

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal Decree No. 7704/2001/TA/Alwar :

Bagga Singh S/o Shri Gyan Singh, by caste Rai Sikh,
R/o Village Mithiawas, Tehsil Tijara, District Alwar.

... Appellant.

Versus

Mst. Mali Bai W/o Laabh Singh, by caste Rai Sikh,
R/o Village Mithiawas, Tehsil Tijara, District Alwar.

... Respondent.

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D.B.

Shri V. Srinivas, Chairman
Shri Indra Singh Rao, Member

Present :

Shri Satveer Singh Siddhu : counsel for the appellant.
Shri Ayub Khan : counsel for the respondent.

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Dated : 07.6.2018

J U D G M E N T

This second appeal has been preferred under section 224 of the Rajasthan Tenancy Act, 1955 (hereinafter to be referred as "the Act") against the judgment and decree passed by learned Revenue Appellate Authority, Alwar dated 28.8.2001 in appeal no.11/99.

2. Heard the arguments of learned counsel for both the parties and perused the record.

3. The learned counsel for the appellant argued that Jwala Singh was allotted the land in khasra no. 359 area 8 biswa in the year 1974 and a Sanad was issued during the settlement operation. Old khasra no. 359 was converted into two khasra numbers i.e. 769 and 770, both measuring 4 biswa each. The appellant purchased the land from Jwala Singh on

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05.7.1986. The respondent Mali Bai managed to get the entry of khasra no. 770 in her name. The trial court framed four issues in the suit and each issue was decided on merit. Respondent Mali Bai has alleged that she has purchased the land from Sher Singh. Hence, Mali Bai does not have any legal claim on the allotted land to Jwala Singh.

4. The learned counsel for the respondent argued that Sher Singh who was the recorded tenant has sold the land to respondent Mali Bai. Mali Bai is bonafide purchaser through a sale deed executed on 20.12.1978. Still in the current revenue record also, Mali Bai is a recorded tenant and is in possession of the disputed land. The learned R.A.A., Alwar has rightly quashed the decision of the learned S.D.O., Tijara (Alwar). As the appeal does not carry any legal weightage, hence needs to be quashed.

5. In this context, citation of (2008)10 SCC 491 in the case of Vaniyankandy Bhaskaran Vs. Mooliyil Padinhjarekandy Sheela has been produced wherein it has been held as under :

"Civil Procedure Code, 1908 - Order 21 Rule 104 - Execution of decree - Subject to outcome of pending suit for title - Applicability - Execution proceedings filed by respondent in respect of possession of suit premises in 2004 - During pendency of suit filed by appellant for specific performance in 2005 executing court passing order for delivery of possession to respondent - Trial court granting injunction to prevent eviction of appellant in execution proceedings - High Court setting aside injunction as being irregular - Contention raised that order passed by executing court was subject to the outcome of the suit for specific performance filed by appellant - Sustainability - Held, on facts interference not justified - Suit filed by appellant for specific performance of contract was considerably later in point o time than the commencement of the execution proceedings - Language of R. 104 is clear and unambiguous that any order made under R. 101 or R. 103 would be subject to the result of a suit pending on the date of commencement of the proceeding - Since the appellant's suit was filed long after the commencement of the execution

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proceedings, provisions of R. 104 of Or. 21 of the Code will not apply in this case."

6. We have given our thoughtful consideration to the rival contentions and scanned the matter carefully. It is clear that the judgment and decree of the learned Revenue Appellate Authority, Alwar is in accordance with law and no intervention is required. Mst. Mali Bai is a recorded khatedar tenant from 1978 and subsequent sale of 1986 by Jwala Singh is void ab initio. The learned appellate court has mentioned issues no. 1 to 4 in its decision and thereafter has analysed in detail the evidences produced by both the parties, as a result has rightly dismissed the decision of the learned lower court. Consequently, the appeal has no force, hence dismissed and the judgment and decree passed by learned Revenue Appellate Authority, Alwar dated 28.8.2001 is hereby upheld.

Pronounced in open court.

(INDRA SINGH RAO)
Member

(V. SRINIVAS)
Chairman

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