced by both sides, which contained entries in their respective favour in respect of the disputed land.

10. The appellant-defendant contended that the validity of the entries could not be examined without summoning the original records. The Trial Court rejected the contention, observing that an application filed by the defendant for summoning the original records had already been dismissed and the said order had attained finality. It further observed that summoning of original records would be necessary where the genuineness of the documents was doubtful, but not where the party challenging the entries could obtain and produce certified copies.

11. On examination of the records, the Trial Court found that the record of rights for Fasli 1356 recorded the name of deceased Nathu Lal in respect of Arazi No. 1807. The record relied upon by the defendant was of Fasli 1394, wherein the defendant's name was recorded. However, according to the Trial Court, the Arazi mentioned in the Fasli 1394 record related to land situated at Mohal Ram Charan and not to the disputed land at Mohal Dilip Singh. The Trial Court, therefore, held that the defendant had failed to substantiate the allegation that the entries in favour of the plaintiff were forged and decided Issue No. 8 against the defendant.

12. Issue No. 9, relating to the lease deed dated 07.05.1945, was thereafter considered. The Trial Court held that the said lease deed did not have legal value and could not be treated as conferring title upon the plaintiff. It, however, observed that the possibility of the document having formed the basis for the entry in the record of rights for Fasli 1356 could not be ruled out. The Trial Court did not attach much significance to the document and observed that it might have relevance for collateral purposes. The issue was accordingly decided.

13. Issue No. 2, relating to the alleged acquisition of the disputed land, was decided in favour of the plaintiff. The defendant had claimed that the land was acquired on 16.10.1958 and possession thereof was taken on 18.10.1958. The Trial Court, however, found that the documents produced in support of the said claim did not establish acquisition of the disputed land. It noticed that paragraph 17 of the award dated 16.10.1958 referred only to two bighas of Arazi No. 1807, whereas the possession certificate did not mention Arazi No. 1807. The defendant/Kanpur Development Authority also failed to produce any document showing payment of compensation in respect of the land claimed by the plaintiff. On these grounds, the Trial Court held that acquisition of the disputed land had not been proved and decided the issue in favour of the plaintiff.

14. While deciding Issue No. 1, the Trial Court considered the rival claims regarding title and possession. The appellant-defendant contended that the plaintiff could not maintain a suit for injunction without seeking a declaration of title if the defendant was found to be in possession. It was further submitted that the plaintiff could not claim ownership merely on the basis of municipal entries, as mutation entries do not confer or conclusively establish title. The defendant also contended that if the plaintiff was actually in possession of the disputed land, he ought to have filed a return under Section 6 of the Urban Land (Ceiling and Regulation) Act, 1976. His failure to do so, according to the defendant, indicated that he was not in possession.

15. The Trial Court considered a letter issued by the Joint Secretary (Estate) to the S.H.O., Naubasta, Kanpur in 1988, directing maintenance of status quo in respect of 20 bighas of Arazi No. 1807 in connection with the suit instituted by the plaintiff. The letter also recorded that the plaintiff had collected some building material over the property and was not in possession of the entire land. The Trial Court also considered the statement of D.W.-1 Mumtaz Ahmad Chisti, who stated that the plaintiff was in possession, though according to him such possession was illegal. On consideration of these circumstances, the Trial Court found that the plaintiff was in possession of a part of the disputed property.

16. The Trial Court further relied upon the entries in the record of rights for Fasli 1356, wherein the name of deceased Nathu Lal was recorded in respect of 20 bighas of Arazi No. 1807. It considered the same along with the provisions of Section 3 of the United Provinces Vilas Abadi Act, 1948, relating to houses constructed in Abadi before the relevant date. The Trial Court also noticed that the notice issued on behalf of defendant No. 1/Kanpur Development Authority referred to demolition of the alleged illegal constructions/possession over the land.

17. Considering the entire material on record, the Trial Court held that possession of the plaintiff over the entire Arazi No. 1807 could not be established. However, it found his possession over the portion comprising House No. 127/W/1807-A established.

Submissions on behalf of the Appellant

18. Learned counsel for the appellant-defendant submits that the judgment of the learned Trial Court suffers from a misreading of the documentary evidence relating to the acquisition of the disputed land. The plaintiff's entire claim is founded upon the alleged lease deed dated 07.05.1945, said to have been executed in his favour by Late Smt. Shiv Rani Kunwar, claiming to be the owner of the disputed land. The plaintiff asserts his title and possession through the said lease deed. According to the appellant, however, the land covered by the plaintiff's claim had already been acquired by the State pursuant to Award No. 1 dated 16.12.1958 and possession thereof had thereafter been taken. Consequently, no subsisting right could have been claimed by the plaintiff on the basis of the alleged lease deed after the acquisition.

