
(2008) 03 RAJ CK 0072
In the Rajasthan High Court

Chhail Singh and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 10-03-2008

Acts Referred:

Rajasthan Tenancy Act, 1955 — Section 232, 42(b)

Citation : (2008) 03 RAJ CK 0072

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vineet Kothari, J.—This writ petition has been filed by Chhail Singh and others who are successors-in-title in respect of agricultural land measuring 19 bighas and 18 biswas situated in khasra No. 175 in village Mudi, Tehsil Jalore, being aggrieved by the order of the Board of the Revenue upon reference u/s 232 of the Rajasthan Tenancy Act by the Collector, Jalore by his order dated 17.8.1998 whereby the Board of Revenue by the impugned order dated 12.3.1999 allowed the said reference and set aside the decree in favour of the predecessor in title Guman Singh passed by the Sub Divisional Officer, Jalore on 30.7.1969 in Revenue Suit No. 4/1969 filed by the said plaintiff Guman Singh u/s 88 and 89 of the Rajasthan Tenancy Act, 1955.

2. The main contention raised by the learned Counsel for the petitioners Mr. Sudheer Sharma is that the said suit was decreed in favour of Guman Singh, since the defendant Padmiya present petitioner in this writ petition, a person belonging to Scheduled Caste, did not remain present before the said trial Court despite service of summons and therefore, in exparte proceedings after taking oral evidence of the plaintiff and two other witnesses, the said trial Court decreed the suit in favour of plaintiff Guman Singh on the ground that said plaintiff Guman Singh was in possession of said agricultural land from period even prior to settlement in the year 1955.

3. After about 25 years, the said defendant Padmiya, the present petitioner through his legal representatives i.e. his wife and son and daughter filed reference application before the Collector, Jalore u/s 232 of the Act who by his order dated 17.8.1998 found that in the Revenue Record, the said agricultural land was recorded in the name of the defendant Padmiya S/O Jeeva by caste Bhambhi, a member of Scheduled Caste right from Samwat year 2004 till 31.8.1969 when in pursuance of registered sale-deed executed by plaintiff Guman Singh in favour of one Mehrab Khan S/O Niyaz Khan, mutation was changed and was recorded in favour of said Mehrab Khan vide mutation entry No. 157 dated 16.8.1969. The learned Collector found that the said change of mutation was in violation of provisions of Section 42(b) of the Rajasthan Tenancy Act, 1955 as any sale, gift or bequest of a land belonging to a member of Scheduled Caste to a person of other caste is void and therefore, no such right could be conferred upon the seller Mr. Guman Singh even by a decree and the said decree passed by the learned SDO on 30.7.1969 was, therefore, void and deserved to be set aside and therefore, the said Collector made a reference to the Board of Revenue u/s 232 of the Act.

4. The learned Collector also found that though in the order dated 30.7.1969, the learned SDO had directed that the decree be made in favour of Guman Singh, in fact no such decree was made and therefore, no right over the said land could be conferred upon said person Sh. Guman Singh and therefore, the subsequent purchaser, namely, Sh. Mehrab Khan who purchased the said land from seller Guman Singh and Bhanwaroo khan, Allah Rakh etc. to whom the said land was sold by Mehrab Khan on 27.4.1988 and the present petitioners Chhail Singh and others to whom these persons sold the said land on 20.2.1996 also could not claim any right over the said land. The said reference made by the Collector u/s 232 of the Rajasthan Tenancy Act came to be allowed by the Board of Revenue by the impugned order dated 12.3.1999. Being aggrieved by the same, the present petitioners have approached this Court by way of this writ petition.

5. Mr. Sudheer Sharma, the learned Counsel appearing for the petitioners has assailed the said order of the Board of Revenue mainly on the ground of delay in making reference, namely 25 years. He submitted that after the decree in favour of Guman Singh on 30.7.1969, the said agricultural land has changed three hands and therefore, the learned Collector, Jalore as well as the Board of Revenue erred in invoking reference jurisdiction u/s 232 of the said Act and holding that the said decree was void and bad in law or in contravention of Section 42(b) of the Act. He relied upon the following judgments in support of his submissions:

1. 2005(1) CDR 505 State of Rajasthan v. Teja and ors.
2. 1999 DNJ (Raj.) 761 Lad Bai and Ors. v. Board of Revenue.
3. 1978 RLW 355 Karan Singh v. State and Ors.
4. 2005(1) RRT 161 Situ Shah and Ors. v. State of Rajasthan and Ors.

