

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal Decree No.5387/2003/TA/Alwar :

1. Nanga S/o Shri Kherya
2. Lallu S/o Shri Bhikha
Both Chamar by caste, residents of Village Kodia, Tehsil Rajgarh,
District Alwar.

... Appellants.

Versus

Dulya S/o Shri Bhorya, caste Meena, resident of Bahadarpur, Tehsil
Rajgarh, District Alwar.

... Respondent.

D.B.

**Shri Indra Singh Rao, Member
Shri Rajinder Kumar, Member**

Argued by :

Shri Khadag Singh : counsel for the appellants.

Shri Satish Pareek : counsel for the respondent.

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J U D G M E N T

Dated : 14.9.2018

Per Shri Rajinder Kumar, Member :

1. This second appeal has been preferred by the defendants-appellants against the judgment and decree dated 19.8.2003 passed in Appeal No.26/2002 by which the first appeal of the defendants-appellants was dismissed.
2. Facts leading to the present controversy in nutshell are that on 25.9.1978, the plaintiff-respondent filed a suit against the defendants-appellants in the trial court of Assistant Collector, Rajgarh in respect of the agricultural land bearing khasra No. 133 (new numbers 388/133 area 5 bigha and 389/133 area 5 bigha) situated in Village Kodia. As per plaint averments, the said land had

been wrongly entered in the name of the defendants-appellants whereas the plaintiff is in actual physical possession of the land as its khatedar. Therefore, a prayer was made to pass a decree declaring the plaintiff-respondent as khatedar of this land and for correction of revenue record in his name. During pendency of the suit, a compromise came to be filed by the parties, which was attested by the trial court on 06.10.1978. The suit of the plaintiff was, thus, decreed on the basis of the said compromise vide judgment dated 03.11.1978. Feeling aggrieved, the defendants-appellants preferred an appeal in the court of learned Revenue Appellate Authority, Alwar on 26.02.1992 i.e. after a lapse of around 13 years and 3 months. The said appeal was dismissed on 05.7.1996 mainly on the ground of delay in filing the same. The defendants-appellants filed second appeal in this Board which was treated as Revision Petition. Thereafter, the said revision was accepted vide judgment dated 02.9.1998 setting aside the judgment & decree of the first appellate court. Accordingly, the matter was remanded to the first appellate court for decision of the appeal on its merits. The first appellate court after hearing the parties dismissed the appeal vide judgment and decree dated 19.8.2003. Hence, this second appeal by the defendants-appellants.

3. We have heard learned counsels for the parties.
4. On behalf of the defendants-appellants, it was argued that the thumb impressions of the defendants-appellants were wrongly obtained on the alleged compromise and thus, the decree passed on that basis is illegal. Even otherwise, as the appellants belong to the category of 'Scheduled Caste', their agricultural land has been illegally transferred to the plaintiff-respondent, who belongs to the category of 'Scheduled Tribe'. Such a transfer even by way of compromise decree is hit by the provisions contained in Section 42

of the Rajasthan Tenancy Act, 1955. The first appellate court acted illegally in not appreciating the controversy raised by the defendants-appellants in this regard. Therefore, a prayer was made to accept the appeal, set-aside the impugned judgments & decrees and to dismiss the suit of the plaintiff-respondent. In support of his arguments, learned counsel relied upon the following citations :

(i) 1983 RRD 159 'Balu Vs. Birda' :- In this case, it was held by the Hon'ble Rajasthan High Court that word 'transfer' used in proviso to Section 42 of the Rajasthan Tenancy Act, 1955 should be treated as comprehensive and even if the agricultural land of a person of Scheduled Caste or Scheduled Tribe is transferred in favour of a person of non-Scheduled Caste or non-Scheduled Tribe by way of compromise decree, it would still come within the mischief of prohibition contained in Section 42 of the Act.

(ii) 2002 RRD 224 'State of Rajasthan Vs. LRs of Chouthmal & ors.' :- In this case, it was held by the Revenue Board that even a 'gair khatedar' of the category of Scheduled Caste cannot transfer his land to a person of General category.

