

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal Decree No. 4373/2005/TA/Bharatpur:

Megh Singh S/o Shri Chura, by caste Banjara,
R/o Village Gurdhanadi, Tehsil Bayana, District Bharatpur.

... Appellant.

Versus

1. Hajari) sons of Shri Chura
2. Bheema)
by caste Banjara, residents of Village Gurdhanadi,
Tehsil Bayana, District Bharatpur.

... Respondents.

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D.B.

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

Present :

Shri Hagami Lal, counsel for the appellant.
Shri Ashok Agrawal, counsel for respondents.
Shri Rohit Soni, counsel for applicant in application under O.1 R.10.

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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 & decree passed by Settlement Officer-cum-Revenue Appellate Authority, Bharatpur dated 30.7.2005.

2. In this case, an application has been submitted on 13.12.2017 under Order 1 Rule 10 of the Code of Civil Procedure by Shri Kedar and Shri Gopal, sons of Shri Ramjeet through advocate Shri Rohit Soni. The learned counsel for the applicant argued that he is buyer of the land from Megh Singh in the year 1999 and has purchased 1/5th share of the land. Hence, the applicant must be added as party to the second appeal. The disputed land was purchased in the name of one of the brothers, later

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another two brothers filed a suit for declaration of 1/3rd share each in their respective names. The learned S.D.O., Bayana decreed the suit on the basis of the compromise filed on 09.8.1996 and the case was decreed on 13.3.2002. From that very day, all three brothers are in possession of the land.

3. The learned counsel for the appellant as well as respondents argued that the land purchased by the applicant has been transferred during the pendency of the suit. It is settled law that any such land purchased during pendency of the suit does not have any legal sanctity and the share of the buyer will remain upto the extent which is received as a result of the pending suit or appeal.

4. In support of his arguments, learned counsel for the respondents has cited the following :-

2015(22) RBJ 671 :

Rajasthan Tenancy Act, 1955- Section 88, 89, 92A & 188- No appeal is maintainable against the decree passed on the basis of compromise.

2012(19) RBJ 80 :

Code of Civil Procedure, 1908- Order 23 Rule 3 and 3A - Rajasthan Tenancy Act, 1955 - Section 88 - Compromise- When decree was passed by the trial court in accordance with the compromise entered into by the parties and duly verified before the Board of Revenue cannot be interfered. The learned Single Judge observed that decree has been passed by the Sub Divisional Officer is not in any manner at variance with the terms of the compromise between the parties whereby 2 bighas and 2 biswas of land comprised in Khasra no. 1171/2 on the western side of the land shall go to the respondent Nos. 5 and 6 and the remaining land of khasra No. 1171/2 and that of khasra no. 1172 shall go to the petitioners. The decree so passed by the trial court being in accordance with the compromise entered into by the parties and duly verified before the Board has rightly not been interfered with by the trial court and by the Board of Revenue in the orders impugned. Special appeal dismissed.

1994(1) RBJ 134 :

When compromise in writing and duly signed is presented in the court, the court is bound to prepare a decree in terms of compromise.

When natural daughter alive, mutation cannot be entered in the names of brother.

The trial courts have erroneously ordered the mutation to be entered in the name of brothers of the deceased. When natural daughter is alive, the question of entering the mutation in the name of brothers does not arise.

1993(1) RLR 259 :

C.P.C., 1908, O. 23 R. 3 - Compromise in writing and signed-Decree in terms of the compromise should have been passed by trial court- AIR 1988 SC 400 and AIR 1992 All. 360, distinguished.

5. Heard learned counsel for the parties and perused the record.

6. We have carefully gone through the arguments of the learned counsel for the parties and scanned the matter carefully. The application under Order 1 Rule 10 of the CPC is rejected. The suit land was sold during pendency of litigation. Megh Singh did not approach the court with clean hands. He has entered in mutual agreement with his brothers while subsequently selling the suit land during pendency of litigation. The mutual agreement is a lawful agreement duly signed by the parties and decreed by the trial court and the first appellate court.

7. In view of above circumstances, all citations submitted by learned counsel for the respondents are applicable in the present case. Hence, there are no grounds to allow the appeal. Consequently, the appeal is hereby dismissed.

Pronounced in open court.

(INDRA SINGH RAO)
Member

(V. SRINIVAS)
Chairman

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