5. 2007 (1) RRT 717 Bhuri Sinh and Ors. v. State of Rajasthan and Ors.

6. Mr. Sunil Bhandari, learned Counsel appearing for Mr. M.R. Singhvi, vehemently opposed the submissions made by the learned Counsel for the petitioners and urged that the decree itself firstly was not made and was never given in favour of said person Guman Singh in whose favour ofcourse an order Annex.4 was passed by the learned SDO in case No. 4/1969 on 30.7.1969. He submitted that the said order being in violation of Section 42(b) of the Rajasthan Tenancy Act was void and deserves to be ignored. He submitted that no notice or summons were served on the defendant Padmiya and in exparte proceedings, a collusive decree was obtained by the said person Sh. Guman Singh and though no decree was made in his favour as a matter of fact, just after the said order was passed on 30.7.1969, he immediately transferred the said land to said Sh. Mehrab Khan on 13.8.1969 and mutation entries were got recorded by an authority, namely, Up-Sarpanch who was not even authorized to make mutation entries in the Revenue Record and it is only the Tehsildar of the concerned Tehsil who can make such entries and this clearly showed that a fraud was played upon a poor person belonging to a Scheduled Caste Community and his land was grabbed by a person of superior caste. He submitted that the learned Collector in his reference order dated 17.8.1998 has clearly noted all these facts and said transactions being void are like edifice without foundation and no benefit much less title over the said land can be said to have been conferred upon such subsequent purchasers including the present petitioners. He submits that said person Padmiya was in possession over the said land in question through out from samwat year 2004 much prior to settlement in the year 1955 till 31.8.1969 and this entry has been clearly recorded in the Revenue Records as noticed by the learned Collector. He submitted that therefore, the Board of Revenue was perfectly justified in accepting the said reference even if such reference was made after 25 years of the so called decree in favour of said person Guman Singh. He urged that since the said provisions of Section 232 did not prescribe any limitation, therefore, no limitation can be imposed or put up against such poor person belonging to an uneducated and socially backward community and therefore, the writ petition deserves to be dismissed. He relied upon several judgments of this Court as well as Hon''ble Supreme Court of India on the point of limitations as well as voidness of the transactions in respect of land in question which belonged to the person of Scheduled Caste Community in violation of Section 42(b) of the Act. List of these cases is given below:

i) 2000(1) WLN 87 Nand Lal and Ors. v. State of Rajasthan an Ors.

ii) 2000 (1) WLC 200 Chiman Lal v. State of Rajasthan and Ors.

iii) Keshabo and Others Vs. State of M.P. and Others,

iv) 2008 AIR SCW 268 Chinde Gowda v. Puttamma

v) Guntaiah and Others Vs. Hambamma and Others,

- vi) Kaloo Chand and Others Vs. The Board of Revenue and Others,
- vii) 1998(2) WLN 387 Laxman and Ors. v. Board of Revenue and Ors.
- viii) 1999(2) WLN 89 Haja v. Board of Revenue.
- ix) Mohammed Rahim Vs. State of Rajasthan and Others,
- x) Dinesh Dalmia Vs. C.B.I.,
- xi) T. Vijendradas and Another Vs. M. Subramanian and Others,
- xii) Maharaja Chintamani Saran Nath Shahdeo Vs. State of Bihar and Others,
- xiii) 1980 AIR (Raj.) 1 Jagan Singh v. State Transport Appellate Tribunal and another.
- Xiv) Mayuram Subramanian Srinivasan Vs. C.B.I.,
- xv) S.C. Prashar, Income Tax Officer, Market Ward, Bombay and Another Vs. Vasantsen Dwarkadas and Others,
- xvi) Uttam Namdeo Mahale Vs. Vithal Deo and others,

