

W.R.

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

APPEAL/ TA/1504/2002/Sri Ganganagar.

Fakeer Singh s/o Jagar Singh (deceased) through LRs:-

1. Kashmir Kaur d/o Late Fakeer Singh
2. Balvindra Kaur d/o Late Fakeer Singh
3. Jasveer Kaur d/o Late Fakeer Singh
4. Tarsem Singh s/o Late Fakeer Singh

All Jat Sikh by caste, rs/o Chak 31 R.B. (IIInd) Tehsil Padampur Distt. Sri Ganganagar (Raj.)

... Appellants.

Versus

1. State of Rajasthan
2. Gordhan s/o Hariram, Caste Nayak, r/o 31 R.B. (IIInd) Tehsil Padampur Distt. Sri Ganganagar (Raj.)

.....Respondents.

D.B.

**Shri Mukesh Kumar Sharma, Chairman
Shri Rajinder Kumar, Member**

Argued by :

Shri Prashant Soni, counsel for the Appellants.

Shri Sunil Pareek, Deputy Govt. Advocate for the respondent no. 1.

Shri Manish Pandiya, counsel for the Respondent no. 2.

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J U D G M E N T

Dated: 6-02-2019

1. This second appeal has been preferred against the judgment and decree dated 28.02.2002 of the learned Revenue Appellate Authority, Sri Ganganagar, whereby the first appeal no. 40/86 of the present appellants

was dismissed and the order of the trial court dated 22.01.1986 accepting the review application of the State Government was confirmed.

2. Facts of the case in brief are that on 2.04.1976 the Tehsildar Padampur submitted an application under section 175 of the Rajasthan Tenancy Act, 1955 [hereinafter referred to as 'the Act'] against Gordhan and Smt. Gurbaksh Kaur (since deceased) with the allegation that the disputed lands were the khatedari lands of Gordhan, who was the member of the Scheduled Caste and the same have been purchased by Smt. Gurbaksh Kaur, who was member of Non-Scheduled Caste category in contravention of the provision of Section 42 of the Act. The application was contested by Smt. Gurbaksh Kaur only. The non-applicant Gordhan could not be served as he had left his place of abode after selling the disputed land and his where about are not known. The learned trial court of S.D.O., Sri Karanpur after hearing the parties dismissed the said application on 29.07.1976 on the ground that application under Section 175 of the Act has been filed after prescribed period of limitation. Thereafter, on 20.11.1976, a review application was filed by the Tehsildar in the trial court with the averments that the original order was passed by the trial court on the ground that the transaction between Gordhan and Smt. Gurbaksh Kaur has taken place vide agreement to sell dated 30.05.1966 whereas the sale deed was executed on 3.06.1974 and therefore, on the basis of this sale deed, the application under Section 175 was within the prescribed period of limitation. The learned trial court accepted the review application vide order dated 22.01.1966 and also accepted the application filed by the Tehsildar under Section 175 of the Act by holding that the khatedari land of the person of Scheduled Caste category has been illegally purchased by a person of non-Scheduled Caste category contravening the provisions of section 42 of the Act. Feeling aggrieved, first appeal was preferred in the court of the learned Revenue Appellate Authority, Sri Ganganagar by the husband of the vendee Smt. Gurbaksh Gaur, who had expired during the pendency of the review petition. The first appeal was dismissed by the learned Revenue Appellate Authority on 28.02.2002. Hence this second

appeal. The original appellate Fakeer Singh has also expired and his LRs have been brought on record.

3. We have heard the learned counsels.
4. On behalf of the appellants, it was argued that the period of limitation for filing review application was 30 days and in the instant matter the said application was filed by the State Government after the prescribed period without any application for delay condonation. Therefore, the trial court committed illegality in accepting the review application. Even otherwise, the ingredients of order 41 Rule 1 CPC were not satisfied in this case and therefore, the review application was not maintainable on merits also. The deceased vendee Gurbaksh Kaur was also 'Harijan' by caste and therefore, the land was legally transferred by the original Khatedar to her but the courts below committed illegality in coming to the conclusion that the land has been sold by a Scheduled Caste person to a non-Scheduled Caste person. The husband of Vendee belonged to 'General category' and the learned trial court on that basis accepted the review application holding that the land in this case has been transferred by a person of Scheduled Caste to non-Scheduled Caste person. The learned first appellate court decided the first appeal without calling for record of the trial court and therefore, committed procedural illegality. Learned counsel also argued that the judgments passed by the courts below are illegal and therefore, the same deserve to be set aside. A prayer was made to accept the appeal and set aside the impugned judgments.
5. Learned counsel for the State Government opposed the above submissions. He has argued that the review application was within the prescribed period of Limitation. As the original order was *void ab initio*, therefore, it was rightly reviewed by the trial court. He further argued that the judgments of the courts below are clearly in conformity with the legal propositions and no interference is required therein.

6. We have given our thoughtful consideration to the rival submissions and perused the record carefully.
7. The courts below have concurred on facts that the land in dispute was sold by a person of Scheduled Caste category to a person of non Scheduled Caste category. These findings of the courts below are based on correct appreciation of the material placed on record and we do not find any illegality, infirmity or perversity in the same so as to warrant any interference therein. These findings of facts are binding on this Board in second appeal. It is not open to this court to scrutinize the evidence in this regard.
8. It was also argued on behalf of the appellants that the review application was hopelessly barred by time. However, we are not impressed by this argument also because the limitation for filing review application under Section 229 of the Act is six months as per entry no. 76 of Part II of the Third Schedule. Therefore, the review application was filed by the State Government within the stipulated period. All the factual and legal aspects of the case have already been dealt with in the impugned judgments and thus, we do not find any illegality in the conclusions of the learned trial court and the learned first appellate court. No question of law is involved in this appeal. Therefore, the appeal is liable to be dismissed.
9. Resultantly, the appeal is dismissed.

Pronounced.

(Rajinder Kumar)
Member

(Mukesh Kumar Sharma)
Chairman