
(2002) 08 RAJ CK 0050
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4253 of 1989

Budha

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 21-08-2002

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2003) 3 WLN 662

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Arun Madan, J.—This writ petition arises out of order dated 24.8.1984 (Annex.4) of the Board of Revenue, dismissing revision/review petition of the petitioner assailing the abatement of appeal. But the present petition has been filed after inordinate delay of five years in the year 1989.

2. The circumstances leading to this petition are briefly stated thus. Ramjilal and others (respondent Nos. 5 to 9) instituted a revenue suit on 7.10.1970 before the Asstt. Collector Bandikui claiming legal heirs of Gyarsa and asserting that Gyarsa and Ramsahai were co-tenants to the agricultural lands in dispute bearing Khasra Nos. 2/1 (8 Biswas), 2/2 (14 Biswas), 2/3 (3 Bighas 13 Biswas), 2/4 (2 Biswas), No. 3 (4 Biswas) (total 5 Bighas 1 Biswa) situated in village Dilwarpura, Tehsil Baswa, but they died; that Gyarsa was unmarried and after his death, his share stood devolved on the plaintiff Nos. 4 & 5 being legal heirs. In the suit they asserted that under coercion Budha (petitioner) & Mangla got the land in dispute sold by executing and registered sale deed in their favour by Gyarsa on or about 14/12/65 and under the garb of this registered sale deed, they took forcible possession of the land in dispute on or about 15/1/66 and thereupon, in collusion with the Patwari, got the land in dispute transferred in their favour on 22/12/67 despite the fact that Gyarsa was by caste Chamar (Scheduled Caste). Ultimately, the plaintiffs sought relief of ejectment and eviction of the petitioner (defendant)

from the land in dispute claiming that the petitioner was a trespasser over the land in dispute inasmuch as Gyarsa had no right to sell the land in dispute nor his land could have been sold or purchased being in violation of Section 42 of the Rajasthan Tenancy Act.

3. In written statement, the defendants admitted the fact of having purchased the agricultural land in dispute from Gyarsa and claimed their possession over it as a result of valid registered sale deed. The only case on behalf of the defendants (petitioner) is that after having bonafidely purchased the land in dispute, they invested huge amount for development thereon besides construction of a tube well. Hence they are entitled to retain its possession.

4. After hearing both the parties, the learned Asstt. Collector by his judgment and decree dt. 16.11.1978 (Annex.2) decreed the suit for eviction of the defendants in favour of the plaintiffs and held the impugned sale of the land in dispute as null and void being in violation of Section 40 of the Tenancy Act because Gyarsa had got no right to sell it without consent of legal heirs of co-tenant Ramsahai and thereby the defendants (petitioner) were held trespassers over the land in dispute and accordingly the decree to hand over possession to the plaintiffs was passed against the defendants. This decree (Annex.2) was challenged by the defendants in appeal before the the Revenue Appellate Authority but the appeal was dismissed by judgment dt. 3.8.1979 (Annex.3) by upholding the findings of the trial Court, against which a revision petition is alleged to have been preferred before the Board of Revenue. During the pendency of revision petition, Mangla (one of defendants revisionists) died as a result of his murder alleged to have been committed by sheonarain, for which an FIR was also lodged against Sheonarain, inasmuch as it is the case of the petitioner that he was also beaten in the incident of murder of his elder brother Mangla, resulting in having sustained skull fracture and various injuries besides other parts of his body.

5. Be that as it may, in revision petition, legal representatives of deceased defendant Mangla could not be brought on record within stipulated period. Whereas application was moved on 26.5.1983 to do so, alongwith application u/s 5 of the Limitation Act but ultimately the Board of Revenue dismissed the revision petition by its order dt. 24.8.1984 (Annex.4) holding the revision petition as abated on account of death of Mangla. Whereafter, on 5.7.1989 Naib Tehsildar in execution of the decree dt. 16.11.1978 (Annex.2) came to the spot and got handed over the possession of the land in dispute to Sheonarain (power of attorney holder of the plaintiff) on 6.7.1989 through possession report (Annex.5). Hence this writ petition.

6. The first and foremost contention urged on behalf of the petitioner is that the Board of Revenue failed to consider the application for substitution of his brother Mangla (deceased) and further failed to condone the delay in question for substitution and thereby erred in passing the impugned judgment dt. 24.8.1984 (Annex.4) especially in view of the circumstances, as referred to above, which

speak for itself, whereas the Board of Revenue should have considered extenuating circumstances leading to his death so as to bring LR of Mangla on record and ought not to have dismissed the revision petition as having abated.

