

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal Decree No.5666/2002/TA/Chittorgarh :

1. Gangaram
 2. Gopilal
 3. Mohanlal
- } sons of Sitaram

All Gadri by caste, residents of Village Bhavlia, Tehsil Nimbaheda,
District Chittorgarh.

... Appellants.

Versus

State of Rajasthan, through Tehsildar Nimbaheda (Chittorgarh).

... Respondent.

D.B.

**Shri R.K. Jaiswal, Member
Shri Rajinder Kumar, Member**

Argued by :

Shri K.K. Purohit : counsel for the appellants.

Shri V.P. Singh : Govt. Advocate for the respondent.

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J U D G M E N T

Dated : 29.10.2018

Per Shri Rajinder Kumar, Member :

1. This second appeal has been preferred by the defendants-appellants against the judgment dated 23.3.2001 of learned Sub Divisional Officer, Nimbaheda decreeing the suit of the State Government under Section 175 of the Rajasthan Tenancy Act, 1955 and the judgment & decree of the learned Revenue Appellate Authority, Chittorgarh dismissing their first appeal.
2. The facts leading to the present controversy in nutshell are that the State Government filed the aforesaid suit against Shri Sitaram and Gopi for their eviction from the disputed land. During pendency of the suit, Rama S/o Gokal was also impleaded as defendant no. 3 vide

order dated 18.6.1984. In the said suit, it was alleged on behalf of the State Government that the disputed land bearing khasra no. 366 measuring 4 bigha 3 biswa situated in Village Bhavlia was the khatedari land of Shri Rama S/o Gokal Chamar and for a long time, the defendant no. 1 Sitaram occupied the said land. The defendant no. 3 Shriram obtained possession of the land from Sitaram after interference of administration. Thereafter, the defendant no. 3 Shriram handed over possession of the disputed land to Sitaram and his son Gopiram in the year 1981 in a dramatic manner. In this way, there has been a violation of the provisions of Section 42 of the Rajasthan Tenancy Act, 1955. Therefore, a prayer was made to deliver possession of this land to the landholder viz. Tehsildar. The defendants no. 1 & 2 submitted reply to the application on 23.7.1984 with the averment that there is no document on record to prove that the disputed land has been illegally transferred by Rama in their favour. The learned trial court vide judgment dated 05.8.1985 dismissed the plaintiff's suit. Feeling aggrieved, the State Government went in appeal in the court of learned R.A.A., Chittorgarh and after hearing both the parties, the judgment & decree dated 05.8.1985 was set aside and the matter was remanded to the trial court for deciding the suit afresh after framing issues and recording evidence of the parties in the matter. After receipt of the file upon remand, the defendants no. 1 & 2 again submitted their reply alleging that they are in a physical cultivatory possession of the disputed land since 40 years and Rama S/o Gokal has no right, title or interest over the disputed land. District Administration made unsuccessful attempt to take possession of the land from them and deliver it to Shriram Chamar. The defendants no. 1 and 2 initiated proceedings against the administrative officers and therefore they have maliciously filed the instant suit. The matter of breach of the provisions of Section 42 arises only when the land is sold through any document. The State Govt. has not alleged that the suit land was sold by Shri Rama S/o

Gokal to defendants no. 1 and 2 and therefore, the suit is not maintainable. A prayer was made to dismiss the suit. No written statement was filed by defendant no. 3. The trial court framed as many as three issues. After contest, the trial court vide judgment dated 23.3.2001, decreed the plaintiff's suit. Feeling aggrieved, the defendants preferred first appeal in the court of R.A.A., Chittorgarh, which was dismissed on 10.7.2002. Hence, this second appeal.

3. We have heard learned counsels for the parties.
4. On behalf of the appellants, it was argued that the judgments and decrees of the courts below are per se illegal. A perusal of Jamabandi of Svt. 2020 would reveal that the appellants are khatedars of the disputed land and therefore the proceedings under Section 175 of the Rajasthan Tenancy Act were not maintainable against them. The trial court and the first appellate court failed to notice this fact that prior to initiation of the instant proceedings under Section 175 of the Tenancy Act, a suit filed by Sitaram under Section 88 of the Rajasthan Tenancy Act was decreed on 28.4.1962 in his favour and on the basis of the said decree, mutation of the disputed land was sanctioned on 12.12.1962 in favour of Sitaram. Therefore, the allegation of the State Government that the possession of the suit land was delivered by Rama to the defendants no. 1 and 2 in the year 1981, is not acceptable. In addition to it, the Tehsildar Nimbaheda after passing of the judgment & decree dated 28.4.1962 submitted a reference for cancellation of the said decree in the court of Additional District Judge, Chittorgarh and the said reference was also dismissed by the said court. The appellants submitted an application in the first appellate court for taking the said documents on record but the said application filed by them was also dismissed in an illegal manner. After the passing of decree in the year 1962, the State Govt. could have instituted proceedings within a period of three years only and the instant proceedings were instituted after more than a period of 10

years and therefore, the suit under Section 175 of the Rajasthan Tenancy Act was not within limitation. Both the courts below failed to take into account the correct factual and legal position and therefore, the learned trial court illegally decreed the suit and the first appellate court illegally dismissed the appeal of the appellants. Therefore, a prayer was made to accept the appeal, set aside the judgments and decrees of the courts below and also to dismiss the suit of the State Government.

