

(2015) 07 RAJ CK 0002

In the Rajasthan High Court

Case No : Civil Writ Petition No. 9543/2015 and Stay Application No. 8378 of 2015

Chandra Kala and Others

APPELLANT

Vs

Om Prakash and Others

RESPONDENT

Date of Decision : 30-07-2015

Acts Referred:

Rajasthan Tenancy Act, 1955 — Section 188, 88, 89

Citation : (2015) 07 RAJ CK 0002

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : R.B. Sharma, for the Appellant; N.C. Goyal, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J—Challenge in this writ petition is made to judgment dated 11.05.2015 passed by Board of Revenue in Second Appeal No. 5863/2000, judgment dated 13.11.2000 passed by Revenue Appellate Authority, Bharatpur, in Appeal No. 49/1999 and judgment dated 24.07.1990 passed by Assistant Collector, Nadbai, in Revenue Suit No. 431/1986. Prayer is also made for a direction to respondents not to interfere with possession of petitioners and not to alienate the property in question.

2. Briefly stated, facts of the case are that one Om Prakash filed a suit in court of Assistant Collector, Nadbai, Bharatpur, under Sections 88, 89 and 188 of the Rajasthan Tenancy Act, stating therein that out of land measuring 2 biswa of khasra No. 1065/3, one biswa land was acquired by the Government for the purpose of road and remaining one biswa land was put to auction by order of Tehsildar dated 24.12.1964, which was purchased by plaintiff Om Prakash. During settlement proceedings, said one biswa land of khasra No. 1065/3 was included in land of new khasra No. 1393 measuring 4 biswa and in revenue record name of defendant No. 1 Loka Ram, having found in possession on the

site, was entered as khatedar khudkast of one-half share of new khasra number, whereas in fact he was having only one-fourth share in land of new khasra and remaining one-fourth land towards east side was in cultivatory possession of plaintiff Om Prakash. Loka Ram sold one biswa of land, which was in cultivatory possession of plaintiff Om Prakash, to Smt. Chandra Kala through registered sale-deed, and defendant No. 2 Smt. Chandra Kala got constructed oil tank on said land and she threatened plaintiff Om Prakash of his forcible eviction from land in dispute.

3. Said suit was contested by filing reply stating therein that old khasra measuring 2 biswa was not in existence and plaintiff was not auction purchaser of one biswa of land, and that one biswa of old khasra number was never added to new khasra number and that name of Loka Ram rightly appeared in "jamabandi" having one-half share in land of new khasra No. 1093. Plaintiff was never in possession of land in dispute. Entries of settlement department are correct. Loka Ram sold his one-half share in Khasra No. 1093 to Chandra Kala by registered sale-deed dated 06.12.1978. During her life time, she remained in possession and after her death her legal heirs are in possession over her share.

4. Learned Assistant Collector, vide judgment dated 24.09.1990, decreed the suit. Aggrieved thereby, defendant-petitioner Smt. Chandra Kala filed Appeal No. 49/1999 before the Revenue Appellate Authority, Bharatpur, which came to be dismissed vide judgment dated 13.11.2000. Smt. Chandra Kala, dissatisfied therewith, filed Second Appeal before the Board of Revenue, Rajasthan, Ajmer, which also came to be dismissed vide judgment dated 11.05.2015. Hence this writ petition filed by Smt. Chandra Kala through her legal heirs, as she has died.

5. Shri R.B. Sharma (Ganthola), learned counsel for petitioners argued that impugned orders of all the three courts below are perverse and erroneous. They failed to correctly appreciate the facts on record. Plaintiff-respondent concealed relevant documents with regard to alleged purchase of disputed land in auction on 24.12.1964, which auction was conducted by Tehsildar, Nadbai. He never produced on record the sale/purchase certificate and possession letter of the land in dispute. Petitioner specifically objected that land in question was never purchased by respondent, rather petitioner purchased it from its khatedar tenant on 06.12.1978 through registered sale-deed and after her death, her legal heirs are continuing in possession of the land in dispute till date and carrying on their business in the shops situated on the land in dispute. The courts below have wrongly decided issue No. 2 in favour of plaintiff-respondent ignoring actual position of possession and contrary to the pleadings, evidence and material available on record. Legal representatives of plaintiff-respondent Om Prakash have been living in Delhi for last 40 years and there is no question of their being in possession of land in dispute. Petitioner in the written statement clearly stated that present khasra No. 1393 was not part of old khasra No. 1065/3 and also there is difference between old 1 biswa measuring and new 1 biswa measuring. Petitioner was having 7 biswa land before settlement and after settlement she

has only 4 biswa land. This fact was not considered by the courts below. Issue No. 3 has also been decided against petitioner erroneously contrary to evidence and material on record. In fact, seller Loka Ram was having one-half share in land of Khasra No. 1093 measuring 4 biswa and Khasra No. 1094 measuring 2 biswa. He sold half of his land measuring 3 biswa in favour of Chandra Kala, predecessor-in-title of petitioners, through registered sale-deed. The courts below have wrongly decided issue No. 4 in favour of defendant-petitioner without appreciating this fact.

6. Learned counsel for petitioners has argued that admitted position is that Chandra Kala purchased the land in dispute in the year 1978 and on the same day she took possession. Plaintiff-respondent had no objection about possession of petitioner. It is after eight years, that plaintiff-respondent filed suit. No issue was framed with regard to delay. Learned counsel for petitioners has taken the court through judgments passed by the court of Assistant Collector, court of Revenue Appellate Authority and the Board of Revenue.

