

W.R.

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal/Decree/TA/724/2000/Jodhpur

Smt. Tipu Devi w/o Chelaram d/o Bassa Ram, Caste Peetal r/o
Satlana Tehsil Luni, Distt. Jodhpur

.....Appellant.

VERSUS

1. Smt. Jhamkudi w/o Salgaram d/o Bassa Ram, Caste Peetal
r/o Mangeda Kalan
2. Smt. Chukli w/o Hukmaram d/o Bassa Ram, Caste Peetal r/o
Mangeda Kalan
3. Smt. Mamta w/o Jasraj Jan r/o B-97 Shastri Nagar, Jodhpur
4. Kedarlal s/o Jankilal
5. Smt. Sushila w/o Kedarlal
6. Tamarchand s/o Kedarlal, Caste Maheshwari r/o Pugalpara
Jodhpur
7. Kanhaiya Lal s/o Ramdayal
8. Rupi Devi w/o Kanhaiya Lal
9. Kamal Kishore s/o Kanhaiya Lal
10. Pushpi Devi w/o Kamal Kishore
11. Jugal Kishore s/o Kanhaiya Lal
12. Smt. Nirmala Devi w/o Jugal Kishore
13. Smt. Laxmi Devi w/o Ram Rakh
all Caste Maheshwari rs/o Kumhariya Kuan Jodhpur
14. Jayantilal s/o Bhanwarlal Kukkad Caste Oswal r/o Indore
Gulab Park Mahesh Nagar r/o Jodhpur
15. Smt. Shashi w/o Jayantilal Caste Oswal r/o Indore Gulab
Park Mahesh Nagar r/o Jodhpur
16. Smt. Suva w/o Sukanram Dhariwal r/o third A Road
Sardarpura Jodhpur
17. Smt. Manisha w/o Manoj Mehta Caste Oswal r/o Danga
Bazar Jodhpur
18. Smt. Shanti w/o Jaswantraaj Oswal r/o Kamla Nehru Nagar
Jodhpur
19. Suresh Bhandari s/o Jagjivan Chand Bhandari r/o Kabootron
ka chauk Jodhpur
20. Smt. Pappu w/o Nirmal Kumar Oswal r/o Nagaur Badiya ki
pol r/o Jodhpur
21. Jaswantraaj s/o Premraj r/o Kamla Nehru Nagar, Jodhpur
22. Nirmala Kumar s/o Mangilal r/o Napagaur Badiya
ki pol r/o Jodhpur

23. Jagjivan s/o Amarchand Bhandari Bhandari r/o Kabootron
ka chauk Jodhpur
24. Smt. Shalu d/o Pushp Chand r/o D-5 Shastri Nagar Jodhpur
25. Somchand s/o Premchand
26. Narender s/o Somchand
27. Virender s/o Somchand
28. Smt. Pushpa w/o Somchand
29. Smt. Chandu w/o Mahender
30. Smt. Manju w/o Narender
31. Smt. Sangita w/o Virender
32. Smt. Nilu w/o Surender
33. Dhirender s/o Somchand
All rs/o Ratanada Jodhpur Tehsil & District Jodhpur
34. Dhanpat s/o Jawarimal r/o Navbokiya Jodhpur
35. Sanjay s/o Dhanpat r/o Navbokiya Jodhpur
36. Bhanwar s/o Dhanpat r/o Navbokiya Jodhpur
37. Suresh s/o Gumanmal
38. Urmila w/o Gumanmal
39. Pankaj s/o Gumanmal
All r/o Sardarpura Jodhpur
40. Suresh s/o Jatanmal r/o Navbokiya Jodhpur
41. Smt. Arun w/o Jatanmal r/o Navbokiya Jodhpur
42. Kanchan Devi w/o Shantilal Bothra
43. Dinesh s/o Ajijmal r/o New Power House Jodhpur
44. Lachhiram s/o Joraram r/o village Mogda Kalan, Jodhpur
45. State of Rajasthan through Tehsildar Jodhpur
46. Additional Tehsildar Luni, Distt. Jodhpur

..... Respondents.

