

(1979) 01 RAJ CK 0027
In the Rajasthan High Court
Case No : Civil Revision No. 203 of 1977

Bhopal Singh and Others

APPELLANT

Vs

Bhagwat Singh

RESPONDENT

Date of Decision : 03-01-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Citation : AIR 1979 Raj 173 : (1979) RLW 220 : (1979) WLN 24

Hon'ble Judges : S.K. Mal Lodha, J

Bench : Single Bench

Advocate : S.D. Rajpurohit, for the Appellant; Rajendra Mehta, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Mal Lodha, J.—This application in revision by the defendants-petitioners has been filed against the order dated Aug. 1, 1977 passed by the learned Civil Judge, Pali, whereby he allowed the plaintiff-non-petitioner's application for amendment of the plaint.

2. The plaintiff-non-petitioner instituted a suit for cancellation of a sale-deed and possession in the Court of Munsif, Pali, on Feb. 22, 1968 against defendants Nos. 1 to 4 who are petitioners before me and defendant No. 5 who is the father of the plaintiff-non-petitioner. The case of the plaintiff as averred in the plaint is that his father during his minority without caring for his interest sold agricultural land bearing khasra No. 125 measuring 99 bighas 6 biswas situate in village Chatelav, Tehsil and District Pali by a registered sale-deed on Aug. 18, 1965, that the sale was made by his father (defendant No. 5) without thinking for the benefit of his person and property at the instigation of defendants Nos. 1 to 4 (petitioners) and as such, the registered sale-deed is illegal and not acceptable to him and is liable to be cancelled. According to the plaintiff, the suit land was worth Rs. 10,000 but it was sold by his father for Rs. 2,000 though in fact, nothing was paid by the defendants-vendees to the defendant-vendor, the father.

According to the plaintiff, this was done by practising fraud. In para 7 of the plaint, it was stated by the plaintiff that the defendants-vendees did not pay even Rs. 2,000 to the defendant-vendor and the payment of Rs. 2,000 was got admitted by him, that he had received this sum as back as four years preceding the date of registration. On the basis of these facts, it was alleged in the plaint that the suit land was transferred without consideration and as such, the plaintiff is not bound by the same. In these circumstances, it was prayed that (i) the sale-deed dated Aug. 18, 1965 "which is in respect of the plaintiff's land bearing khasra No. 125 may be cancelled and its possession may be restored to him. The suit was resisted by the defendants-petitioners on various grounds. It was pleaded that the suit as framed was exclusively triable by a Revenue Court. It was contended in the written, statement that as the plaintiff has alleged in the plaint that the sale is void and was claiming possession of the agricultural land by treating the defendants-petitioners as trespassers, the suit was not cognizable by a Civil Court.

3. Issue No. 2 framed by the trial court covering the objection relating to the jurisdiction of the court. This issue was decided by the trial court against the defendants-petitioners on Dec. 7, 1974 holding that the suit is cognizable by a Civil Court. Aggrieved by the aforesaid order, the defendants-petitioners preferred S. B. Civil Revision No. 114 of 1975, petitioner Bhopalsingh and others v. Non-petitioners Bhagwansingh and others, in this court. During the course of arguments, learned counsel for the plaintiff submitted an application for the amendment of the plaint. In that application, the plaintiff sought permission for the amendment of the plaint under O. VI, Rule 17 read with Section 151, C.P.C. to delete the allegations contained in para 7 of the plaint. This court, vide its order dated Jan. 20, 1977, allowed the revision application in part and set aside the, order dated Dec. 7, 1974 and the case was sent back for disposal of issue No. 2 relating to the jurisdiction afresh after deciding the application under Order VI, Rule 17, read with Section 151, C.P.C. In pursuance of the aforesaid order of this court, the defendants-vendees submitted reply to the application of the plaintiff for amendment of the plaint and contested it principally on the ground that if para No. 7 is deleted, the nature of the suit would be changed and that would adversely affect the issue regarding the jurisdiction and as such, the amendment should not be allowed. The defendants submitted an application on July 15, 1977 stating therein that before disposing of the application for amendment of the plaint, issue No. 2 regarding the jurisdiction of the Civil Court in its present form may be heard and disposed of first. The learned Civil Judge dismissed that application and heard arguments on the application for the amendment of the plaint. The application for the amendment of the plaint was allowed by the learned Civil Judge on Aug. 1, 1977 on payment of Rs. 100 as costs to the defendants-petitioners within a week or to deposit the same and it was ordered that on this being done, permission is accorded for deleting para No. 7 of the plaint.

4. Being dissatisfied by the aforesaid order dated August 1, 1977, the petitioners

have preferred this revisional application.