19. Learned counsel submits that the learned Trial Court has incorrectly read paragraph 17 of Award No. 1 dated 16.12.1958. According to him, the said paragraph specifically refers to Arazi No. 1807 and establishes that the land in question formed part of the acquisition proceedings. The Trial Court, according to the appellant, proceeded on an erroneous assumption that reference to only a particular area of Arazi No. 1807 in the award necessarily meant that the disputed land was not covered by the acquisition. The award, when read with the other acquisition documents, according to the appellant, clearly establishes that the disputed Arazi was acquired.

20. It is further submitted that the Trial Court also failed to properly appreciate the evidence regarding payment of compensation. Learned counsel has placed reliance upon Paper No. 81 of the appeal, containing the statement showing the compensation determined and awarded to the respective landowners pursuant to the acquisition proceedings. It is submitted that the said document specifically records payment/award of compensation of Rs. 3,249/- in favour of Smt. Shiv Rani Kunwar. According to the appellant, this document assumes significance because the plaintiff himself claims his right through Smt. Shiv Rani Kunwar as the alleged lessor and original owner of the property. Receipt of compensation by the very person through whom the plaintiff claims title, according to the appellant, strongly corroborates the appellant's case that the land of Smt. Shiv Rani Kunwar was included in the acquisition proceedings.

21. Learned counsel therefore submits that the Trial Court committed an error in observing that there was no material to establish payment of compensation. The document relied upon by the appellant was required to be considered along with the award and other acquisition records. The documents, when read cumulatively, according to him, establish not only the acquisition but also the fact that compensation was determined in respect of the land belonging to Smt. Shiv Rani Kunwar.

22. It is next submitted that the plaintiff's entire case is founded upon the alleged lease deed dated 07.05.1945. The plaintiff claimed that Smt. Shiv Rani Kunwar was the owner of the land and, being its owner, she had executed the lease deed in his favour. However, according to the appellant, the plaintiff failed to establish the lease deed in accordance with law. In particular, the plaintiff failed to prove the authority and title of Smt. Shiv Rani Kunwar to execute the alleged lease in respect of such a large tract of land. Once the very foundation of the plaintiff's claim of title was not established, the plaintiff could not claim a better right merely on the basis of subsequent entries in the revenue or municipal records.

23. It is further submitted that the learned Trial Court itself found that the alleged lease deed had no legal value and could, at the highest, be relevant for collateral purposes. Having recorded such a finding, the Trial Court ought not to have relied upon the entries in the record of rights as a circumstance supporting the plaintiff's claim without first examining the source and basis of those entries. According to the appellant, an entry in the revenue record cannot, by itself, create or confer title, particularly where the plaintiff's alleged source of title has not been proved.

24. Learned counsel further submits that the Trial Court placed undue reliance upon the entry in the record of rights for Fasli 1356. Such entries, according to him, are essentially entries made for revenue purposes and cannot by themselves establish ownership or title. At the highest, they may constitute evidence of possession or may have some evidentiary value depending upon the circumstances in which they were made. They cannot, however, cure the failure of the plaintiff to prove the alleged lease deed or establish the title of the lessor.

25. It is also submitted that the plaintiff sought a decree of permanent injunction by asserting both title and possession over the disputed property. Therefore, the plaintiff was required to establish the right on the basis of which protection of his possession was claimed. Once the alleged lease deed, which constituted the foundation of his claim, was not proved, and the land had already been acquired, the subsequent revenue entries could not confer

upon him any independent right against the appellant.

26. Learned counsel thus submits that the learned Trial Court considered the acquisition documents separately and in isolation instead of examining them cumulatively. The Award, the possession proceedings and the statement relating to compensation, particularly the compensation of Rs. 3,249/- awarded to Smt. Shiv Rani Kunwar, were required to be considered together. Had the documents been properly appreciated, it would have been clear that the disputed land formed part of the acquired property and that the alleged lease could not confer any subsisting right upon the plaintiff. The judgment and decree, therefore, deserve to be set aside.