7. Per contra, Shri N.C. Goyal, learned counsel for respondents, opposed writ petition and submitted that as to who is in possession and what is the location of land in dispute, is essentially a question of fact. All the courts below have decided this question in favour of plaintiff-respondent. The suit was decreed by court of Assistant Collector and that judgment has been affirmed by the Revenue Appellate Authority as also the Board of Revenue. Learned counsel has, in particular, referred to finding recorded by the court of Assistant Collector in detail, which are based on analysis of evidence, both oral and documentary. He argued that there was no perversity in impugned judgments. In this connection, learned counsel for respondents has referred to statements of Nathilal (PW-1), Navneetlal (PW-2), Om Prakash (PW-3) and Kanhaiyalal (PW-4).

8. Heard learned counsel for the parties and perused the material on record.

9. The parties are at variance as to exact location of the land in dispute. Plaintiff-respondent filed suit seeking declaration that for one biswa of land out of 4 biswa of khasra No. 1393, which would be 1/4th of total area of land of that khasra number, on its western side, he be declared khatedar tenant, and necessary entries/correction in the revenue record be accordingly ordered to be made, and defendants be restrained from interfering with peaceful possession of plaintiff-respondent.

10. Learned court of Assistant Collector, while decreeing the suit, passed a detailed judgment on 24.09.1990. He took note of the documents, namely, copy of "khasra girdawari" of Samvat 2034 (Exhibit P-1), copy of "khasra girdawari" of Samvat 2023 to 2029 (Exhibit P-2), copy of "milan kshetrphal" of Samvat 2028 (Exhibit P-3), "khasra girdawari" of Samvat 2035, Copy of "jamabandi" of Samvat 2028 and original sale-deed dated 28.11.1978. He also took note of copy of tressed map, copy of "jamabandi" of Samvat 2012 to Samvat 2045-46 and Samvat 2043 to 2046, copy of "jamabandi" of Khata No. 463, copy of

"jamabandi" of Khata No. 423. The Assistant Collector also examined statements of Nathilal (PW-1), Navneetlal (PW-2), Om Prakash (PW-3) and Kanhaiyalal (PW-4). He also considered statements of Babulal (DW-1), Rajendra Singh (DW-2) and Yadram (DW-3). On the basis of analysis of record, the court of Assistant Collector has recorded finding on issue No. 2 that it is clear from "milan kshetrphal" that khasra No. 1065 consisted of big area, but from "milan kshetrphal" it is not clear as to from which part of land khasra No. 1065/1 was formed. Present khasra No. 1393 measuring 4 biswa was part of khasra No. 1065 measuring 7 biswa and new khasra No. 1097 measuring 2 biswa was part of old khasra No. 1065 measuring 3 biswa.

11. The Assistant Collector noted the argument of defendant-petitioner that khasra Nos. 1393 and 1394 were formed of old khasra No. 1065/1, the total area of which was 7 biswa, which was recorded in the name of Loka Ram in Samvat 2023, out of which one biswa was acquired for road and remaining one biswa was sold by him to Chandra Kala. Two biswa of Khasra No. 1394 and 1 biswa of Khasra No. 1393 was also included therein. Two biswa of Khasra No. 1393 has wrongly been shown in the sale-deed. In the entry of "jamabandi bandobast", entire two biswa of khasra No. 1394 has been entered in "khatedari" of Loka Ram and not its half part, but Loka Ram claims one-half share of khasra No. 1393, which has no basis. In fact, khasra No. 1394 measuring 2 biswa and khasra No. 1393 measuring 1 biswa, total area of which was 3 biswa, was owned by Loka Ram, which he had sold to Chandra Kala. If half land of khasra No. 1393 is considered to be of Loka Ram, its total measurement becomes 4 biswa, whereas, according to sale-deed, he claims to own only 3 biswa. Thus, remaining 1 biswa of khasra No. 1393 was the land purchased by plaintiff-respondent Om Prakash from Tehsildar in auction, which was part of old khasra No. 1065/3. The Assistant Collector did not accept this plea and held that defendant-petitioner was trying to complicate the facts. Land measuring 1 biswa of khasra No. 1065/3 belonging to Kanhaiya S/o. Tejas, was auctioned by Tehsildar, which was purchased by Om Prakash and a special entry was made by Patwari concerned on 24.12.1964 in khasra Samvat 2026 regarding handing over of possession to Om Prakash. In Samvat 2023 Loka Ram was recorded as Khatedar of 7 biswa of land of khasra No. 1065/1. Loka Ram is also recorded as khatedar of 2 biswa in khasra No. 1065/3. Therefore, finding was recorded that position is not clear from milan khasra. This issue is resolved from the sale-deed dated 06.12.1978 executed by Loka Ram. From that document, it is clear that Loka Ram had 3 biswa of land in his share out of khasra Nos. 1393 and 1394 and he sold his entire share to defendant Chandra Kala for sale-consideration of Rs. 5000/-.

12. Contention of the petitioner that he had half share in land of khasra No. 1393 was not accepted because the Land Settlement Department in "jamabandi" of khasra No. 1394 showed 2 biswa land in his name, and that would mean that he had remaining 1 biswa in khasra No. 1394, which he sold to defendant Chandra Kala.

13. Learned Revenue Appellate Authority and the Board of Revenue have affirmed this finding of the court of learned Assistant Collector. This is essentially a finding of fact and all the three courts below, having concurrently decided this question in favour of plaintiff-respondent and against defendant-petitioner, there is no justification for this court to interfere with such finding in exercise of its power of certiorari. The impugned judgments cannot be said to have suffered from illegality, perversity or error apparent on the face of record.

14. There is no merit in this writ petition. It is accordingly dismissed. Stay application is also dismissed.