D.B

Shri V. Srinivas, Chairman
Shri Rajinder Kumar, Member

Argued by:

1. Shri Yogendra Shaktawat, Counsel for the Appellant.
2. Shri Virendra Singh Rathore, Counsel for the Respondent no.
1 and 2.
3. Shri J.K Pant, Counsel for the Respondent no. 17 to 19 and
30 to 33.
4. Shri Thaneshwar Sharma, Counsel for the Respondent no. 25.

JUDGMENT**Dated 10-07-2018****Per Shri Rajinder Kumar, Member**

1. This second appeal is preferred under section 224 of the Rajasthan Tenancy Act, 1955 against the judgment and decree of the learned Revenue Appellate Authority, Jodhpur, whereby the first appeal [No. 78/1997] filed by the plaintiff/appellant against the judgment and decree of the trial court of SDO, Jodhpur rejecting the suit under Order 7 Rule 11 CPC was dismissed.
2. The facts leading to the present controversy in nutshell are that the plaintiff/appellant filed the aforesaid suit No. 175/1994 against the defendants/respondents in the trial court claiming the reliefs of declaration of khatedari rights, partition and permanent injunction. During pendency of the suit, an application was filed by the defendants/respondents under Order 7 Rule 11 CPC on 29-04-1997. The said application was accepted by the learned trial court and the suit of the plaintiff/appellant was also dismissed. The first appeal filed by the plaintiff/appellant was rejected by the learned R.A.A, Jodhpur vide the judgment impugned herein. Hence this second appeal.
3. We have heard learned counsels for the parties.
4. On behalf of the plaintiff/appellant, it was contended that on 5-10-1971, an application was filed by his grandfather before the Naib-Tehsildar for partition of the disputed land between his two grandsons, namely, Pola Ram and Ratna Ram, who are brothers of the plaintiff whereas at that time the plaintiff, her two sisters and her another was also alive. On the basis of the proposed partition, the Naib Tehsildar ordered the Halka Patwari to make an entry of mutation. Accordingly, the Halka Patwari entered the mutation and got the same verified through the Sarpanch. The said partition was not legal, as both of his brothers were not con-tenants of the land and all the legal heirs were not joined party to the partition proceedings. In the year 1975 and 1978, both brothers of the plaintiff died issueless and mutation of their properties was sanctioned in the name of their mother alone and no share was given to the plaintiff and her sisters. Thereafter, the defendant no. 1 sold a considerable portion of disputed land to defendant No.4, defendant no. 25 and defendant no. 26 to 47 vide sale deeds executed on different dates. The defendant no. 4 re-sold the disputed land to defendant No. 5 to 24. As the defendant no. 1 intended to alienate the remaining land also, therefore, the plaintiff filed the present suit, wherein the relief claimed by her was for

declaration of khatedari rights over 1/4th share in the disputed land. In addition to it, the reliefs of partition and permanent injunction were also claimed. The learned trial court, on the basis of averments made in application under Order 7 Rule 11 CPC illegally rejected the suit filed by the plaintiff on the ground that only civil court has jurisdiction to decide the issue of cancellation of sale deed. The said findings of both the courts below are perverse, as the substantial relief claimed in the suit was regarding declaration of khatedari rights and partition. Thus, the Revenue Court has jurisdiction to decide the case. The argument of learned counsel is that the question of jurisdiction is a mixed question of law and facts and plaint cannot be rejected under Order 7 Rule 11 C.P.C on this ground. In this reference, learned counsel has relied upon 2016 (3) DNJ (Raj.) 1208 [Gopal Vs. Manohar Lal & ors]. Relying upon 2005 (12) RBJ 04 [Mota Ram Vs. Bhanwari], learned counsel also argued that a suit for declaration of khatedari rights and cancellation of entries made in revenue record is triable by the Revenue court only. On this score also, the impugned judgments are illegal. His further argument was that where the court comes to a conclusion that it has no jurisdiction to try the suit, the only course open to that court is to return the plaint for presentation in proper court and not to dismiss the same. To buttress this argument, learned counsel relied upon AR 1993 C.C. 2094 [R.S.D.V. Finance Company Pvt. Ltd. Vs Shri Vallabh Glass works].