Submissions on behalf of the Respondent-Plaintiff

27. Learned counsel for the respondent-plaintiff submits that the appellant-defendant has failed to establish that the entire Arazi No. 1807 was acquired pursuant to the acquisition proceedings relied upon by it. According to him, Arazi No. 1807 constituted a large tract of land measuring about 68 bighas, out of which the appellant claimed to have acquired only 40 bighas and 19 biswas. Thus, the mere fact that Arazi No. 1807 finds mention in the acquisition proceedings does not establish that the entire Arazi No. 1807, including the land in possession of the plaintiff, was acquired.

28. It is further submitted that the Award dated 16.10.1958, even when read as a whole, does not clearly identify the exact portion of Arazi No. 1807 which was acquired. The Award does not, according to learned counsel, specify the boundaries or other particulars by which the acquired portion can be identified on the spot. In the absence of clear identification of the acquired land, the appellant cannot contend that the land in possession of the plaintiff formed part of the acquired area.

29. Learned counsel further submits that the Trial Court rightly appreciated the acquisition documents and found that paragraph 17 of the Award referred only to a limited area of Arazi No. 1807. The possession certificate relied upon by the appellant also did not specifically mention Arazi No. 1807. Thus, according to him, the acquisition documents relied upon by the appellant do not establish that possession of the particular land claimed and possessed by the plaintiff was ever taken.

30. Learned counsel has further relied upon the record of rights for Fasli 1356, wherein the name of the plaintiff/deceased Nathu Lal was recorded in respect of the disputed land. It is submitted that these entries were made much prior to the alleged acquisition and continued to support the plaintiff's possession and claim over the property. The appellant did not challenge the

said entries at the relevant time and failed to establish that they were forged or fabricated.

31. It is, therefore, submitted that the appellant cannot, merely by referring to general acquisition proceedings concerning Arazi No. 1807, seek to dispossess the plaintiff from the particular land in his possession without first establishing that the same formed part of the land actually acquired. The revenue entries in favour of the plaintiff, coupled with the evidence regarding his possession and the absence of clear identification of the acquired portion, according to learned counsel, fully justified the decree passed by the Trial Court.

32. Learned counsel thus submits that the Trial Court has considered the entire material on record and has rightly found that acquisition of the land in possession of the plaintiff was not proved. The findings recorded by the Trial Court are based upon appreciation of evidence and do not warrant interference in appeal.

Discussion and Conclusions

33. After hearing learned counsel for the parties and taking into consideration the findings recorded by the learned Trial Court on Issues No. 1, 2, 8 and 9, as well as the submissions advanced on behalf of the appellant, **the following points arise for determination in the present appeal:**

1. Whether the question of title to the disputed Arazi No. 1807 was merely incidental to the relief of injunction claimed by the plaintiff or was a substantial issue requiring adjudication, and whether, in either event, the plaintiff succeeded in establishing his title over the disputed property?
2. Whether the finding recorded by the learned Trial Court regarding possession of the plaintiff over the disputed property suffers from any infirmity or is contrary to the evidence on record?
3. Whether, in the facts and circumstances of the case, the decree of permanent injunction could have been granted in favour of the plaintiff without a clear adjudication of his title over the disputed property, and whether the judgment and decree of the learned Trial Court are consequently sustainable?

Conclusion on Point of Determination no.1

34. Before advertng to this issue, it would be apposite to refer the judgment of **Anathula Sudhakar v. P. Buchi Reddy (Dead) by LR. & Ors., AIR 2008 SC 2033**, where it was held that:

"12. We may however clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a cloud on the title of plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient."

35. The aforesaid judgment makes it clear that the question whether a plaintiff seeking permanent injunction is required to seek a declaration of title depends upon the nature of the rival claim and the state of the plaintiff's title. Where the plaintiff has a clear and established title and the defendant merely disputes such title without setting up any apparent or competing right, the suit for injunction may be maintainable without a prayer for declaration. However, where the defendant raises a genuine and substantial dispute regarding the plaintiff's title, thereby creating a cloud over it, the plaintiff cannot ordinarily avoid adjudication of title merely by seeking an injunction.

36. The aforesaid principle has to be examined in the light of the peculiar facts of the present case. The plaintiff did not base his claim merely upon the alleged lease deed dated 07.05.1945. His case was also founded upon the record of rights of Fasli 1356, in which his predecessor Nathu Lal was recorded in respect of the disputed Arazi No. 1807. The said entry admittedly existed prior to the acquisition proceedings relied upon by the appellant. The appellant-defendant disputed the genuineness of the said entry and pleaded that the plaintiff had got his name recorded by practising fraud.

