

IN THE BOARD OF REVENUE FOR RAJASTHAN : AJMER

Appeal Decree No.5736/2005/TA/Rajsamand :

Gram Panchayat, Relmagra, through Sarpanch, Gram
Panchayat, Relmagra, Tehsil Relmagra, District Rajsamand.

... Appellant.

Versus

State of Rajasthan, through Tehsildar, Relmagra,
District Rajsamand.

... Respondent.

* * *

D.B.

Shri V. Srinivas, Chairman
Shri Vijay Kumar Soni, Member

Present :

Shri Purna Shanker Dashora : counsel for the appellant.

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

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Dated : 26.6.2018

J U D G M E N T

Present second appeal is presented under section 224 of the Rajasthan Tenancy Act, 1955 (hereinafter to be referred as "the Act") against the judgment and decree passed by learned Settlement Officer-cum-Revenue Appellate Authority, Udaipur dated 05.9.2005 in appeal no. 203/2004 titled 'Gram Panchayat Relmagra Vs. State' by which learned R.A.A. rejected the above mentioned appeal on the ground of jurisdiction.

2. The brief facts of this second appeal are that plaintiff/appellant filed a suit no. 248/02 under section 88 of the Rajasthan Tenancy Act titled 'Gram Panchayat Relmagra Vs. State of Rajasthan' in the court of Sub Divisional Officer, Rajsamand stating that old khasra no. 1568 min area 14.09 bigha was reserved for extension of Abadi by the Collector, Udaipur vide his order dated

06.10.1965. After settlement operation, old khasra no. 1568 min was converted in new khasra nos. which are mentioned in para no. 4 of the plaint. The averment of the plaint is that except new khasra no. 2151 area 4.19 bigha (in judgment it is called disputed land), all the land recorded in the name of Gram Panchayat, Relmagra, the land of khasra no. 2151 area 4.19 bigha was recorded in the name of government land because the land in dispute which is reserved for extension of Abadi is to be corrected in the revenue record. The said land is to be recorded in the name of Gram Panchayat and accordingly revenue record be corrected and plaintiff/ appellant be declared the owner of this land. Defendant/ present respondent filed his written statement. The learned trial court framed two issues and after hearing both the parties, the trial court rejected the suit stating that plaintiff/ appellant could not prove his case beyond doubt. Having been aggrieved by the judgment & decree passed by the learned trial court dated 19.8.2004, the plaintiff/ appellant filed a first appeal no.203/2004 titled 'Gram Panchayat Relmagra Vs. State of Rajasthan' in the court of R.A.A., Udaipur. During the arguments of the appeal before R.A.A., a legal question was arisen that under section 88 of the Rajasthan Tenancy Act, only tenancy right can be declared in favour of a tenant. But in this case, plaintiff/ appellant does not require the tenancy right and instead of tenancy right, he is claiming the land in dispute to be declared as Abadi land. Such relief cannot be granted through revenue suit. The learned R.A.A. vide his judgment dated 05.9.2005 rejected the appeal on the point of jurisdiction stating that no such relief can be granted by the revenue courts. Being aggrieved by the judgment & decrees of both the learned lower courts, plaintiff/ appellant filed this second appeal before this court.

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

4. The learned counsel for the appellant argued that the issue of jurisdiction was not framed by the learned trial court. If there was an issue regarding the jurisdiction, then both the parties will have to lead the evidence and argue the case accordingly. Once there is no

such issue, then there is no question of evidence and arguments. The learned S.D.O. simply rejected the plaint on the ground that plaintiff/ appellant could not produce his evidence to declare the rights. The learned R.A.A. decided the appeal beyond pleadings. There is no dispute that the land in question was reserved for the Abadi and was in the ownership of Gram Panchayat. For the correction of revenue record, suit for declaration under section 88 Rajasthan Tenancy Act can be filed in revenue court. The judgment & decree passed by the learned R.A.A. is beyond pleadings and against the provisions of law. So, the appeal be allowed and judgment & decrees of both the learned lower courts be set aside and suit of the plaintiff/ appellant is to be allowed.

5. Against this, the learned Government Advocate argued that under section 88 of the Tenancy Act, only tenancy rights can be declared by a revenue court. In this matter, plaintiff/ appellant wants himself to be declared through a suit that the land in dispute is Abadi land and plaintiff/ appellant is the owner of the said land. Such kind of relief cannot be granted by the revenue court. The question of jurisdiction is a question of law and it can be raised at any stage of the case. There is nothing wrong in the judgment & decree passed by the learned R.A.A. Hence, this appeal is to be rejected.

6. Heard both the advocates, perused the learned lower courts' files and appreciated the arguments led by both the advocates. After going through the plaint filed in the trial court, it is found that the relief was claimed by the plaintiff/ appellant for declaration of title in favour of plaintiff and disputed land be recorded as Abadi land having the ownership of plaintiff/ appellant. If we go through section 88 of the Rajasthan Tenancy Act, it is very clear that through declaration, only tenancy rights can be declared by a revenue court. Section 88 is hereby reproduced as under :-

"88. Suit for declaration of right - (1) Any person claiming to be a tenant or co-tenant may sue for a declaratin that he is a tenant or for a declaration of his share in such joint tenany.

(2) A tenant of Khudkasht may sue for a declaration that he is such a tenant.

(3) A sub-tenant may sue the person from whom he holds for a declaration that he is a sub-tenant.

(4) A landholder other than the State Government may sue a person claiming to be a tenant or co-tenant of a holding or a tenant of Khudkasht or a sub-tenant for a declaration of the right of such person."

Section 88 is very clear. It says that tenancy right or right of Khudkasht tenant can be declared under section 88 of the Rajasthan Tenancy Act. There is no such provision that declaration can be awarded for Abadi land. If there is very clear position that declaration for Abadi land cannot be permitted under section 88, then judgment passed by learned R.A.A. is the correct one. The point of jurisdiction is a legal question which can be raised at any stage of the case. The learned R.A.A. decided the appeal by his impugned judgment dated 05.9.2005 stating that no declaration for Abadi land can be awarded through section 88 of the Tenancy Act by a revenue court. There is no illegality or irregularity in the judgment of learned R.A.A. Hence, this second appeal is rejected and judgment & decree of learned Settlement Officer-cum-Revenue Appellate Authority, Udaipur dated 05.9.2005 is hereby upheld.

Pronounced in open court.

(Vijay Kumar Soni)
Member

(V. Srinivas)
Chairman

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