

(2004) 05 RAJ CK 0033

In the Rajasthan High Court

Case No : Civil Second Appeal No. 597 of 1999

Barji (Smt.) and Others

APPELLANT

Vs

Thakurji Shri Dwarkadheesji and Others

RESPONDENT

Date of Decision : 10-05-2004

Acts Referred:

Rajasthan Premises (Control of Rent and Eviction) Act, 1950 — Section 13, 3

Citation : (2004) 4 RLW 2068 : (2004) 3 WLC 732

Hon'ble Judges : A.C. Goyal, J

Bench : Single Bench

Advocate : B.L. Mandhana, R.S. Rathore, N.S. Rathore and A.L. Verma, for the Appellant; B.S. Rajawat, Government Advocate, N.K. Maloo and V.K. Tamolia, for the Respondent

Judgement

A.C. Goyal, J.—These two civil second appeals have been preferred by legal heirs of defendant No. 2 Ram Dev and defendant No. 1 Gopal Ram respectively against the judgment and decree dated 13.10.1999, whereby learned Additional District Judge, Khetri, district Jhunjhunu, affirmed the judgment and decree of eviction passed by Civil Judge, Jhunjhunu on 3.8.1992. Cross-objections have been filed by the plaintiff-respondent.

2. Briefly narrated the facts are that the plaintiff Thakurji Shri Dwarkadheesji, through Manager Durga Prasad, filed a civil suit on 4.6.1960 in the court of Civil Judge, Jhunjhunu, against two defendants Gopal Ram and Ram Dev with the averments that the land measuring 16 Bighas 12 Biswas, bearing various Khasra Numbers, as mentioned in para 1 of the plaint, was given to one Dwarka Prasad an ancestor of Durga Prasad by the then Ruler of Khetri vide Patta (Ex. 34) on Mangsar Budhi 4 Samwat 1907 (Year 1850). Dwarka Prasad constructed houses, pond, two wells, temple, garden, the boundary wall and installed the idol of Shri Thakurji Dwarkadishji. This "Kund" (pond) is known as "Bohra ji Wala Kund" situated in abadi land of town Khetri. Subsequently, this property was donated to the idol of Thakurji by Dwarka Prasad, who himself continued to serve as

"Sevak" and Manager of Thakurji.

3. The plaintiff's case is that Durga Prasad's father Sheolal died on 18.1.1935 and from that date the estate of Sheolal was brought under the management of the Court of Wards and continued till 2.5.1955. It is pleaded that during the period the estate remained under the management of the Court of Wards, the land and garden were managed through paid servants who gradually destroyed the garden and started cultivation of crop in the land under the garden for which they were not entitled.

4. The plaintiff further pleaded that after the estate was released from the management of the Court of Wards, Durga Prasad leased out the land alongwith houses in question to the defendants for a period of one year from 2.5.1955, for a consideration of Rs. 115/-, for vegetables, fruits and flowers. The original agreement of lease was placed on record which is Ex.35. The grievance of the plaintiff is that the defendants gradually converted the land of the garden into agricultural land without any right to do so. Now the plaintiff wants to put up a garden on the entire land and the kacha and pacca houses in the land are required by the plaintiff for the temple and garden. Vide notice dated 11.4.1960, the plaintiff asked the defendants to vacate the land as well as the houses. The plaintiff prayed for a decree for possession of the houses as well as the land under the garden and for mense profits at the rate of Rs. 2/-per day.

5. Both the defendants filed separate written statements with identical pleas. They pleaded that the suit was in respect of the agricultural land and thus the civil court had no jurisdiction and it is filed beyond limitation and the lease deed being unregistered is inadmissible in evidence and the notice of ejectment was not legal and valid.

6. On the basis of the pleadings, issues were framed. The Trial Court decided Issue No. 4 with regard to jurisdiction against the plaintiff and returned the plaint. It was held by learned Civil Judge that the land in question was agricultural land and therefore, the suit was triable by Sub Divisional Officer, Khetri. On appeal against this order, the District Judge, Jhunjhunu, vide judgment dated 18.2.1963, set-aside the order of the Civil Judge and directed first to decide the question whether the land in dispute fell within the "Abadi land" of Khetri Town.

7. After remand, the Trial Court recorded the evidence of the parties and vide its judgment dated 30.9.1966 decree the plaintiff's suit for ejectment and also granted a decree for damages for use and occupation of the property in dispute at the rate of Rs. 1/- per day from 2.5.1960 till delivery of the possession of the property to the plaintiff.

