

(2013) 07 RAJ CK 0118

In the Rajasthan High Court

Case No : Civil Special Appeal No. 893 of 2012 in Civil Writ Petition No. 1610 of 2012

Bhanwar Singh and Others

APPELLANT

Vs

The Board of Revenue and Others

RESPONDENT

Date of Decision : 11-07-2013

Acts Referred:

Rajasthan Tenancy Act, 1955 — Section 183B, 42(b)

Citation : (2013) 3 WLN 405

Hon'ble Judges : V.K. Mathur, J; Govind Mathur, J

Bench : Division Bench

Advocate : Amitabh Acharya, for the Appellant;

Judgement

Govind Mathur, J.—A land measuring 0.1700 hectare comprising Khasra No. 246 was khatedari land of Gulab and Shankar sons of Gokul, a member of Scheduled Caste. Out of the said land 0.0600 hectare was in possession of the appellant-petitioners. An application was preferred under Sec. 183-B of the Rajasthan Tenancy Act by aforesaid Gulab and Shankar with assertion that the appellant-petitioners trespassed over their land. While contesting the application the plea advanced on behalf of the appellant-petitioners was that they purchased the land in question from Shri Gokul with a consideration of Rs. 3300/- by executing a sale deed on a plain paper and this was done in the background that the land concerned was attached in execution of a decree. The attachment came to be released by payment of decretal amount by the appellant-petitioners.

2. The appellant petitioner, thus, cannot be termed and treated as trespassers. The application preferred by Gulab and Shankar came to be rejected, however, the Board of Revenue ultimately accepted the same and being aggrieved by that a petition for writ was preferred. The writ petition came to be dismissed under the judgment impugned. Learned Single Judge while dismissing the petition for writ arrived at the conclusion that in view of the provisions of Section 42(b) of the Rajasthan Tenancy Act the transfer of the land by a member of Scheduled

Caste in favour of a person who is not a member of Scheduled Caste is void and, therefore, no right at all was created in favour of the petitioners.

3. In appeal, the argument advanced by counsel is that the land in question was in possession of the appellant-petitioners from last number of years and that too as a consequence of a sale deed executed between the parties, thus, by no stretch of imagination the appellant-petitioners can be treated as trespassers. It is also submitted that as a matter of fact the consideration for sale of the land aforesaid was nothing but the decretal amount paid to get the land in question released from attachment.

4. Having considered the argument advanced and the record relevant we do not find any merit in this appeal. As a matter of fact a Full Bench of this Court in DB Special Appeal (Writ) No. 158/2004, State of Rajasthan vs. Uka & Ors., examined the issue involved in this appeal in detail and arrived at the conclusion that a sale made in violation of the provisions of Section 42(b) of the Rajasthan Tenancy Act is void ab-initio, thus, does not create any right in favour of the purchaser. In view of this legal position, the appeal is devoid of merit. Dismissed accordingly.