5. It may be stated here that issue No. 2 framed by the trial court, when translated into English, reads as under:

"Whether the suit is not triable by this Court (Civil Court)?" While deciding the application for the amendment of the plaint, the learned Civil Judge held the suit to be triable by a Civil Court.

6. I have heard Mr. S. D. Rajpurohit, learned counsel for the petitioners and Mr. Rajendra Mehta, learned counsel for the non-petitioner and have also carefully gone through the record of the case.

7. The learned Civil Judge decided application for the amendment of the plaint first without deciding issue No. 2 relating to the jurisdiction of the Civil Court to try the suit as this court in the aforesaid S. B. Civil Revision No. 114/75 against the order of the Civil Judge, Pali dated December 7, 1974, by which he decided the issue No. 2 in favour of the plaintiff and against the defendants, directed that issue relating to jurisdiction should be decided afresh after deciding the application under Order VI, Rule 17, C.P.C.

8. In view of the arguments raised before the learned Civil Judge for the purpose of deciding the application for the amendment of the plaint, he, as stated above, also recorded a finding that the suit is cognizable by a Civil Court and as it was/is cognizable by a Civil Court, he permitted the plaintiff to amend the plaint by deleting its para No, 7.

9. Mr. S. D. Rajpurohit, learned counsel for the petitioners, in this revision assailed the order of the learned Civil Judge permitting the amendment of the plaint on the ground that the plaint in the suit in an unamended form, was not triable by a Civil Court and, therefore, the Civil Court had no jurisdiction to allow the application for amendment of the plaint. Learned counsel submitted that the suit was cognizable by a Revenue Court and, therefore, the order of the Civil Court allowing amendment of the plaint is without jurisdiction. In support of his arguments, learned counsel urged that according to the averments made in the plaint, the transaction of sale dated Aug. 18, 1965 in respect of which cancellation is sought, is void, and as the sale is void, the main relief in the suit is for possession of the agricultural land, bearing khasra No. 125, which can only be granted by a Revenue Court. In order to show that the transaction of sale is void, Mr. Rajpurohit drew my attention to the following facts:

(1) Want of consideration of sale,

(2) No permission was obtained by the plaintiff's father for selling the minor son's property who is plaintiff in the trial court, as required by Section 8(2) of the Hindu Minority and Guardianship Act (No. XXXII of 1956).

According to the learned counsel, even if the transaction of sale is voidable, as the plaintiff demanded possession from the defendants-vendees, he treated the

transaction of sale to be void and as such no declaration to the effect that transaction of sale is void, is at all necessary. Learned counsel for the petitioners placed strong reliance on Hanumanthappa v. Seethyya and Co. AIR 1949 Mad 790 (FB), H. C. Khan v. Purni Agrawallani AIR 1953 Asm 102 and Debi Sahai Vs. Ganga Sahai and Another, to show that a court which has no jurisdiction to entertain a suit, is not competent to allow an amendment of the plaint, which, if granted, would bring the suit within the jurisdiction. As regards the argument that by demanding possession, the transaction of sale even if voidable has become void, and no declaration to declare it as such is necessary, he invited my attention to Chauhan v. Ram Sarup, 42 Ind Cas 27: (AIR 1917 Oudh 40), V. Muthukumara Chetty Vs. Anthony Udayar and thirty Ors., Bijoy Gopal Mukerji v. Krishna Mahishi Debi, (ILR 1907 Cal 329 , Sivanmalai Goundan Vs. Arunachala Goundan and Others, and Jagdamba Prasad Lalla and Another Vs. Anadi Nath Roy and Others, During the course of arguments, the learned counsel also made reference to Chandanmal v. Da-war, 1954 RLW 184, Shankarlal v. Dhulilal, 1963 Raj LW 310, Asala v. Narain 1963 RLW 323 Rooda Ram v. Rattu Ram, 1972 RLW 532, Jagan Singh v. Choteylal 1973 RLW 674 and an unreported decision in Civil Revn. No. 153 of 1971, Longram v. Jai-palsingh decided on 29-7-71 (Raj), which has been mentioned in para 10 of the judgment reported in Shyam Kumar and Others Vs. Budh Singh and Others, On the other hand, Mr. Rajendra Mehta supported the order under revision. He submitted that as the plaint stood in an unamended form, the main relief asked for by the plaintiff is cancellation, of the sale deed dated Aug. 18, 1965 and as the sale, made by his father without legal necessity and against the interest of the plaintiff and without obtaining the permission u/s 8(2) of the Hindu Minority and Guardian ship Act, it is voidable and until the sale deed is cancelled, the plaintiff will not be entitled to any other relief. He submitted that relief relating to restoration of possession is incidental to the main relief of cancellation of the sale deed and it is consequential or ancillary one. My attention was drawn to Raj Kumar Raghubanchmani Prasad Narain Singh Vs. Ambica Prasad Singh (Dead) by Lawyers and Others, wherein it was held that an, alienation by the Manager of the joint Hindu family even without legal necessity is voidable and not void. He submitted that in view of the decision of the Supreme Court, Longram's case (supra) is not a good law. On the basis of the decision reported in Babulal Vs. G.S. Hashmi and Others, and Shobha Venkat Rao Vs. K.R. Mahale, he contended that the learned Civil Judge could permit the amendment of the plaint even if he has no jurisdiction to entertain the suit as originally instituted. He further urged that in the circumstances of this case, the main relief which the plaintiff has prayed, is cancellation of the sale deed, which can only be granted by a Civil Court. Mr. Mehta referred to Lal Singh and Others Vs. Tejsingh and Another, and Shyam Kumar and Others Vs. Budh Singh and Others,

