

(1986) 04 RAJ CK 0054

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 99 of 1973

Ami Lal

APPELLANT

Vs

Budha

RESPONDENT

Date of Decision : 15-04-1986

Acts Referred:

Rajasthan Tenancy Act, 1955 — Section 5(5)

Citation : (1986) RLW 480 : (1986) 1 WLN 712

Hon'ble Judges : Inder Sen Israni, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Inder Sen Israni, J.—This is a Civil Misc. Appeal against the judgment and decree passed by the learned Additional Civil Judge, Alwar dated 27-2-1973 in Civil Appeal No. 26/73 by which the judgment and decree passed by the learned Munsif, Kishangarh-bas dated 12-4-1972 in Civil Suit No. 25/70 (52/71) filed for redemption of agricultural fields, was reversed.

2. The plaintiff respondent filed a suit in the court of Munsif, Kishangarh-bas on 27-2-1970 against the defendants for redemption of two agricultural fields No. 390 measuring 1 Bigha and 15 Biswas, and No. 711/531 measuring 3 Bighas and 15 Biswas, situated in Village Bhagola for recovery of possession from the defendants appellants.

3. The case of the plaintiff respondent is that he was Biswedhar and had mortgaged with possession Khasra No. 390 to the appellants for a sum of Rs. 400/ on 27-4-1955 and a copy of the mortgage deed was registered on 2-5-1955. Other Khasra No. 711/531 was also mortgaged with the appellant on 21-10-1952 with possession for Rs. 520/- & mortgage deed in respect of the same was registered on 19-11-1952. The appellant since then has been in possession of these fields. The defendant appellant admitted the mortgage deeds in respect of the aforesaid fields and also contended that the aforesaid fields

were in Khudkast. It was further contended that since coming into force of the Zamindari & Biswedari Abolition Act, 1959 (Act No. 8 of 1959) (here in after called as "the Act") all rights and interests in the said fields, which were mortgaged with him by the plaintiff respondent stood transferred and vested in the State Government and therefore the plaintiff respondent had no right to file the present suit and the suit was thus not maintainable.

4. Learned Munsif framed 8 issues, out of which Issues No. 1,6 and 7 read as under:

(1) Whether the defendant was ploughing the field as Khudkast" even 5 years earlier than the mortgage deeds and was in possession of the same as "Kastkar" ? If so, what is its effect ?

(6) Whether this Court had no jurisdiction to try the suit ?

(7) Whether on account of coming into force of the provisions of Rajasthan Zamindari and Biswedari Abolition Act, 1959 all rights title and interest of the plaintiff respondent are extinguished and the same vested in the State of Rajasthan and, therefore he had no right to file this suit for redemption of mortgage deeds ?

5. Learned Munsif decided issue No. 7 as preliminary issue and held that the plaintiff was not entitled to bring the suit for redemption of the mortgage in view of the provisions of the Act. Aggrieved by the finding of learned Munsiff, the plaintiff appellant preferred an appeal, which was heard and decided by the learned Additional Civil Judge, Alwar by its judgment dated 27-2-1973, by which it was held that the plaintiff did have the right to file the suit for redemption of the mortgaged fields, because the Act abolished the rights of Biswedars, but did not abolish the rights of Khudkast, who became Khatedar tenant and as such their rights are protected. Aggrieved by this judgment, the present appeal has been filed.

6. Learned Counsel for the appellants has argued that by coming into force of the Act, all rights of the plaintiff-respondent vested in the State Government as they were admittedly Biswedars of the land as pleaded by them in the plaint-itself. In Sub-clause (5) of Section 5 of the Rajasthan Tenancy Act, 1955, Biswedars have been defined to be a person on whom a village or portion of a village in any part of the State is settled on the Biswedari system and who is recorded as a Biswedars or as an owner in the record of rights and shall include a Khatedar in the Ajmer area. Under the Act "Biswedars" has been given the meaning assigned to it in the above Clause (5) of Section 5 of the Act of 1955. By virtue of the provisions of Section 5 of the Act of 1955 all the rights, title and interest of Zamindars or Biswedars and of every person claiming through him in such estate, which includes land (cultivable, waste or barren) shall vest in the State Government free from all encumbrances. For the purpose of the State, every mortgage deed or charge of any such right, title or interest shall be charge on the amount of compensation payable to the Zamindars or Biswedars under this Act.