5. Learned counsels for the respondents vehemently opposed the aforesaid contentions. According to them, there are no factual or legal infirmities in the concurrent findings of both the courts below. The appellant and her sisters were not entitled to any share in partition proceedings, which took place much prior to the amendments made in the Hindu Succession Act, 1956 on 20-12-2004. As the khatedar of the land submitted partition proposal before the Naib-Tehsildar, the later was duty bound to accept the same. Therefore, no infirmity can be found in the partition proceedings. It would be now too late to re-open the partition proceedings. Accordingly, the defendant no. 1 was within her legal rights to sell the disputed lands. Even otherwise, the relief of cancellation of sale deed is main relief and the relief relating to declaration and partition are merely ancillary reliefs. Hence, revenue court has no jurisdiction to try the suit. It was also argued that the signatures of plaintiff could be found on the disputed sale deed and thus, she is estopped from challenging the legality of the same. In support of aforesaid arguments, they have relied upon the following citations:-

- (i) 2011 (1) RRT 306 [Suraswati & others Vs Doonger & others]:- In this case it was held by this Board that Tehsildar had jurisdiction to pass an order of partition, if there was no dispute between the parties.
 - (ii) 2013 (2) RRT 1428 [Sultan Singh Vs. Prabhu Dan]:- In this case it was held by this Board that the parties may agree to partition their land and on appeal, the Assistant Collector cannot say that the said partition was not proper.
 - (iii) 2012 (1) RRT 350 [Ganduri Koteswaramma Vs Chakiri Yanadi and anothers]:- In this case, the Hon'ble Supreme Court held that the daughters are entitled to get share in ancestral property from 9-09-2005 and the amended provisions shall not apply to partition, which took place before 20-12-2004.
 - (iv) 2016 (1) RRT 29 [Prakash Vs Phoolawati]:- In this case, the Hon'ble Supreme Court has held that amendment made in Section 6 of the Hindu Succession Act, 1956 is prospective.
 - (v) 2006 (2) RRT 1332 [Sobhag Kanwar Vs State of Rajasthan]:- In this case it was held by Hon'ble Rajasthan high Court that after marriage, a daughter becomes the member of the family of husband and she is entitled to succeed on the death of husband till her remarriage.
6. We have given our thoughtful consideration to the rival submissions and perused the record carefully. We have also studied the law laid down in the citations submitted before us.
 7. The substantial questions of law raised in this appeal is:-
 - (i) Whether in the present case, the relief of cancellation of sale deeds was the ancillary relief and reliefs of declaration of khatedari rights and parition were the main reliefs, therefore, the jurisdiction of revenue court to try this suit was not barred?
 - (ii) If so, whether the judgments and decrees of the courts below are perverse and require interference by this Board.
 8. It is trite law that in order to determine whether the suit is exclusively cognizable by the Civil court or by the Revenue Court, the Court must strictly scrutinize the plaint. If a composite suit claiming more than one reliefs is filed and the question of jurisdiction is raised, then the jurisdiction of the Civil or Revenue Court to entertain the suit must be determined on the consideration of the fact as to what is the main relief claimed in the suit. The true nature of the relief claimed in suit can be determined from the pith and substance of the pleadings and not from the form in which relief is framed.

9. In the present case, the plaintiff has alleged in the plaint that she along with her two sisters are class I heirs and have succeeded to the agricultural land of their father and after the death of their brothers (who died without leaving behind class I heirs), all the three sisters and their mother are entitled to 1/4 share each. It has also been alleged by the plaintiff in the plaint that her mother has sold substantial portion of land and thus the transfer in excess of her 1/4 share is void. The reliefs claimed in the suit by the plaintiff are for declaration of her khatedari rights, partition by metes and bound and for permanent injunction. As a matter of fact, the plaintiff has essentially sought the declaration of her share in the disputed land in terms of section 88 and item no. 5 of the Scheduled III of the Land Revenue Act, 1955. Therefore, the suit filed by her was triable by the Revenue Act. In this regard, we can place reliance upon a decision of the Hon'ble Rajasthan High Court in the matter of Rukmani Vs Bhola & ors 2012 (2) WLC (Raj.) 797. In that case, the Hon'ble High Court held under:-