7. Having considered the rival submissions made at the Bar and upon perusal of aforesaid law precedents, this Court is of the opinion that this writ petition deserves to be dismissed for the following reasons:

8. Very foundation on the basis of which the present petitioners are claiming their right, title or interest over the land in question is the order passed by the learned SDO on 30.7.1969 in the Revenue suit filed u/s 88 and 89 of the Rajasthan Tenancy Act by one Sh. Guman Singh S/O Chiman Singh, the person of a caste not belonging to Scheduled Caste or Scheduled Tribe. He approached the said Revenue Court on the basis of his alleged possession over the said land in question from the time prior to settlement. However, no Revenue record, showing his possession or entry of his name was produced before the trial Court. The said suit was proceeded ex parte against the present respondent - Padmiya. Though this Court does not have record of said Revenue Suit, but there is merely a mention in the said order that though summon was issued to the defendant Padmiya on 29.3.1969 for filing written statement, but the said defendant was absent on the said date. Again a date was fixed on 9.5.1969, but despite service, the defendant remained absent. The said notices showing manner of service on said defendant Padmiya has not been placed on record of the present writ petition. The said Court, therefore, proceeded ex parte and without any documentary evidence in favour of said person Sh. Guman Singh, merely by oral statements of witnesses, namely of plaintiff himself and two other witnesses produced by him, the said Revenue Court proceeded to declare the right of said plaintiff Guman Singh in respect of said land. As rightly contended by the learned Counsel for the respondents, no decree appears to have been made in pursuance of said order of the learned Revenue Court or the SDO as directed in the said order dated 30.7.1969 as no such decree has been placed on record. The

subsequent transactions of sale can only depend upon the valid title of said person Sh. Guman Singh as it is well settled that nobody can pass a better title than what one has. A perusal of the reference order of the learned Collector, Jalore dated 17.8.1998 clearly indicates that the said order dated 30.7.1969 passed by the learned SDO was a collusive decree, even though no formal decree was made in favour of said person Guman Singh. The Revenue Court clearly recorded name of the defendants Padmiya in the Revenue Record right from Samwat year 2004 till 31.8.1969. The poor chap Padmiya even did not come to know of this decree or mutation entries deleting his name and recording the name of said person Guman Singh on 16.8.1969 and after 15 days of order dated 30.7.1969 i.e. immediately thereafter the said land was transferred to one Mehrab Khan on 13.8.1969. This casts a serious doubt on the whole proceedings initiated by the said person Guman Singh and change of mutation entries in the Revenue Record. The learned Counsel for the respondents also appears to be justified in submitting that said mutation entries were recorded by a person without any authority, namely, Up-Sarpanch.

9. Therefore, this Court is of the opinion that the learned Collector was justified in making reference upon coming to know of all these facts, upon an application filed by respondent Padmiya and after noticing all these facts and holding that said collusive decree in favour of said person Guman Singh could not confer any right upon him, made the reference. The very purpose of enacting the provisions like Section 232 in the Rajasthan Tenancy Act is to see and ensure that no such collusive decrees or void sale transactions deprive under privileged section of society or persons belonging to Scheduled Caste or Scheduled Tribe of their land and right over the agricultural land in such a manner. If merely passage of time though no such limitation has been prescribed u/s 232 of the Act is held up as a bar against such persons of weaker section, it would make mockery of provisions like Section 232 of the Act itself. The fact that land in question has changed three hands from one to another belonging to persons other than the persons of Scheduled Caste does not validate or add strength to the lack of foundation which these transactions had. Therefore, in the considered opinion of this Court, the Board of Revenue was justified in allowing the reference made by the Collector, Jalore by the impugned order dated 12.3.1999. The Tehsildar, Mudi, Tehsil Jalore shall put back the Legal Representatives of deceased Padmiya into possession of the said land forthwith.

10. The present writ petition is thus, devoid of merit and same is accordingly dismissed. No order as to costs.