5. Learned counsel for the plaintiff-respondent opposed the above submissions. He has argued that the suit was decreed by the trial court on the basis of compromise filed by both the parties, therefore, appeal is not maintainable against such a decree. The allegation of the defendants-appellants that compromise decree was fraudulently obtained is also not proved. Even otherwise, the revenue courts have no jurisdiction to set aside such a decree. The remedy lies in filing civil suit. The plaintiff-respondent belongs to the category of Scheduled Tribe and the defendants-appellants belong to the category of Scheduled Caste, therefore, there was no prohibition in passing compromise decree. As the provisions of Section 42 of the Rajasthan Tenancy Act, 1955 are not violated, the decree passed by the trial court is justified. He further argued that

the plaintiff-respondent has been discharged by the criminal court in the criminal case under Sections 420, 467 and 471 IPC at the instance of the defendants-appellants. Therefore, the version of the defendants-appellants that fraud was committed upon them is not tenable. A prayer was, thus, made to dismiss the appeal. In support of his arguments, learned counsel has submitted copy of the judgment passed by Additional Sessions Judge, Rajgarh in Revision No. 01/2003, whereby the revision petition against the order of discharge was dismissed by the said court.

6. In rebuttal of the above arguments, learned counsel for the defendants-appellants argued that an appeal is maintainable against a compromise decree passed by the Revenue Court. In this regard, reliance was placed on 1978 RRD 11 'Chimman Vs. Islam Khan'.

7. After having given our thoughtful consideration to the rival submissions and upon perusal of record of the trial court, it is revealed that on 06.10.1978, a compromise was submitted by the plaintiff and both the defendants jointly. The contents of the compromise would reveal that the defendants agreed therein that the disputed lands are in possession of the plaintiff as khatedar and would remain in his possession as such. The said compromise was read over to the plaintiff and the defendants and they accepted its contents to be true. Both the parties to the compromise were identified by counsel for the plaintiff and the learned trial court attested the compromise on the same day. Both the courts below have concurred in their opinion that the said compromise was submitted voluntarily by the defendants. The fact that defendants-appellants were discharged by the criminal court in case under Sections 420, 467 and 471 IPC also proves that no fraud was committed in presentation and attestation of compromise in the

Revenue Court. Therefore, the above findings of facts of the courts below are neither perverse nor illegal.

8. As regards the maintainability of appeal against compromise decree, the matter is not *res-integra*, as it has been held in Chimman's case (supra) that Section 96 (3) of the CPC barring appeals from consent decree are not applicable to appeals from decrees of the Revenue Courts. Therefore, the present appeal is maintainable.
9. The question of law raised in this appeal, however, is whether the compromise decree passed by the trial court contravened the provisions of Section 42(b) of the Rajasthan Tenancy Act, 1955 and if so, what would be its effect? Admittedly, the plaintiff belongs to the category of Scheduled Tribe and the defendants belong to the category of Scheduled Caste. It is trite law that a member of Scheduled Caste may transfer his interest in whole or a part of his holding only to the member of Scheduled Caste and a member of Scheduled Tribe, may to a member of the Scheduled Tribe only. The emphasis of Section 42 is to maintain rights of a member of Scheduled Caste/ Scheduled Tribe in their own category. Thus, the transferee should be a member of Scheduled Caste, if the transferor is from Scheduled Caste, and same will be the position in the case of Scheduled Tribe also. In this regard, reference may be made to a judgment of the Hon'ble Rajasthan High Court passed in the 'State of Rajasthan Vs. Bhav Singh & ors.' DB Special Appeal (Writ No.158/2004) decided on 10.5.2010.
10. It is also settled law that compromise decree resulting in transfer of agricultural land of a person of Scheduled Caste to a person of non-Scheduled Caste would be covered by Section 42 of the Act. In this regard, reliance can be placed on Balu's case (supra). In this way, the compromise decree passed by the learned trial court in the

instant case in favour of the plaintiff was void. Therefore, the learned first appellate court committed grave illegality in dismissing the appeal filed by the defendants-appellants. The upshot of above discussion is that it was a case of illegal transfer of land by the defendants in favour of plaintiff and it appears that to avoid the consequences of ejection from the suit land, the defendants, on a second thought, filed appeal in the court of learned Revenue Appellate Authority by stating that they were impersonated at the time of presentation and attestation of compromise. As a case of contravention of the provisions of Section 42 (b) of the Act is made out, the person(s) in possession of the suit land are liable to be ejected therefrom. Therefore, while allowing this appeal filed by the defendants, a direction is also required to be issued to the concerned Collector to take appropriate steps under law for resumption of land in favour of the State.

11. Resultantly, the appeal in hand is accepted and the judgments and decrees of the courts below are set-aside. The suit filed by the plaintiff for declaration is dismissed and the Collector, Alwar is directed to take appropriate steps for ejection of the person(s) in possession of the suit land and for its resumption in favour of the State Government. A copy of this judgment be sent to the Collector, Alwar for needful.

Pronounced.

(Rajinder Kumar)
Member

(Indra Singh Rao)
Member