"If the substance of the pleadings and relief claimed by the plaintiff-appellant is considered in a right perspective, it is clear that the plaintiff by means of the present suit is seeking a relief of declaration in her favour that she is khatedar tenant/co-tenant of 1/2 share of the land in dispute alongwith the defendant. The land in dispute being an agricultural land, such declaration can be given only by a revenue court under the provisions of the Act. It cannot be disputed that a suit for declaration regarding an agricultural land is to be filed under Section 88 of the Act if a person claims to be tenant or a co-tenant in the agricultural land in dispute. Section 207 of the Act provides that all suits of the nature specified in the third schedule shall be heard and determined by a revenue court and no other court other than a revenue court shall take cognizance of any such suit. In item 5 of the third schedule a suit for declaration under Section 88 of the Act has been mentioned. I am also of the view that if the revenue court passes a decree for declaration in favour of the plaintiff to the effect that she is khatedar-tenant or co-tenant of 1/2 or any other share in the land in dispute, that court is equally competent to grant a consequential relief to the effect that the sale deed in question is void and

ineffective to the extent of share of the plaintiff and it is not essential for the plaintiff to file a separate suit thereafter in a civil court for getting the sale deed cancelled. I am also of the view that if the revenue court declares the plaintiff co-tenant of the land in dispute, it is not necessary for her to get the sale deed cancelled as that would be automatically void and ineffective to the extent of share of the plaintiff."

10. In the case of Modu Ram Vs. Board of Revenue & ors [2015 (3) WLN 284 (Raj.)], it has been held by the Hon'ble Rajasthan High Court that:-

"So far as the plea raised by learned counsel for the petitioner that the jurisdiction to cancel the sale deed is exclusively with the civil court and therefore, the same is necessarily barred before the Revenue Court, is concerned, the said aspect has been comprehensively dealt with in the case of Jaswant Singh (supra) and Rukmani (supra), wherein it has been held that if the sale deed is claimed to be void and/or the cancellation thereof is merely ancillary to the main relief of declaration and partition, the said relief can be granted by the Revenue Court as well and it cannot be said that the jurisdiction of the Revenue Court is affected thereby."

11. The facts of the present case bear resemblance to the facts of the Modu Ram's case (supra). In the present case also, the relief of cancellation of sale deed is merely ancillary to the main relief of declaration and partition and thus the reliefs claimed by the plaintiff could be granted by the Revenue Court and it cannot be said that the jurisdiction of the Revenue Court is barred in this regard.
12. There is another aspect of the matter also. In this case, the validity of a sale deed has been challenged and thus the same cannot be considered and decided by taking resort to the provisions of Order 7 Rule 11 C.P.C. In this regard, reference can be made to a decision of Hon'ble Rajasthan High Court reported in AIR 1983 Rajasthan 03 (Bhagwan Das Vs Goswami Brijesh Kumar).
13. In view of above discussion, the substantial question is answered in terms that in the present case the relief of cancellation of the sale deed was the ancillary relief and the reliefs of declaration of

khatedari rights and partition were the main reliefs, therefore, the jurisdiction of revenue court to decide the suit was not barred. In such circumstances, the judgments and decrees of the courts below are perverse and require interference by this Board.

14. Coming to the cases cited by learned counsel for the respondents/defendants, the same are touching merits of the case. Therefore, at this stage no reliance can be placed upon them.
15. Resultantly, the appeal is allowed and impugned judgments and decrees of the courts below are set aside. The trial court of SDO, Jodhpur is directed to re-admit the suit no. 175/1994 filed by the plaintiff/appellant to its original number and dispose of the same in accordance with law.

Pronounced.

(Rajinder Kumar)
Member

(V. Srinivas)
Chairman