8. Aggrieved by the judgment and decree of the Trial Court the defendants filed two separate appeals which were dismissed by the learned District Judge, Jhunjhunu on 25.7.1967 on the preliminary ground that the appeals are not maintainable. The defendants thereupon filed civil second appeal before this

Court, which was registered as S.B. Civil Second Appeal No. 316/67 and the same was allowed vide order dated 18.7.1969 and the case was remanded to the first appellate court for disposal on merits. Thereafter, the learned District Judge upheld the judgment and decree of the Trial Court and dismissed the appeals vide judgment dated 1.6.1972.

9. The defendants again approached this Court by filing two separate appeals. In these appeals, only two points had been urged by the learned counsel for the appellants. At the first instance, it was argued that the subject matter of the suit is agricultural land and, therefore, the suit is not triable by civil court. The second point was that the decree for ejectment is bad in as much as even if the land in question is held to be "Abadi land", the plaintiff has failed to prove any of the grounds of eviction as provided u/s 13 of the Rajasthan Premises (control of Rent and Eviction) Act 1950 (for short the Act 1950"). This Court while dealing with the first point, held that the land granted by the "Patta" Ex. 34 was being held for building purposes. There is nothing in "Patta" Ex.34 to show that the land which was at that time in the shape of sand-dune was to be used only for agricultural purposes and not for building purposes at all. It was also held that the temple and land appertinent thereto is in the populated area of the Town of Khetri and must be deemed to be a part of the populated area. Merely because a portion of the land in the compound of the temple is being used as a garden or for the matter of that for cultivation would not change the character of the land being "abadi land". Therefore, it was held that the case is governed by the Act of 1950. It was next held that since such appoint was not raised by the defendants during the trial, neither issue was framed on it nor the plaintiff had occasion to lead evidence in this regard. In the result this Court vide judgment dated 14.12.1973 (Gopal v. Durga Prasad & Ors. (1),) partly allowed the appeals, set-aside the judgments and decrees of the courts below and remanded the case back to the Trial Court with a direction to give an opportunity to the plaintiff to amend the plaint, regarding the grounds for eviction and then to proceed according to law.

10. According the plaintiff filed an application for amendment of the plaint and the same was allowed by the Trial Court. The plaintiff thus filed amended plaint on 15.4.1974 and sought eviction on the grounds of default in payment of rent, substantial damage to the premises, material alteration, denial of title and reasonable and bonafide requirement of the plaintiff.

11. Both the defendants filed separate amended written statements on 31.10.1973 by denying all the grounds of eviction. During the pendency of the suit the defendant No. 2 Ram Dev died, hence his legal representatives were brought on record, who also filed written statement on 24.10.1989.

12. On 24.11.1989, as many as 21 issues were framed. Evidence of the parties was recorded. 14 witnesses on behalf of the plaintiff while 11 witnesses were examined on behalf of the defendants. The State of Rajasthan was also impleaded as defendant No. 3 but none appeared for the State.

13. The Trial Court vide judgment dated 3.8.1992, decided issues relating to material alteration, denial of title, reasonable and bonafide requirement against the plaintiff. Issue of default was decided in plaintiff's favour but benefit of the first default was given to the defendants. While deciding Issues Nos. 1 & 6 regarding substantial damage to the premises in plaintiff's favour, decree of eviction with mense profits at the rate of Rs. 40/- p.m. from the date of the judgment till vacant possession is to be handed over to the plaintiff was passed.

14. Smt. Barji, legal representative of the deceased defendant Ram Dev as well as the defendant Gopal filed separate appeals. The plaintiff also filed cross appeal. All the three appeals were dismissed vide impugned judgment dated 13.10.1999.

15. Following common substantial questions of law were framed in both the appeals by this court on 6.9.2002:-

"1. Whether the damages or destroyal of some of the trees and plants can be treated as substantial damages to the suit premises so as to grant a decree of eviction on that ground only ?

2. Whether the finding of issues No. 1 and 6 arrived at by the learned courts below is perverse ?

3. Whether the agricultural land falls within the definition of premises and the present suit was maintainable under the provisions of Rent Control Act ?

4. Whether the acceptance of land by enhanced rate and creating new contract, the plaintiffs had waived his right of eviction on the ground of substantial damages of premises when according to the plaintiffs the damages was caused in the year 1955 ?

5. Whether the decree of eviction could be maintained ignoring the admission of plaintiffs in the plaint that the garden was destroyed during the period of Court of Wards ?

6. Whether one suit was maintainable for two different tenancies and different causes of action ?"

I have heard learned counsel for the parties.