37. The question, therefore, is whether such an entry could have been treated as forged or ineffective by the learned Trial Court merely in the course of deciding the present suit. In this regard, it is significant that the entry in the record of rights was not shown to have been cancelled, corrected or set aside by any competent revenue authority or court. So long as the said entry continued to exist, its legal and evidentiary effect could not be completely ignored merely because the defendant alleged that it was forged. The defendant, if intended to rely upon the alleged falsity of the entry, was required to establish the same in accordance with law before the competent forum.

38. The position becomes more significant because the learned Trial Court itself relied upon the Fasli 1356 entry while considering the plaintiff's possession. Having accepted the existence of the said entry and having relied upon it as a circumstance supporting possession, the Trial Court could not, on the other hand, disregard its legal effect while examining the plaintiff's claim merely because the original lease deed was found not to confer title.

39. It is also relevant that the appellant-defendant relied upon a subsequent record of rights of Fasli 1394, but the learned Trial Court found that the said entry related to land situated at Mohal Ram Charan and not the disputed land situated at Mohal Dilip Singh. Thus, the appellant's subsequent revenue entry did not, according to the finding of the Trial Court, correspond to the property in dispute. The appellant, therefore, failed to demonstrate that the existing entry of Fasli 1356 in favour of the plaintiff's predecessor had subsequently been lawfully displaced by an entry relating to the same land.

40. In these circumstances, the mere fact that the alleged lease deed dated 07.05.1945 was not found sufficient to confer title could not, by itself, lead to the conclusion that the plaintiff had no legally recognisable right or possession over the property. The source or basis on which an entry came to be made and the continued existence of the entry are two distinct matters. If the entry had been lawfully cancelled or set aside, its effect would obviously stand on a different footing. But in the absence of any such order, the entry could not simply be treated as non-existent.

41. The contention of the appellant that the revenue entry does not by itself confer title is undoubtedly a settled proposition. But that proposition has to be distinguished from the question whether an existing revenue entry can be ignored altogether. A revenue entry may not, by itself, create title, but an existing and unchallenged entry cannot be treated as forged or wiped out from consideration merely on the basis of an allegation made by the opposite party. Its evidentiary value has to be assessed in the context of the entire evidence on record.

42. Therefore, in the present case, the issue is not whether the plaintiff established title exclusively on the strength of the lease deed dated 07.05.1945. Rather, the relevant question is whether, in view of the existing Fasli 1356 entry in favour of the plaintiff's predecessor, the rival claim of the appellant and its allegation that the entry was forged could be adjudicated incidentally in a suit for injunction, particularly when no prior order of a competent court or authority setting aside the said entry was brought on record.

43. On this aspect, the finding of the learned Trial Court that the appellant

failed to establish the alleged forgery of the Fasli 1356 entry assumes considerable significance. The mere production of a subsequent revenue record in favour of the appellant, particularly when the same was found by the Trial Court to relate to a different Mohal, could not displace the earlier entry standing in favour of the plaintiff's predecessor.

44. Thus, the question of title, to the extent it rested upon the existing revenue entry and the appellant's challenge thereto, was not required to be decided as an independent substantive relief in the present suit unless the circumstances were such as to create a genuine cloud over the plaintiff's otherwise existing right. The crucial question, therefore, is whether the appellant established such a competing right over the very land in dispute, particularly on the basis of the alleged acquisition, so as to render the plaintiff's existing entry and possession insufficient for grant of injunction.

45. That question would necessarily have to be considered along with the evidence relating to identity of the land, acquisition, delivery of possession and the plaintiff's actual possession, which also bears directly upon Point Nos. 2 and 3.

Conclusion on Point of determination No. 2

46. Coming to the second point regarding possession, it is evident from the judgment of the learned Trial Court that the finding of possession was not recorded in respect of the entire Arazi No. 1807 claimed by the plaintiff. The learned Trial Court specifically found that the plaintiff had failed to establish his possession over the entire disputed land and confined its finding of possession to the limited portion comprising the two-room construction, namely House No. 127/W/1807-A. Thus, the decree of injunction was not founded upon a finding that the plaintiff was in possession of the entire Arazi No. 1807 measuring 23 bighas and 12 biswas.