10. As the learned counsel for the petitioners, as stated above, has assailed the order permitting to amend the plaint on the ground that the suit is triable by a Revenue Court and, therefore, the Civil Judge could not allow the application for

amendment of the plaint, it has become necessary for me to decide this point first. I specifically put to the learned counsel for the petitioners that if this point is decided in the revision, it will affect the decision of issue No. 2.

11. Appearing for the petitioners Mr. S. D. Rajpurohit submitted that in view of the submissions made by him, the decision on the question of jurisdiction of the Civil Court may be given and the consequences ensuing therefrom will be acceptable to the defendants-petitioners. In these circumstances, I propose to decide the point of jurisdiction of the Civil Court in this revision.

12. It is not disputed by the learned counsel for the parties that the question of jurisdiction is to be decided on the basis of the averments made in the plaint and all the allegations made therein should be considered in order to decide the question whether the suit is exclusively triable by a Revenue Court. It is well settled that it is the substance of the plaint and the true nature of the suit, that has to be seen for the purpose of determining the question of jurisdiction. A perusal of the plaint shows that it has been alleged by the plaintiff that his father (defendant No. 5) had sold the agricultural land along with well, described in para 1 of the plaint, to defendants Nos. 1 to 4 (petitioners) without legal necessity and without caring for the benefit of his person and property. In para 5, it has also been stated that in fact the market value of the agricultural land and well is Rs. 10,000 and the consideration which is alleged to have been paid is Rs. 2,000 only. Para 7 of the plaint has been ordered to be deleted by the impugned order. It was stated that, in view of the facts stated therein, the sale was executed without consideration and the plaintiff is not bound by it. In these circumstances, it was prayed in para 15 of the plaint that the sale deed dated August 18, 1965, in respect of the plaintiff's land and well, bearing khasra No, 125, may be cancelled and possession of the land in question may be delivered to him. It is, therefore clear to my mind that the main relief which the plaintiff is seeking in the suit is about the cancellation, of the sale deed dated August 18, 1965. Cancellation of the aforesaid sale deed is the main object of the suit and the plaintiff cannot be held entitled to the restoration of possession of the agricultural land and well in respect of which the sale deed was executed by defendant No. 5 in favour of defendants Nos. 1 and 4 until it is cancelled.

12-A. I may here read Section 31 of the Specific Relief Act, 1963, which is as follow:

"Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled."

In Lalsingh's case (AIR 1972 Raj 173), it was held by Jagatnarayan, C. J., that the relief of cancellation of a sale-deed or a decree to that effect can only be granted by a Civil Court and not by a Revenue Court. In that case, a suit was filed for declaration, that the sale deed executed by the plaintiffs' father, was

not, binding on them and for possession over the land sold under sale deed. The point canvassed before the Court was whether the suit was for cancellation of sale deed or not. The learned Chief Justice came to the conclusion that the suit was for cancellation of the sale deed and it is necessary to get it cancelled before one can be entitled to the property disposed of by it. To quote the learned Chief Justice (at p. 138):

"The relief of cancellation of a sale-deed or a decree can only be granted by a Civil Court and not by Revenue Court."

12-B. In *Shyam Kumar and Others Vs. Budh Singh and Others*, the plaintiff filed a suit alleging that he is the owner in possession of the suit land and that defendant No. 4 purporting to act as the holder of a power of attorney from the plaintiff, has executed a sale deed in favour of defendants Nos. 1 to 3 of the land belonging to plaintiff. The case of the plaintiff in that case further was that defendant "No. 4 was neither appointed by the plaintiff nor was he the holder of the power of attorney from the plaintiff and consequently the sale-deeds are void, inoperative and of no effect and therefore they should be cancelled and the defendants be restrained by permanent injunction from interfering with the plaintiff's possession over the suit land. An objection was raised that the suit was not triable by a Civil Court but was cognizable by a revenue court. Sachar, J. after examining important cases of this Court on the point, observed as under (at page 242):

"In my view the main relief therefore that the plaintiffs are seeking in the present case is a relief for cancellation of the documents of the sale deeds The relief of perpetual injunction and others are incidental to the main relief, and will follow as a consequence to the finding of the court with regard to the relief of cancellation of the sale-deed or otherwise."