QUESTION NO. 1

16. The relevant provisions of Section 3(v) of the Act 1950 are as under:-

(v) "Premises" means:-

(v)(a) any land not being used for agricultural purposes; and

(v)(b) any building or part of a building other than a farm building, let or intended to be let for use as a residence or for commercial use or for any other purpose, including:-

(v)(b)(i) the gardens, grounds, godowns, garages and out houses, if any, appurtenant to such building or part,

A bare perusal of above provisions goes to show that premises includes the gardens. Even otherwise this Court vide judgment dated 14.12.1973 has already held that the provisions of the Act 1950 would apply to the suit premises.

17. Section 13(1)(b) of the Act, 1950, provides that where the tenant has wilfully caused or permitted to be caused substantial damage to the premises, the landlord has a right for a decree of eviction. It was submitted by Mr. Mandhana learned counsel appearing for the appellants Smt. Barji and others that damage or destruction of some of the trees and plants does not amount to substantial damage to the premises so as to afford a ground of eviction and at the most the landlord can claim damages in case of cutting, existing trees on the date of lease. Reliance was placed upon Mahavarya Udpa v. Dasa Tantri (2). He also referred the provisions of Section 108(O) of the Transfer of Property Act 1982. Mr. Rathore, learned counsel appearing for other appellant Gopal adopted the submissions of Mr. Mandhana. Learned counsel Mr. Maloo appearing for the landlord-respondent submitted that the term "premises" includes the gardens and trees etc. Hence damage to the garden as well as the trees would amount to damage to the premises and the judgment of the Mysore High Court is not applicable in the instant case. Having considered the said submissions, it is difficult to accept the submissions made by Mr. Mandhana and Mr. Rathore. In Mahavarya's case (supra), the landlord sued the tenant only for the recovery of Rs. 520/- by way of damages for destruction of certain trees standing on the leased premises. There was no prayer for eviction. It is also significant that the eviction proceedings are governed by Section 13 of the Act 1950 and learned counsel for the respondent-landlord rightly submitted that as per the definition of the term "premises" it includes the gardens, the grounds and out houses, if any, appurtenant to such building. Substantial damage to the premises is one of the grounds of eviction as stated hereinabove. Therefore, in view of the above discussion, it is clear that the damage or destruction of some of the trees and plants can be treated as substantial damage to the suit premises. The first point is decided accordingly.

QUESTION NOS. 2 & 5

18. Both the questions are co-related. It is not in dispute that the suit property remained under the management of the Court of Wards from January 1935 to 2nd of May 1955 and the suit property/land/garden was managed through paid servants who were both the defendants. Mr. Mandhana put much stress upon para 4 of the plaint wherein it is pleaded that the garden was gradually destructed and the land under the garden was being cultivated during the period the estate remained under the management of the Court of Wards and thus it is the admission of the plaintiff that the garden was destructed during the period from January 1935 to May 1955 but the courts below did not consider such a clear admission of the plaintiff. It was next submitted that findings of the courts

below on Issue No. 1 and 6 are perverse as neither there was a plea that how many trees and of what kind of trees were existing at the time of commencement of the lease; that how many trees were cut and when; that the various inspection reports reflect only the existing position of the land/garden on the various dates of inspection; that there was no evidence of the plaintiff to prove that it were the defendants who cut the trees and destructed the garden; that some of the trees fell on account of natural decay.

19. On behalf of the respondent landlord, it was contended that even during the period the estate was under the management of the Court of Wards, both the defendants were paid employees of the Court of Wards; that as per para 4 of the plaint only the process of damaging the garden and trees was started and no such conclusion can be drawn on the basis of the pleadings in the plaint that the entire process of damage to the garden and trees was complete during the period the estate remained under the management of the Court of Wards. He referred para 6 and 7 of the plaint wherein it is specifically pleaded that the defendants continued to damage the garden and started cultivating the land under the garden. He also referred "Kabuliat Ex.35" which was executed by the defendants on 2nd of May 1955, when the suit property was let out to the defendants and this "Kabuliat" contains a specific condition that the defendants would maintain the garden and they would have no objection in doing so. It was also contended that the courts below have considered the entire pleadings and evidence in detail and thus the concurrent findings of the courts below do not call for any interference in the second appeals.

