

(2006) 10 RAJ CK 0064
In the Rajasthan High Court

Bhuri Singh and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 11-10-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145
Limitation Act, 1963 — Section 5

Citation : (2007) 2 RLW 997

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shiv Kumar Sharma, J.—Heard learned Counsel for the parties.

2. The predecessor in title of petitioners Narain Singh filed a suit for declaration against Smt. Gainda (predecessor in title of respondents No. 4 to 7) regarding the land in dispute situated in village Kakda Tehsil Deeg claiming to be in possession of the land since Svt. 2014 and acquired khatedari rights. Since despite service the defendant did not appear the Sub Divisional Officer Deeg proceeded exparte and decreed the suit vide judgment dated July 20, 1970. The respondents filed first appeal on June 23, 1973 along with the application u/s 5 of Limitation Act, 1963. On receiving notices the petitioners raised preliminary objections. The appeal came to be dismissed vide judgment dated July 16, 1974. Thereafter the respondents filed second appeal before the Board of Revenue (for short "Board"), who vide judgment dated November 11, 1982 dismissed the same holding that the respondents purchased the land in dispute from Gainda after institution of suit, therefore, the transaction was hit by the doctrine of lispendense. It was also held that Smt. Gainda belonged to Scheduled Caste whereas plaintiff belonged to caste Fauzdar, therefore there was violation of Section 42 of Rajasthan Tenancy Act, 1955. The State Government was not party to suit therefore the transfer of possession was in violation of Section 42. In the year 1973 the respondents 4 to 7 also filed a suit for declaring the decree dated

July 20, 1970 as null and void. The petitioner raised objection regarding maintainability of suit in revenue court. The suit was dismissed vide judgment dated June 7, 1976. The respondents filed another suit on July 19, 1983 August 4, 1983 for declaring the decree dated July 20, 1970 null and void. The same was also dismissed in default on March 25, 1989.

3. Again in the year 1995 the respondents filed suit for declaring null and void the sale deed dated April 26, 1990/April 30, 1990 of 1/4 share out of land in dispute by petitioner No. 4. The respondents concealed the facts of earlier judgments and fraudulently the notices were not served upon petitioners and ex parte decree dated July 1, 1995. Thereafter the mutation No. 259 got opened in their favour. The petitioners and other defendants filed application on February 2, 1996 under Order 9 Rule 13 CPC for setting aside ex parte decree dated July 1, 1995. The stay order was also obtained on February 3, 1996 but the same was vacated on February 14, 1996 and revision petition also dismissed on May 1, 1999. On February 22, 1996 the petitioner filed complaint u/s 145 CrPC and attachment proceedings was initiated and receiver was appointed.

4. The respondents filed application in the year 1996 for making reference disclosing the fact of purchase of land by them through sale deed on November 4, 1965 and mutation No. 327 was opened on June 16, 1966. The decree dated July 20, 1970 was assailed on the ground that the same was in favour of savarna caste and the same is hit by Section 42 of the Act. On such application the reference was made vide order dated October 28, 1996. The Board vide judgment dated September 8, 1997 accepted the reference and cancelled the decree dated July 20, 1970. The review filed by petitioner was dismissed vide order May 31, 1999. Against the orders dated October 28, 1996 of Collector Bharatpur, September 8, 1997 and May 31, 1999 of the Board that the instant writ petition has been preferred by the petitioner.

5. The State of Rajasthan submitted reply to the writ petition with the averments that since the land belonged to member of Scheduled Caste the decree could not have been passed.

6. Admittedly the Board and revenue Appellate Authority dismissed the appeals of the respondents earlier. Thereafter the respondents initiated other proceeding to make reference on February 22, 1996 after unreasonable delay of more than 25 years. There is nothing on record to show that fraud was played in obtaining the decree by the petitioner.

7. Division Bench of this Court in Anandi Lal v. State of Rajasthan 1996 DNJ (Raj). 100 indicated that to permit exercise of revisional powers under Sections 82 and 232 of the Rajasthan Land Revenue Act, 1956 (for short "1956 Act") after unreasonable delay would amount putting imprimature of the courts on the unreasonable and arbitrary exercise of powers. In Mangi Lal v. State of Rajasthan 1988 (1) WLC 625 has been obtained by fraud, the power of reference can be exercised even after the unreasonable delay.

8. In *State of Rajasthan v. Teja* 2005 (2) WLC 53 indicated in para 10 thus:

While it is true that the subject transfer is in violation of Section 42-B of the Act of 1955 but that, in itself, is not sufficient. As the respondent has acquired tenancy Khatedari rights and continued in possession of the land for number of years, his rights cannot be called in question after unreasonable delay in absence of a positive case of fraud on account of collusion between the public officer and the private party. The Collector before invoking the revisional power, has not recorded any reasons to the effect that illegality in transfer as a consequence of fraud between the public officer and the private party has suffered (sic) public loss. In our view, the Board of Revenue has committed error in accepting the reference made by the Collector without satisfying the prerequisites. Learned Single Judge has rightly set aside the order of the Board of Revenue.

9. In *Lal Bai v. Board of Revenue* 1999 DNJ (Raj.) 761 this Court held that:

(Para 12)

The legislature therefore, need not think it fit to cover decrees of Court of competent jurisdiction which may have the result of transfer the land to Khatedar tenant. To read the words a decree of Court of competent jurisdiction in Section 42 is to read something more in that section that has been put by the legislator. Such judicial activism in my opinion is impermissible in law. The language of Section 42 does not permit such violent interpretation. In my opinion, therefore, the judgment referred to above reported in 1998 is per incuriam of Section 42 and not binding on me. In my opinion, the provisions of Section 42 are not attracted in the present case as the transfer of land has been made in execution of a decree passed by a Court of competent jurisdiction. There is nothing on record to show that there has been a challenge to this decree by a person belonging to Scheduled Caste. There is no explanation as to why the the transfer is challenged at such belated stage after 18 years. The orders impugned in this petition holding the decree bad as violative of Section 42 are therefore illegal as they violate the provisions of Section 42. The transfer made by decree is neither a sale, gift or bequest as envisaged by Section 42 and therefore, provisions of Section 42 are not attracted. Both Board of Revenue and Collector legally wrong in holding that the transfer was under the provisions of Section 42 and it is liable to be set aside.

10. Having closely analysed the material on record. I find that it is not a case where obvious manipulation has been perpetrated in the record. Even the decree obtained by the petitioner was not founded on fraud, therefore the exercise of making reference after unreasonable delay would be unjust and unreasonable. Although sections 82 and 232 of the Rajasthan Land Revenue Act, 1956 do not provide for the period of limitation, but concept of exercise of power in a reasonable manner inheres with it the concept of exercising the same within a reasonable time and if the power is not exercised within reasonable time, the invocation of the power after inordinate delay and the exercise of the same after

unreasonable length of time would be illegal and void.

11. For these reasons I allow the writ petition and set aside the impugned orders dated October 28, 1996 of Collector Bharatpur, September 8, 1997 and May 31, 1999 of the Board. There shall be no order as to costs.