
(1988) 09 RAJ CK 0072

In the Rajasthan High Court

Case No : Special Appeal No. 468 of 1983

Balveer Singh and Others

APPELLANT

Vs

Board of Revenue

RESPONDENT

Date of Decision : 14-09-1988

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Transfer of Property Act, 1882 — Section 107

Citation : (1988) 2 WLN 256

Hon'ble Judges : J.S. Verma, C.J;N.C. Kochar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

N.C. Kochar, J.—The facts giving rise to this Special Appeal u/s 18 of the Rajasthan High Court Ordinance are as under: On October 4, 1958. the appellants had filed a suit u/s 183 of the Rajasthan Tenancy Act, 1955 ("the Act") against Bhura, respondent in the court of Sub-Divisional Officer, Phalodi, for possession of the land in dispute situated in village Kotra, Tehsit Osiyan, District Jodhpur.

2. It was alleged that respondent Bhura had been inducted in the land in dispute for a period of two years under an agreement dated 12th September, 1950 but after the expiry of period of tenancy, Bhura who remained in occupation of the land in dispute as a trespasser, could not be evicted by the appellants because of the promulgation of the Rajasthan Regularization(Protection of Tenants) Ordinance ("the Ordinance"). The appellants, therefore sought a decree for possession of the land. The suit of the appellant was contested by Bhura who denied that he was a trespasser in the land and contended that the suit u/s 183 was not maintainable and if so advised, the appellants may take proceedings against him u/s 180 of the Act.

3. During the pendency of the proceedings before the Sub Divisional Officer, the appellant filed an application u/s 209 of the Act praying that in case Bhura was

not held to be a trespasser, but was held to be a tenant from year to year, the suit be treated as u/s 180 (1)(b) & (c) of the Act and decree may be passed on the said basis. The learned Sub- Divisional Officer held that Bhura could not be termed as a trespasser but after the expiry of the period of two years of tenancy he became a tenant holding over from year to year. The decree for possession besides for rent at the double of the agreed rate was thus passed in favour of the appellant and against respondent Bhura.

4. Respondent Bhura filed an appeal before the Revenue Appellate Authority, Bikaner, who allowed the appeal and held that Bhura had become Khatedar tenant, in view of Section 19(1)(a) of the Act, as he was recorded as a sub-tenant in the Girdawari of Samvat year 2012. The suit of the appellants was, thus, dismissed by the learned Revenue Appellate Authority.

5. In the second appeal filed by the appellants before the Board of Revenue it was held that Bhura was in cultivatory possession of the land in dispute, prior to September 12, 1950 when compromise agreement was entered into by the parties and that he remained in possession as a sub-tenant of the appellant till the time that the Act came into force and he continued holding over as a sub-tenant from year to year. It was, therefore, held that in view of the fact that it was admitted by the appellants that sub-tenancy was created in favour of Bhura by agreements dated September 12, 1958 and he continued to be in possession of the land till the Act came into force, he had acquired khatedari rights u/s 19(1) (a) of the Act, even though his name had not been recorded in the Annual Register. The appeal was, consequently, dismissed.

6. The appellants challenged the order of the Board of Revenue by filing a writ petition under Article 226 and 227 of the Constitution of India.

7. Learned Single Judge of this Court dismissed the writ petition holding that Bhura came in possession as a sub-tenant and continued as such, in view of the protection granted to him by the Ordinance and that in view of Sub-section (1A) of Section 19 of the Act he acquired Khatedari rights and could not be evicted from the land in dispute. Feeling aggrieved, the appellants have filed this Special Appsal against the order dated April 7, 1987 passed by the learned Single Judge of this Court, dismissing the writ petition of the appellant.

8. We have heard Mr. Dinesh Maheshwari, advocate, for the Appellant, Mr. R.N. Bishnoi, advocate, for Bhura and have also perused the record of the case.

9. Mr. Maheshwari has contended that the learned Single Judge was in error in holding that Bhura acquired Khatedari rights by virtue of Section 19(1A) of the Act, and that he could not be considered to have got those rights, without making an application u/s 19(2) of the Act. It was only, vide agreement dated September 12, 1950 (Anx.7) and that after the expiry of the said period of two years, his tenancy came to an end and he remained in possession of the land in dispute as a tenant holding over, and as such, he was liable to be evicted u/s 180 (1)(2) of the Act.

