
(2013) 01 RAJ CK 0268
In the Rajasthan High Court
Case No : Civil First Appeal No. 639 of 2012

Chomu Sahakari Kray Vikary Samiti Limited

APPELLANT

Vs

Jagdeeshprasad Meena and Others

RESPONDENT

Date of Decision : 22-01-2013

Acts Referred:

Citation : (2013) 01 RAJ CK 0268

Hon'ble Judges : Bela M. Trivedi, J

Bench : Single Bench

Advocate : Ashok Mishra, for the Appellant; Ashok Gaur and Mr. Ashwini Jaiman for Respondents No. 1 and 7, for the Respondent

Final Decision : Allowed

Judgement

Bela M. Trivedi, J.

By the Court:-

1. With the consent of the learned counsels for the parties the appeal is decided finally at the admission stage. The present appeal has been filed by the appellant-plaintiff u/s 96 of C.P.C. challenging the judgment & decree dated 26.10.2012 passed by the Additional Sessions Judge (Fast Track) No. 2, Jaipur Metropolitan (hereinafter referred to as "the trial court") in the Civil Suit No. 63/2012, whereby the trial court has allowed the application of the respondents No. 1-7-original-defendants filed under Order VII Rule 11 of the CPC, rejecting the plaint of the appellant-plaintiff.

2. It is the case of the appellant-plaintiff that appellant is a society registered under the Rajasthan Cooperative Societies Act, 2001. The respondents No. 1 to 6 had entered into an agreement dated 28.08.1993 to sell the suit land to the appellant-society. However, the respondent No. 1 allegedly made gift of the said land to the respondent No. 7 on 13.06.2012, and therefore the appellant-plaintiff filed the suit seeking specific performance of the said agreement in question. In the said suit, the respondents-defendants filed the application under Order VII

Rule 11 seeking rejection of the plaint on the ground that the suit was barred u/s 42(b) of the Rajasthan Tenancy Act, 1955. The said application was resisted by the appellant-plaintiff by filing the reply. The trial court by the impugned order allowed the said application and dismissed the suit of the appellant-plaintiff under Order VII Rule 11 of CPC. Being aggrieved by the said order, deemed as decree, the present appeal has been filed.

3. It has been submitted by learned counsel Mr. Ashok Mishra for the appellant-plaintiff that none of the clauses of Rule 11 of Order VII were attracted for rejecting the plaint of the plaintiff. According to him, Section 42(b) of the Rajasthan Tenancy Act, does not bar any filing of the suit, and therefore the plaint could not be rejected under clause(d) of the said provisions. He further submitted that it would be a matter of evidence whether the suit land is an agricultural land or not, and whether the respondents-defendants are khatedari tenants or not within the meaning of Section 15 of the said Tenancy Act, and therefore such suit cannot be dismissed under Order VII Rule 11.

4. However, learned counsel Mr. Ashok Gaur Senior Advocate for the respondents No. 1 & 7 vehemently submitted that the suit filed by the appellant seeking specific performance of the agreement dated 28.08.1993 was absolutely frivolous suit and therefore liable to be rejected at the threshold. Pressing into service, the provision contained in Section 42(b) of the Tenancy Act as also various judgments of Hon'ble Supreme Court and this Court, the learned counsel has submitted that even if the said agreement is not believed to be a forged agreement, then also such a sale to person who is not the member of schedule caste or schedule tribe is prohibited u/s 42(b) of the Tenancy Act, and that the appellant society being a juristic person, any sale or transfer to such society is also prohibited under the said provision. Mr. Gaur has relied upon the decision of the Hon'ble Apex Court, in case of State of Rajasthan and Others Vs. Aanjaney Organic Herbal Pvt. Ltd., ; the decision of this Court in the case of State of Rajasthan Versus Ulka & Ors., reported in RLW 2010 (3) Raj. 2636, and in the case of VA Friendship Solar Park Pvt. Ltd. and Another Vs. State of Rajasthan and Others, , in support of his submissions. Relying upon the averments made in the plaint and the alleged agreement produced alongwith the plaint, the learned counsel Mr. Gaur has submitted that even as per the case of the plaintiff, the concerned respondents were the khatedari tenants, and therefore the provisions contained in Section 42(b) of the Tenancy Act would be attracted.

5. On careful consideration of the submissions made by learned counsel for the parties in the light of the impugned order passed by the trial court and in the light of the provisions contained in the Rajasthan Tenancy Act, it appears that the suit of the appellant-plaintiff has been rejected by the trial court under Order VII Rule 11 on the ground of being barred u/s 42(b) of the Tenancy Act. For the ready reference the said provision is reproduced as under:-

42. General restrictions on sale, gift & bequest-

The sale, gift or bequest by a Khatedar tenants of his interest in the whole or part of his holding shall be void if

(a)...

(b):-such sale, gift or bequest is by a number of Scheduled Caste in favour of a person who is not a member of the Scheduled Caste, or by a member of a Scheduled Tribe in favour of a person who is not a member of the Scheduled Tribe.

6. From the bare perusal of the said provision it transpires that there is general bar on the sale, gift and bequest by khatedari tenants of his interest in the part or whole of his holding in favour of a person who is not a member of schedule caste or schedule tribe. Though there cannot be any disagreement to the proposition of law laid down by the Apex Court that the society or company incorporated under the relevant statutes would be juristic person and could not be said to be member of scheduled caste or scheduled tribe, it requires to be noted that there is no bar u/s 42(b) of the Tenancy Act against filing of the suit. It may be a different thing that ultimately the appellant-plaintiff may not succeed in the suit on merits, in view of the said bar contained in Section 42, nonetheless in absence of any specific provision contained in the Tenancy Act barring the filing of the suit, the plaint of the appellant-plaintiff cannot be rejected under Order VII Rule 11(d) of CPC. As rightly submitted by the learned counsel for the appellant, whether the land in question is an agricultural land or not and whether the respondents are khatedari tenants or not, and whether the suit is barred by limitation or not, would be the questions which could be decided considering the evidence in the suit only. The learned counsel for the respondents has failed to point out as to how the suit filed by the plaintiff could be termed as misuse of process of law or vexatious. In that view of the matter, the impugned order passed by the trial court deserves to be set-aside and the trial court is required to be directed to decide the suit in accordance with law and expeditiously.

7. At this juncture, the learned counsel Mr. Ashok Mishra for the appellant has requested to continue the interim relief granted by this Court till the pendency of the suit, which has been seriously objected by the learned Senior Advocate Mr. Gaur for the respondents. Mr. Gaur has further submitted that since prima facie the appellant-plaintiff is not entitled to any relief in the suit, and the issues regarding the limitation and jurisdiction of the Court, etc. being pure questions of law, the trial court be directed to decide them as preliminary issues in the suit. This Court cannot accept any of the submissions made by learned counsels for the parties for the simple reason that the trial court has rejected the plaint of the plaintiff under Order VII, Rule 11, and hence the issues are still to be framed by it. It is needless to say that both the parties shall be at liberty to make appropriate applications as may be legally permissible, to the trial court and the same shall be decided by the trial court in accordance with law. In view of the above, the impugned order dated 26.10.2012 passed by the trial court is set-aside. The trial court is directed to decide the suit as expeditiously as possible

and in accordance with law. The appeal is allowed accordingly.