20. Having considered the rival submissions, I find no substance in the submissions made by learned counsel for the appellants as the courts below have considered the pleadings and entire evidence in detail and there is no perversity in the concurrent findings on these two issues. Although details of existing trees/plants and cutting thereof have not been pleaded but various inspection reports which were placed on record prior to filing of amended plaint in the year 1974 clearly indicate the existing position of various kinds of trees at the time of the lease as well as filing the suit in favour of the plaintiff. Ex.1 is the Inspection report dated 5.6.1960. It was prepared by P.W.11 Shri Gopi Nath, who was Nazir of the Court. Ex.5 is the report dated 3.4.1962. The Court appointed P.W.4 Shri Girdhar Gopal Advocate as Commissioner, who prepared this report after inspection of the disputed land. Ex.55 is the copy of the order of Assistant Settlement Officer. This order is dated 25.1.1962. The Assistant Settlement Officer found the existence of the garden over the disputed land. Ex.60 Inspection report was prepared by the then District Judge, Jhunjhunu on 7.5.1972. There are two statements both marked Ex.70. One statement is that of the defendant Ram Dev. It was recorded on 17.10.1959 by the Court in a criminal case registered on the complaint of the plaintiff regarding cutting the trees and Shri Ram Dev in this statement admitted the cutting of some trees by him. Another statement is that of Geegraj, who is son of defendant Ramdev and he also supported his father's version. It is also significant to make a mention of

Ex.34 "Patta" of this property and Ex.35 "Kabuliat" which was executed by the defendants themselves. Ex.32 patta of the said estate goes to show that this land was given to Shri Dwarka Prasad for establishing a garden, pond, wells etc. and according to Ex.35 the defendants agreed upon to maintain the garden existing over this land. Ex.45 is the map prepared on 22.4.1960 and it was filed with the plaint. A number of existing trees of various kinds have been shown in this map Ex.45. Therefore, in view of the entire discussion made hereinabove no case misreading, non-reading or wrong reading of pleadings or the evidence of the parties is made out and thus concurrent findings of the courts below are not liable to be set-aside at all in these second appeals.

21. One other point was submitted by learned counsel for the appellants that every amendment in the plaint does not relate back to the date of filing the suit. Reliance was placed upon Sampath Kumar v. Ayyakannu and Anr. (3). According to Mr. Mandhana since no details regarding existing and cutting of trees are given and the relevant grounds of eviction taken in the amended plaint do not relate back to the date of the filing of the suit. Mr. Maloo also admitted the submission that the grounds for eviction taken by way of amendment in the plaint shall not relate back to the date of institution of suit and proceedings on new grounds shall begin when amended plaint was filed. Reliance was placed upon Chandgi Ram v. Babu Lal (4). I have considered the said submissions. Firstly this point is not relevant to decide the present appeals and secondly it was admitted by learned counsel for the respondent-landlord that grounds of eviction shall not relate back to the date of institution of the suit. As far as the submissions with regard to absence of pleadings and evidence is concerned, the same have already been taken into consideration as mentioned hereinabove. It was next submitted by learned counsel for the appellants that as per the contents of para 1 and 17(ka) of the plaint, the temple, the pond and the garden, have been shown only in Khasra No. 1399 measuring 10 Biswas which approximately comes to 1000 sq. yards and thus according to the plaintiff the substantial damage relates to only this portion of the land and prayer for eviction has also been made with regard to only 10 Biswas of land of Khasra No. 1399 and thus decree of eviction from the entire land of 16 Bighas 10 Biswas is illegal. Mr. Maloo referred the statement of defendant Shri Ramdeo recorded by the Trial Court wherein he himself admitted that the area of the entire land is 51 kacha Bigha which comes to Pacca 16 Bighas and 12 Biswas and description of the entire land has been given in para 1 of the plaint and the eviction has been sought from the entire land and not only for 10 Biswas. It was also contended that such an objection was not raised either before the Trial Court or in the first appellate court. Having considered the pleadings, the submissions made by learned counsel for the appellants appear to be devoid of merit. The plaintiff did not confine his case only to 10 Biswas. A perusal of the plaint clearly goes to show that the disputed land is 16 Bighas 10 Biswas and prayer for eviction was made for this entire land and not only for 10 Biswas as submitted by learned counsel for the appellants. Therefore, both the questions are decided accordingly against

the appellants.

QUESTION NO. 3

22. It was not disputed by learned counsel for the parties that this question stands already decided by this Court vide judgment dated 14.12.1973 (as reported in W.L.N. 1973 967 (supra)).

QUESTION NO. 4

23. This question was not pressed by learned counsel for the appellants.

QUESTION NO. 6

24. It was contended by learned counsel Mr. Verma appearing for the appellants that it is a case of two separate tenancies and two separate tenants-defendants, hence one suit of eviction was not maintainable. Learned counsel for the respondent-landlord submitted and rightly so that both the defendants were co-tenants who executed one document Ex.35 and both of them jointly agreed to pay the consideration as provided in Ex.35 and thus two separate suits would not have been maintainable. Thus this question is also decided against the appellants.

25. Learned counsel for the respondent-landlord did not press the cross-objections hence the same are liable to be dismissed.

26. Consequently, both the appeals are dismissed with costs and cross-objections are dismissed as not pressed.