10. We have gone through the Anx. 7 which was filed by the appellants along with the writ petition and which has been proved to have been executed by the appellants and Bhura. This document shows that the appellants were tenants in respect of various portions of land and that said portions of land were in occupation of different sub-tenants and the land in dispute was in the cultivatory possession of Bhura. It further shows that some dispute arose between the appellant and the tenants of different portions and a compromise was arrived at and in terms thereof Ex. R/7 was executed by the parties. This document shows that the appellant had admitted that Bhura and other tenants had already been cultivating the land in their possession and the disputes were settled between the parties and it was agreed that the tenants would give a share of the produce in accordance with the terms mentioned in the agreement and that those terms would govern the tenancy for a period of two years following the date of agreement and that thereafter the parties would enter into fresh agreement in regard to the terms of tenancy. In our view this document cannot be said to be a document, creating a tenancy for a period of two years but only shows that the terms of tenancy were settled by the parties for the period of two years w.e.f. The date of its execution. Even otherwise, it is admitted that the document had not been registered and as such, in view of Section 107 of the Transfer of Property Act, 1882, it cannot be said that tenancy for a period of two years was created in favour of respondents by the appellants, by view of this document. In our view, Bhura remained a tenant from year to year in the land in dispute and his tenancy could be terminated only by service of a notice to quit. Bhura, thus, cannot be said to be a sub-tenant, holding over, as his tenancy never came to an end and he continued to be in possession of the land in dispute as sub-tenant till the Act came into force. No suit for ejectment could, therefore, be filed against him u/s 180(b) of the Act.

11. Before dealing with the argument regarding acquisition of Khatedari rights by Bhura u/s 19 (1A), it may be advantageous to reproduce the relevant portions of Section 19 of the Act. The said provision read as under:

19. Conferment of rights on certain tenants of Khudkasht and sub-tenants,--(1) Every person who, at the commencement of this Act?

(a) was entered in the annual registers then current as a tenant of Khudkaht or sub-tenant of land other than grove land, or

(b) was not so entered but was a tenant of Khudkasht or sub-tenant of land, other than grove land,

...

(1-A) Subject to the exceptions contained in the proviso to Sub-section (1), every person referred to in that Sub-section shall, as from the date of commencement of the Rajasthan Tenancy (Amendment) Act, 1961 here after in this chapter referred to as the "appointed day", become, subject to the other provisions contained in this chapter, the Khatedar tenant of that part of the land

held by him in which he has not acquired, Khatedari rights under Sub-section (1), if before the appointed day no proceeding for his ejectment under Clause (a) or Clause (d) of Sub-section (1) of Section 180 shall have been started within the time limit, prescribed by Section 182A or if on that day no such proceedings previously started might have been pending.

(2) Every tenant of Khudkasht or sub-tenant referred to in Clause (b) of Sub-section (1) claimed that the rights mentioned in that Sub-section accrued to him on the appointed date in the whole or any part of his holding shall, within two years of that date and on payment of court fee of "Fifty naya paisa, apply to the Assistant Collector having jurisdiction, praying for a declaration that such rights accrued to him as aforesaid and the provisions of Sub-section (5) of Section 15 shall apply to such application and such tenant of Khudkasht or sub-tenant shall not be regarded to have become the Khatedar tenant of his holding or part, as the case may be, until he has obtained the declaration so prayed for.

...

...

12. Section 19 of the Act was substituted by Section 2 of the Rajasthan Act No. 7 of 1959, which came into force w.e.f. 5-4-1959. Sub-section(1) thereof categorized the persons holding the land as sub-tenant in two categories. Clause (a) deals with the category of persons whose names were entered in the annual registers, which were then current, and Clause (b) deals with the persons whose names were not entered in the said registers. The persons in the first category acquired the Khatedari rights automatically and with out any step to be taken by them. A person belonging to the other category had to make an application under Sub-section (2) of Section 19 of the Act within a period of two years w.e.f. 5-4-1959 for declaration that Khatedari rights had accrued to him and such person could not be regarded as a Khatedar tenant, until he had obtained such declaration. The period for making such application, came to an end on 5-4-1961, on which date Section 19(A), which was inserted by Amendment Act No. 12 of 1961, came into force and which has conferred Khatedari rights on sub-tenants who had not acquired such rights under Sub-section (1) till that date.

13. The angument of Mr. Maheshwari that even the person mentioned in Section 19(1A) has to make application u/s 19(2) of the Act, for declaration of Khatedari rights in his favour, cannot be accepted in view of the fact that, as noted above, the period of limitation for making such an application had expired on the date when Section 19(1A) was inserted in the Act by the legislature.

14. The policy of the legislature has been that the tiller of the land should have the Khatedari rights therein. It appears that initially the Khatedari rights were given to the persons whose names had been entered as tenants sub-tenants in the annual registers and those whose names had not been so entered were required to make application for declaration of such rights in their favour. Thereafter, the legislature thought it proper to confer Khatedari rights in favour

of person who were not recorded as tenants or sub-tenants falling within Section 19(1)(a) but were otherwise eligible for conferment of such rights being within the ambit of Section 19(1) of the Act, without the further requirement of making an application u/s 19(2) of the Act and for this reason Sub-section (1A) was inserted in Section 19 w.e f. 5-4-1961 the, date on which the period of limitation prescribed for an application u/s 19(2) had expired.

15. In our view, therefore, it has rightly been held that Bhura acquired Khatedari rights in the land in dispute u/s 19 (1A) of the Act.

15. No other point has been raised before us.

16. The appeal is without any merit and is dismissed with costs.