Sachar, J., also observed that in *Jagan-singh's case* 1973 Raj LW 674 a sale deed was undoubtedly void because of prohibition in the statute and therefore the main relief claimed in the suit was for possession and hence triable by a Revenue Court. The learned Judge distinguished *Jagansingh's case* on the ground that the main relief in that case was for possession. C. M. Lodha, J., as he then was, in *Jagansingh's case*, however, made the following observations:

"If the instrument is voidable and the avoidance of the same is necessary the relief for cancellation of the instrument is indispensable and in that case the Revenue Court can give no relief as long as the sale-deed is not cancelled. But the position would be different if the instrument is alleged to be or proved to be void, ab initio. In that case it would not be necessary to avoid the document and merely by proving that it was a void document, the plaintiff would certainly get the possession of the property without cancellation of the sale-deed."

(underlining is mine)

The learned Judge in *Jagansingh's case* took note of the provisions of Section 31

of the Specific Relief Act, 1963. He held that the suit was triable by Revenue Court on the ground that the main relief claimed by the plaintiff in that suit was for possession.

13. In view of the decision in Raj Kumar Raghubanchmani Prasad Narain Singh Vs. Ambica Prasad Singh (Dead) by Lawyers and Others, the sale-deed made by the plaintiff's father, who is defendant No. 5, in favour of the defendants Nos. 1 and 4 (petitioners) is voidable as according to the plaintiff it was without legal necessity and u/s 31(1) of the Specific Relief Act, when the plaintiff has reasonable apprehension that the sale-deed if left outstanding, may cause him serious injury, it became necessary for him to have it adjudged, void or voidable. The cancellation of the sale-deed, being the main relief in the suit, can only be granted by a Civil Court. Learned counsel for the petitioners cannot, in my opinion, derive any benefit from the decision in Jagansingh's case 1973 RLW 674 . In Longram's case Civil Revn. No. 153 of 1971, D/- 29-7-1971 Raj) (supra) the learned Judge took the view that the sale by the father of undivided coparcenary property is void in the absence of the legal necessity and the prayer for cancellation of the sale-deed is not very material, and further that the suit was essentially for possession of agricultural land. The sale by the father of the plaintiff in the case before me is voidable according to the decision in Raj Kumar Raghubanchmani Prasad Narain Singh Vs. Ambica Prasad Singh (Dead) by Lawyers and Others, I regret my inability to agree with the view taken in Longram's case and it is no more a good law after Raghubanchamani's case.

14. It, therefore, follows that the main relief which the plaintiff has asked for in the suit is of cancellation of the sale-deed executed by his father on August 18, 1965 and the incidental relief regarding restoration of possession will follow as a consequence to the finding of the Civil Court relating to the relief of the cancellation of the sale-deed. In these circumstances, in my opinion, the learned Civil Judge while allowing the application for amendment of the plaint by deleting paragraph 7 of the plaint, rightly held that the suit of the plaintiff is cognizable by a Civil Court. In these circumstances, I do not consider it necessary to express any opinion on the question whether a court which has no jurisdiction to entertain a suit, can allow an amendment of the plaint. I must state that there is divergence of judicial opinion on the point, though this court in Gangabux v. Ayodhya prasad 1954 RLW 583 took the view that where the court has no jurisdiction in the suit as originally valued but the plaintiff puts in an amendment relinquishing part of his claim and thus bringing it within the jurisdiction of the court, such an amendment could not be allowed and the plaint must be rejected. The same Judge, in Kundan Mal and Others Vs. Thikana Siryari and Others, observed:

"It is true that if the suit as framed were beyond the jurisdiction of the lower courts, they would have had no jurisdiction to make any amendment."

Be that as it may, the suit, out of which this revision arises, has been held by me to be cognizable by a Civil Court and as such now it cannot be disputed by the

learned counsel for the petitioners that the Civil Judge had no jurisdiction to try the suit as originally instituted.

15. Learned counsel for the petitioners has not disputed the correctness of the order allowing amendment of the plaint on any other ground.

16. I do not want to encumber this judgment by making detailed discussion of all the authorities, cited by the learned counsel for the parties. I have tried to decide the question raised before me by appreciating the relevant decisions having bearing on it.

17. The net result of the exercise done hereinabove is that no ground for interference with the order under revision is made out, and as such it must be dismissed.

17-A. I, accordingly, dismiss the revision without any order as to costs.

18. Before parting with the case, I wish to make it clear that nothing said in the foregoing part of this judgment would debar the trial court from determining the points in controversy between the parties on merits in accordance with law.