Therefore, all right, title and interest of Biswedars came to an end as soon as the Act came into force on 1st November, 1959. Learned Counsel for the appellants has further argued that since the plaintiff-respondent did not plead in the plaint in clear terms that the plaintiff even though Biswedars held the land as Khud-kast, therefore, the court had no jurisdiction to hold that the plaintiff-respondent held the land as Khudkast and therefore, the provisions of Section 5 of the Act did not apply to him. He has cited the case of Siddik Mohammed Sah v. Mt. Saran and Ors. AIR 1938 PC 57, in which it has been held that no amount of evidence can be looked into upon a plea which was never put forward in the pleadings. In the matter of Rana Sheo Ambar Singh Vs. Allahabad Bank Ltd., Allahabad, which is a case under UP Zamindari Abolition of Land Reforms Act, 1951 (Act No. 1 of 1951), their Lordships of Supreme Court held that where the proprietary rights in certain villages are mortgaged before the UP Act Order 1 of 1951, the legal effect of the notifications u/s 4 of the said Act would be that under the Notification, Sir and khudkast land and grove land would vest in the State and would not be an exception to the consequences of vesting in Section 6 and therefore, the proprietary rights in Sir and Khudkast land and grove land, which were mortgaged would be extinguished. In the matter of Haji Sk. Subhan Vs. Madhoroa, it was held by their Lordships of Supreme Court in a case under the MP Abolition of Proprietary Rights (State Mehlash Aleinated Lands) Act, 1959 (Act No. 1 of 1959), that in view of the provisions of Section 3(1) and (2) respondent stood divested of his proprietary rights over the land and u/s 3(2) he could not acquire any right in his favour subsequent to the vesting of the land on the notified date. Learned Counsel for the appellants has, therefore, urged that on both these counts, the judgment and decree of the learned Addl. Civil Judge is liable to be set aside and the judgement and decree passed by the learned Munsif deserves to be restored.

7. Learned Counsel for the respondent on the other hand has urged that the plaintiff has remained to be a tenant in the revenue record as Kastkar. He has drawn my attention to the Jamabandies of Samvat Years 2018 and 2019 wherein the plaintiff respondent is shown as Kastkar. He has further stressed that the Khasra Girdawari is neither record of rights nor the annual register. Therefore, the same has no importance as held in Shri Panne Singh v. Shri Guman Singh 1964 RRD 101. He has therefore, urged that the reliance should be placed on the entries of Jamabandies produced by the plaintiff-respondent.

8. I have heard the rival contentions of learned Counsel for both the parties and have also gone through the record. In paras No. 1 and 2 of the plaint, the plaintiff-respondent has himself pleaded that since the execution of the mortgage deeds, the possession of the land is with the appellants. He has also pleaded that they were Biswedars and had mortgaged their lands with possession with the defendants since the year 1952. This, therefore, clearly shows that the plaintiff respondent was not in possession of the land in any case after the execution of the mortgage deeds. After coming into force the Rajasthan Zamindari and Biswedari Abolition Act, 1959 the rights of Zamindars and Biswadars were

abolished and, therefore, the plaintiff respondent had no locus standi to bring the suit for redemption and possession of mortgage land as all rights and interests in the said fields stood transferred and vested in the State of Rajasthan and, therefore, the suit for redemption and possession is not maintainable. Apart from this, the plaintiff never raised any plea of being Khudkast of the land in his pleadings and only pleaded to be the Biswedari of the same. As mentioned earlier, it has been clearly laid down in AIR 1938 PC 57 (supra) that when the claim has never been made in the pleadings, any evidence in support of the same cannot be looked into upon a plea which was never put forward. Same is the case with the plaintiff respondent. It was the duty of the plaintiff-respondent to have pleaded in the plaint itself about his Khudkast rights on account of which he should have claimed that the provisions of the Rajasthan Zamindari and Biswedari Abolition Act, 1959 were not applicable to him.

9. I am, therefore, of the opinion that the plaintiff respondent is not in actual physical possession of the land and his rights have been abolished by the Act and since no plea of Khudkast was raised in the plaint, the learned trial court rightly decided the preliminary issue No. 7 in favour of the appellants.

10. In view of the above discussion, the judgment of the learned Addl. Civil Judge, Alwar dated 27-2-1973 passed in Civil Appeal No. 26/73 is set-aside and the judgment of learned Munsif, Kishangarh-bas dated 12th April, 1972 passed in Civil Suit No. 25/70(52/71) is upheld. Appeal is allowed with no order as to costs.