
(1982) 09 RAJ CK 0009

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1397 of 1982

Chhaganlal and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 23-09-1982

Acts Referred:

Rajasthan Tenancy Act, 1955 — Section 207, 239

Citation : AIR 1983 Raj 186 : (1982) RLW 609

Hon'ble Judges : N.M. Kasliwal, J;K.S. Sidhu, J

Bench : Division Bench

Advocate : B.L. Luhadia, for the Appellant;

Final Decision : Dismissed

Judgement

Kasliwal, .J.

1. This writ by the petitioners Chhaganlal and Hukam Chand under Article 226 of the Constitution of India is directed against the judgment of the Board of Revenue dated December 21. 1981.

2. The brief facts leading to this writ. petition are that a declaration was filed by Chhaganlal and his brother Gopal regarding their land under the ceiling proceedings. iN the said declaration ?hhaganlal had declared Hukam chand as his grandson. Gopal had also not mentioned that Hukam Chand was his adopted son. The matter went up to the Board of Revenue and the case was remanded by the Board of Revenue with the direction that the question whether Hukamchand was the adopted son of Gopal should be decided alter making enquiry in this regard. After the re-mand of the case the petitioners led oral and documentary evidence and the Assistant Collector Baran after taking into consideration the entire evidence arrived at the conclusion that the petitioners had not proved the adoption of Hukam Chand. The appeal filed by the petitioners was also dismissed by the Revenue Appellate Authority and the Board of Revenue by the impugned judgment dt. Dec. 21, 1981. upheld the order of the Revenue Appellate

Authority. Thus there is a concurrent finding of all the courts including the Board of Revenue that the adoption of Hukam Chand by Gopal is not proved.

3. Mr. Luhadia, learned counsel for the petitioner tried to assail the finding of the Board of Revenue with regard to adoption but we are clearly of opinion that the Board of Revenue has given cogent reasons after taking into consideration the entire evidence led in this regard that the adoption of Hukam-chand is not proved. That apart, it is purely a finding of fact which cannot be assailed in the exercise of Jurisdiction, of this Court under Article 226 of the Constitution of India.

4. It was next contended by Mr. Luhadia that the question of adoption was a civil right and the authority under the Ceiling Act had no right to determine this question. It was further contended in this regard that u/s 207 of the Rajasthan Tenancy Act only suits and applications of the nature specified in the third schedule shall be heard and determined by the Revenue courts. Attention was also invited to Section 239 of the Rajasthan Tenancy Act which lays down that if in any suit or proceeding in a revenue court a question of proprietary right in respect of land forming the subject matter of such suit or proceeding is raised and such question has not previously been determined by a civil court of competent jurisdiction, the revenue court shall frame an issue on the question of proprietary right and submit the record to the competent civil court for the decision of that issue only. On the basis of the aforesaid provisions it is contended that the question of adoption was a matter relating to proprietary right in respect of land forming the subject-matter and as such the revenue courts under the Ceiling Act had no right to decide the said question and the matter ought to have been referred to the civil court of competent jurisdiction for its decision. In our view there is no force in the aforesaid contention. So far as Section 207 is concerned it has no application at all because it makes mention of only suits and applications of the nature specified in the third Schedule of the Tenancy Act. The dispute relating to ceiling did not fall in any of the suits and applications mentioned in the third Schedule, and the third Schedule of Tenancy Act has no application at all to the matters arising under the ceiling law. So far Section 239 is concerned, that also relates to the suits and applications arising under the Tenancy Act. It was contended in this regard by the learned counsel for the petitioners that before coming into force of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973, the provisions relating to ceiling matters were incorporated in Chapter III-B under the Rajasthan Tenancy Act itself. It is contended that in view of the fact that Chapter III-B of the, Ceiling Law being part of the Rajasthan Tenancy Act all the provisions of the Rajasthan Tenancy Act should be made applicable to the proceedings relating to ceiling matters. In our view there is no force in this contention as well. The Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 which came into force on the first day of January 1973 repealed the provisions contained in Chapter III-B under the Rajasthan Tenancy Act. The matter has been decided after the remand by the Assistant Collector Baran on 27-4-79 and obviously on this date provisions