47. The said finding regarding possession over the two-room construction was based upon the evidence available on record. One of the circumstances noticed by the learned Trial Court was the notice issued by defendant No. 1 itself to the plaintiff, whereby the plaintiff was directed to remove the alleged illegal construction of two rooms existing over the disputed land. The issuance of such notice by the appellant-defendant assumes significance, as it constitutes an admission, at least to the extent of existence of the construction over the site claimed by the plaintiff. If there was no construction or possession of the plaintiff over the particular portion, there was little occasion for defendant No. 1 to issue a notice requiring its removal.

48. The learned Trial Court also considered the Commissioner's report, which indicated the existence of a room over the alleged site. The said report, therefore, provided independent corroboration regarding the physical existence of construction over the portion in question. The evidence relating to the notice issued by defendant No. 1 and the Commissioner's report was considered by the learned Trial Court along with the other material available on record.

49. The learned Trial Court further noticed the statement of D.W.-1 Mumtaz Ahmad Chisti, who admitted the possession of the plaintiff, though according to him such possession was illegal. This admission is also relevant while examining the question of actual possession. The dispute raised by the defendant, therefore, was not as to whether the plaintiff was physically occupying or possessing the particular portion containing the construction, but whether such possession was legally authorised or was an illegal possession. The latter question is distinct from the question of factual possession.

50. Apart from the aforesaid evidence, the learned Trial Court also considered the statutory protection available in respect of constructions existing upon abadi land. It placed reliance upon Section 3 of the United Provinces Village Abadi Act, 1948, and noticed the material indicating that the construction in question appeared to have been raised prior to the relevant date. The Trial Court further considered the fact that such construction was in existence from a period preceding the enforcement of the Uttar Pradesh Zamindari Abolition and Land Reforms Act.

51. On the basis of the statutory scheme, the learned Trial Court proceeded to hold that where construction had been raised upon abadi land before the relevant date and was in the possession of the person concerned, the law attached a legal consequence to such possession and construction. The Trial Court found that the construction in question appeared to have been raised before 1950 and, therefore, considered it to be a construction which had existed from before the implementation of the U.P. Zamindari Abolition and Land Reforms Act. It accordingly held that such construction, having been raised on abadi land with the consent of the relevant zamindari, was liable to be treated as vested in the person in possession thereof in accordance with the statutory protection.

52. Thus, the finding of the learned Trial Court regarding possession was founded upon more than a mere revenue entry. The existence of the two-room construction was supported by the Commissioner's report; its existence over the disputed site was further corroborated by the notice issued by

defendant No. 1 itself directing the plaintiff to remove the construction; and the fact of possession was also supported by the statement of D.W.-1. The Trial Court thereafter examined the nature of such possession in the light of the statutory provisions applicable to old abadi constructions.

53. In these circumstances, the appellant's contention that the plaintiff had failed to establish possession over the disputed property cannot be accepted in its entirety. The plaintiff certainly failed to prove possession over the entire Arazi No. 1807, but the finding of possession over the limited portion comprising the two-room construction is supported by the evidence on record as well as the statutory provisions considered by the learned Trial Court. The distinction between these two aspects is important, because the decree of injunction granted by the Trial Court was confined to the portion over which the plaintiff's possession was found established.

54. Consequently, I find no sufficient ground to interfere with the finding of the learned Trial Court regarding the plaintiff's possession over the said limited portion of the disputed property.

Conclusion on Point of Determination no.3

55. In view of the discussion made hereinabove, the contention that the decree in favour of the plaintiff is liable to be set aside merely because there was no separate and conclusive adjudication of title cannot be accepted. The plaintiff had an existing revenue entry in his favour, which had not been set aside by any competent court or authority, and his possession over the limited portion comprising the two-room construction was also found established on the basis of the evidence on record. The appellant, on the other hand, failed to establish that the said portion had been acquired and possession thereof had been taken pursuant to the acquisition proceedings relied upon by it.

56. In a suit for permanent injunction, where the plaintiff establishes his possession and the defendant fails to establish a better right to interfere with such possession, the relief cannot be denied merely because the plaintiff has not obtained a declaration of title, particularly when the existing revenue entry in his favour continues to hold the field. The decree granted by the learned Trial Court, being confined to the portion over which the plaintiff's possession was found established, therefore cannot be held erroneous merely for want of a separate declaration of title.

57. Accordingly, Point No. 3 is answered against the appellant-defendant.

58. Accordingly, the impugned order is upheld, and the appeal is dismissed.

August 10, 2026
Ujjawal

(Anil Kumar-X,J.)