5. Learned Government Advocate has vehemently opposed the above submissions. He has supported the judgments & decrees of the courts below. He has argued that no question of law is involved in this matter. Therefore, a prayer has been made to dismiss the appeal.
6. We have given thoughtful consideration to the rival submissions and perused the record very carefully.
7. At the outset, it is noticeable that in this case, an allegation has been made that the disputed land was the khatedari land of a person belonging to Scheduled Caste and its possession was obtained by the present appellants from him in an illegal manner. In this way, it was alleged that there has been a violation of the mandatory provisions contained in Section 42 of the Rajasthan Tenancy Act, 1955. Therefore, it would be apposite here to quote the relevant part of the said provision :-

"Section 42. General restrictions on sale, gift and bequest- The sale, gift or bequest by a Khatedar tenant of his interest in the whole or part of his holding shall be void, if-

(b) Such sale, gift or bequest is by a member of Scheduled Caste in favour of a person who is not a member of the Scheduled caste, or by a member of Scheduled Tribe in favour of a person who is not a member of the Scheduled Tribe."

The above provision has been a subject matter of interpretation in a number of decisions by the Hon'ble Supreme Court and the Hon'ble Rajasthan High Court as well. To quote a few of those decisions would suffice our purpose. A Single Bench of the Hon'ble Rajasthan High Court in Balu V/s Birda (1983 RRD 159) has held as under:-

"The question which comes for consideration is whether by virtue of compromise, when a party concedes to a particular position, the result of which is that the agricultural land, which is alleged to be in Khatedari of that party is given to the other party, who is non scheduled caste, it tantamounts to 'transfer' for the purposes of S. 42 of the Rajasthan Tenancy Act. Undoubtedly there is no dispute that the plaintiffs belonged to Scheduled Caste and the Defendant-respondents are non-scheduled Caste. Obviously therefore, if there had been a transfer, as contemplated by Section 42, it was void and cannot be made effective."

Then, in para 9 of the above judgment, a question was posed in the following terms:-

"The question still arises is whether such a transfer amounts to sell, bequest, gift or other conveyance of property as contemplated by the Transfer of Property Act. In my opinion, the provisions of Section 42 have been enacted for prohibiting transfer of agricultural land from Scheduled Caste to Non-Scheduled caste, on the ground that Scheduled caste and Scheduled Tribe are the weaker sections of Society and if protection is not given, the other affluent members of Society would EXPLOIT them. This is Socio-Economic Legislation to ameliorate the condition of down trodden, depressed and suppressed segment of society, who are weaker financially, economically, socially and also in education."

Thereafter, it was held by Hon'ble High Court in para 10 as under:-

"It is, therefore, necessary that broad, liberal interpretation should be made to the word, 'Transfer' used in this proviso and all direct or indirect methods of transferring property should be considered to be hit by the prohibition, contained in Section 42. In that context and background, the sale or bequest would be void. The parties manipulate compromises in civil suits and

Revenue suits and both the parties went to change the property from one person to other person. Can it not be said that it was a transfer for the purpose of Section 42 as surrender can only be made under Section 55 of the Rajasthan Tenancy Act? Broadly speaking, I am of the opinion that the word, 'transfer' used in the proviso to Section 42 should be treated as comprehensive and even if an agricultural land in Khatedari of Scheduled caste and Scheduled Tribe, by a compromise in a suit, then also it would come within the mischief of prohibited transfer under S.42 of the Rajasthan Tenancy Act. Even a contested decree resulting in transfer would be covered by the protective Umbrella of S. 42 of the Act."

A Division Bench of the Hon'ble Rajasthan High Court in Chhail Singh V/s State of Rajasthan [2008 (15) RBJ 501], has held as under:-

"In that view of the matter, in our view, even if a transfer comes about, consequent upon a decree whether ex-parte, or contested, or fraudulent, is also hit by the prohibition enacted by Section 42, and consequently would attract the power of reference."

It is clear from above decisions that the provision contained in section 42 of the Rajasthan Tenancy Act, 1955 is a beneficial provision and the legislative intent is to extend protection to the members of the Scheduled Castes and Scheduled Tribes, who are not in a position to keep their property to themselves in the absence of protection. Therefore, liberal construction to the protective mechanism for its effective working out must be given. In view of the above legal position, section 42 of the Rajasthan Tenancy Act, 1955 requires a liberal construction.

8. Though the defendants-appellants had alleged that they were khatedars of the disputed land in pursuance of the court decree but they have failed to produce copy of the said judgment & decree. On the contrary, there is a concurrent finding of facts of the courts below that the disputed land was the khatedari land of the deceased Rama S/o Gokal, who was a member of the Scheduled Caste, in favour of the appellants, who belong to non-Scheduled Caste in contravention of

the provisions of Section 42 of the Rajasthan Tenancy Act, 1955. The said findings of facts are neither perverse nor illegal. Therefore, the same are binding in this second appeal . In this connection, reference can be made to the law laid down in 1982 RRD 435 'Puran Vs. State' and 1998 RRD 585 'Laxman & ors. Vs. Board of Revenue'. Thus, no question of law, much less substantial question of law is involved in this appeal. The appeal deserves to be dismissed.

9. Resultantly, this appeal is dismissed.

Pronounced.

(Rajinder Kumar)
Member

(R.K. Jaiswal)
Member

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