of Chapter III-B cannot be applied. The matter would be governed by the provisions of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973. This Act is a self-contained Act and deals with the matter relating to ceiling on agricultural holdings. There is no question of applying any provision of the Tenancy Act specially Section 239 of the Tenancy Act in determining the question of ceiling areas under the Rajasthan Imposition of Ceiling on Agricultural Holdings Act 1973. In our view the courts under the Ceiling Act are entitled to decide the question relating to adoption or other questions which are relevant for determination of the ceiling area of the tenant. Mr. Luhadia has placed reliance on *Shyam Kumar v. Budh Singh*, RLW 1977 131 : AIR 1377 Raj 2381. This case in our view has no application at all to the controversy raised before us. That was a case where a suit for cancellation of sale-deed of agricultural land and perpetual injunction was filed in the re-court under the provisions of Rajasthan Tenancy Act. In that case it was held that the main relief sought by the plaintiff was the cancellation of the sale-deed and the relief of perpetual injunction was only incidental and as such the matter was triable by civil court as revenue courts were obviously not well equipped to try such difficult questions of law. The above authority thus is of no relevance at all on the question to be determined by us. We may also refer to Section 244 of the Rajasthan Tenancy Act which lays down that when in a suit instituted in a civil court or revenue court and appeal goes to a civil court the objection that the suit was instituted in the wrong court will not be entertained by the appellate court unless such objection was taken in the court of first instance and the appellate court shall dispose of the appeal as if the suit had been instituted in a right court. We have only made reference to Section 244 to show that even under the Rajasthan Tenancy Act such objection must be raised in the court at first instance. However we have already held that none of the provisions of the Rajasthan Tenancy Act are applicable in proceedings to be determined under the Ceiling Act.

5. It may also be pointed out that the case was remanded by the Board of Revenue for deciding the question relating to adoption but the petitioners never challenged that decision at that stage nor took any objection before any of the courts below that such question of adoption was not triable by the revenue court. The petitioners even led evidence and did not succeed in proving the adoption in their favour. Ultimately, the matter was decided against the petitioners by all the revenue courts including the Board of Revenue and in these circumstances also this question cannot be raised by the petitioner before this court for the first time under Article 226 of the Constitution of India. Mr. Luhadia, counsel for the petitioner in this regard placed reliance on *Kiran Singh v. Chaman Paswan*, AIR 1954 SC 340. In the above case it was observed by their Lordships of the Supreme Court (Para 6) : --

It is a fundamental principle that a decree passed by a court without Jurisdiction is a nullity and that it is invalid; it could be set up whenever and where it is sought to be enforced or relied upon, even at the state of execution and even

in collateral proceedings. A defect of jurisdiction whether it is pecuniary or territorial or whether it is in respect of the subject-matter of the action strikes at the very authority of the Court to pass any decree, such a defect cannot be cured even by consent of the parties.

The question before us is not with record to a decree passed by the court without jurisdiction and in that regard to be a nullity. It is not in dispute that the Asstt. Collector Baran has jurisdiction to decide a question relating to excess land held by the petitioners contrary to the provisions of Ceiling Act. This question is determined on the basis of land recorded in the revenue records in the khatedari of a tenant. If such tenant dies before the determination of his ceiling area, his land would be clubbed in the area of a person in whom the tenancy devolves after the death of such tenant. The question in whom the tenancy devolves would be determined by the revenue court or authority called upon to determine the ceiling area and excess land. In the present case Gopal died after the declaration filed by him and before the determination of his ceiling area. The land was recorded jointly in the name of Gopal and his brother. Chhaganlal. The adoption of Hukam Chand by Gopal has not been proved, as such, the land of Gopal has rightly been clubbed in the area of Chhaganlal for determining the excess land. The Assistant Collector had jurisdiction to decide this question as learned counsel for the petitioners was unable to show any rule or law prohibiting the Assistant Collector to decide such question.

6. In the result, we find no force in this writ petition and the same is therefore dismissed in limine.