7. In my considered view, this writ petition deserves to be dismissed firstly on the ground of delay and laches on the part of the petitioner because the petitioner has challenged the abatement order dt. 24.8.1984 of the Board of Revenue after inordinate delay of five years, only at the stage when in execution of decree of possession (Annex.2) dt. 16.11.1978 which had attained its finality by virtue of it having been upheld in appeal long back on 3.8.1979 (Annex.3), the land in dispute was being handed over to the decree holder (plaintiffs) through physical possession at the instance of Naib Tehsildar by his report dt. 6.7.1989 (Annex.5). Secondly because, even before the Board of Revenue, as is evident from a bare reading of the impugned order dt. 24.8.1984 (Annex.4), the application for substitution was lacking proper pleadings not only for the purpose of substitution but also for condonation of the delay having occurred in moving the same, as there was no material having been disclosed on record to show as to on which date Mangla died and as to why the delay had taken place in having not taken necessary steps for substitution within time, rather there was contradictory version of defendants because only statement in the affidavit was that Mangla had died during pendency of the appeal, whereas only the revision petition was pending before the Revenue Board, inasmuch as according to the opposite counsel before the Board of Revenue. Mangla had died two years prior to the date of hearing on the application for substitution. Even when the Members of the Board of Revenue during the course of arguments enquired about exact date of death of Mangla, his learned counsel, as is evident from the impugned order, itself, had failed to satisfy on that score. Further from the impugned order dt. 24.8.1984 it stands clear that against the judgment of the Revenue Appellate Authority (Annex.3), a joint appeal was filed by Budha (petitioner) and Mangla, both of whom were real brothers and during the pendency of that appeal, Mangla died but no steps were taken for substitution resulting the appeal having abated also, that too upon expiry of prescribed period of 90 days from his death, inasmuch as by the impugned order dt. 24.8.1984 (Annex.4) the Board of Revenue has held that the second application for recalling the abatement order was not maintainable.

8. In this writ petition, the petitioner has failed to produce any material worth consideration by way of proper pleadings, by having not produced not only the certified copy of the joint appeal or its abatement order or even any of applications moved for substitution of Mangla, or even any review application having been filed therein for substitution of Mangla either belatedly or alongwith condonation application. In the absence whereof, no proper adjudication can be made by this Court despite the fact that this writ petition has been pending since the year 1989, inasmuch as impugned order had been passed in the year 1984. Even under the impugned order dt. 24.8.1984, the Board of Revenue held the revision petition cum review application as having abated in the absence of

substitution of deceased Mangla.

9. For the first time in this writ petition, the circumstances have been disclosed for the delay caused in having moved for substitution, since otherwise the Board of Revenue could very well have considered them also. But this having not been done, it is not permissible for the petitioner to do so and that too after a lapse of more than two decades.

10. Similar is the position as to the averments that Sheonarain being non-Scheduled Caste or Tribe Member could not have been allowed to become power of attorney as benamidar for taking possession of the land in dispute in execution of the decree of eviction of the defendant petitioner and for possession having been passed by the trial Court duly upheld by the appellate forums. Such a contention cannot also be allowed to be raised for the first time and that too without any proper pleadings or material on record because the petitioner has not placed any document or even at least the power of attorney allegedly in favour of Sheonarain to show that Sheonarain was benamidar, nor Sheonarain has been arrayed as party respondent to this writ petition, nor in the absence of any document on record, the allegations made against Sheonarain in this writ petition can be taken note as to factum of his life imprisonment for murder of Mangla or as to disinterest on the part of the respondent Nos. 5 to 9 or as to the applicability of restriction u/s 42 of the Act against Sheonarain being member of Scheduled Tribe, nor in his absence, possession report dt. 6.7.1989 (Annex.5) in favour of Sheonarain can be interfered with in this writ petition, nor such an impugned report can be quashed holding it to be bad in law by virtue of restriction u/s 42 of the Act.

11. The allegations made against Sheonarain as to his character of having criminal record or having been made, out of caste from Meena community by Panchayat of Dilawarpura or the assertion that as a result of such allegations he was not authorised and permitted to hold power of attorney or the fact that the respondents No. 5 to 9 are affraid of Sheonarain, cannot be allowed to be raised in the absence of either Sheonarain being arrayed as party respondent to this writ petition or any documents produced on record to support such allegations. Hence. I do not find any force in any of the contentions urged before this Court.

12. Consequently, this writ petition fails and is hereby dismissed with no order as to costs.