
(2000) 11 RAJ CK 0048
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1888 of 1995

Gaushala Sri Karanpur

APPELLANT

Vs

State of Others

RESPONDENT

Date of Decision : 27-11-2000

Acts Referred:

Rajasthan Tenancy Act, 1955 — Section 183, 42(B), 47, 53. 88

Citation : (2001) 4 WLC 214 : (2001) 2 WLN 36

Hon'ble Judges : V.G. Palshikar, J

Bench : Single Bench

Advocate : J.L. Purohit, for the Appellant;

Judgement

Palbhikak, J.

(1). By this petition the petitioner has challenged the concurrent orders passed by the Revenue Authorities holding that the sale of agricultural land by the respondents in favour of the petitioner is void ab initio being hit by the provisions of section 42 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as "the Tenancy Act").

(2). The petitioner is a registered trust created for the purposes of maintaining in good stead chattel in Rajasthan, it is devoted to maintaining, upbringing, feeding of cows and similar much animals in the area.

(3). That the petitioner is duly registered with the Registrar of Gaushala at Jaipur under the provisions of the Rajasthan Gaushala Act, 1960, it is a purely charitable institution created for the purposes of maintaining the chattel as aforesaid. The petitioner would have in mind, purchased 7 bighas of land in square No. 12. Chak No. 5F from one Buta Singh son of Surfoo Singh by a registered sale-deed and the petitioner Gaushala is in possession of this land since then.

(4). That a suit was filed on 10.1.1978 by respondents No.5 to 13 who are

respective of Buta Singh the original vendor of the petitioner in the court of Sub-Divisional Officer, Sri Karanpur, it was filed of the section 88, 183 and 53 of the Tenancy Act. it was claimed that the sale by Buta Singh in favour of the petitioner trust was void by reason of the provisions of section 42 of the Tenancy Act, they claimed eviction of the petitioner and restoration of possession to them.

(5). The suit was resisted by the petitioner by filing a written statement. The pleading that the sale being in favour of an institution established for charitable purpose is not one which is covered by the provisions of section 42 (B) of the Tenancy Act. It was also pleaded that identical suit was filed earlier bearing No. 49/69 and it was dismissed on 24.12.1969 holding that the sale in favour of the petitioner effected in 1967 was not in contravention of provisions of Section 42. It was therefore, pleaded that on the principle of constructive res judicata, the second suit was barred.

(6). The Sub-Divisional Officer, Sri Karanpur decided and decreed the suit on 2.7.1986 holding that Gaushala is a juristic person and is not a member of Scheduled caste and therefore sale to it by Buta Singh is void. The question regarding res judicata was not dealt with properly. An appeal against this order was dismissed by the Revenue Appellate Authority on 22.7.1994 and the second appeal before the Board of Revenue met the same fate on 8.9.1994. These concurrent order in the circumstances are questioned before me in this petition.

(7). Shri J.L. Purohit, learned counsel for the petitioner assailed the illegalities of these orders or the following submissions:-

(a) Though Gaushala is a juristic person it is not a person living or human being and hence the sale in its favour by a member of Scheduled caste is not covered by the provisions of Section 42.

(b) A juristic person does not and cannot have any caste, it cannot therefore, be said that the transfer by Buta Singh is in favour of a person who is not a member of Scheduled caste. A juristic person is incapable of being member of any caste or creed and hence, the provisions of section 42 are not attracted.

(c) The principle of constructive res judicata is squarely applied in the present case and the earlier order barred adjudication of the later suit.

(8). None was present for the respondents.

(9). Having pondering over the submission made by Shri J.L. Purohit, I find it necessary to accept the same for the reasons to follow hereinafter. The Rajasthan Tenancy Act of 1955 was enacted to protect tenants of an agricultural land in the State of Rajasthan. Section 42 of the said Act was enacted to prevent exploitation of the members of the Scheduled caste and Scheduled tribes and other backward classes. For quite some time, members of Scheduled caste and Scheduled tribes because of their backwardness of century were regularly being exploited by others scheming persons not belonging to their caste, agricultural end and members of these caste were taken up or purchased for paltry the sum

accepting the ignorance of these people in the matter of present values and price of agricultural land, a prohibition therefore, was imposed via section 42. It will be seen from the provisions of Section 42 that a sale, gift or bequest of any holding by a member of Scheduled caste in favour of a person who is not a member of the Scheduled caste is held void. There is no time limit prescribed. This section was introduced in the Rajasthan Tenancy Act of 1955 by the Rajasthan Act No. 12 of 1955 on 15.12.1954. Normally, sales which have to be declared invalid or which are prohibited are so declared or prohibited prospectively. However, in this case, a blanket provision is introduced holding that all sales, gifts and bequest by a member of Scheduled caste in favour of a person who is not a member of Scheduled caste shall be void. It was the benevolent piece of legislation enacted and introduced into the Rajasthan Tenancy Act, 1954 for the protection of the member of the Scheduled caste. It necessarily is a provision for protection of human beings. The persons belonging to Scheduled caste are human beings as also others not belonging to the Scheduled caste but whether a person belongs to Scheduled caste or not, the entire agricultural community whether consist of a person belonging to Scheduled caste or Scheduled Tribes or other backward classes or higher caste people uniformly and unanimously care for the milk animals. The milk producing animals are reward by irrespective castes or creed. Judicial notice of the fact can be taken that even persons belonging to Scheduled caste also reward the cow as much as other Hindus do. A perusal of the provisions of Tenancy Act itself will show that the entire enactment is made for the purpose of governing the relationship of landlord and tenant and certain provisions for special protection as section 4 are enacted to protect exploitation of the members of the Scheduled caste and Scheduled tribes from exploitation and by other caste people. "The provision declining sales by Scheduled caste person to a non-Scheduled caste person as void, therefore, has to be read as one meaning a sale between two human beings and not the sale between human beings who belong to Scheduled caste and juristic person like the petitioner.

(10). In my opinion, the provisions of section 47 of the Tenancy Act are intended to recover sales, gifts or bequest by a member of Scheduled caste to a person who is not a member of Scheduled caste, here the close person who is not a member of Scheduled caste has to be read as a whole and not separately. It cannot be read that as a person and member of Scheduled caste, the sale must be to a person who is not a member of Scheduled caste and only human being can be a member of Scheduled caste not juristic person, therefore, the juristic person is not covered by the close person who is not a member of the Scheduled caste appearing in section-42 of the Tenancy Act. An intention of the Legislature to prohibit or prevent or ban the entire approach of the authority below was thus illegal which resulted grave miscarriage of justice, their orders are liable to be quashed. It is declared that the sale of the land dt, 9.8.67 by Buta Singh in favour of the petitioner Gaushala is not hit by the provisions of section 42. In fact such finding was not necessary in view of the fact that the principle of res judicata squarely applied to review proceedings also and by reason of decision in

the earlier suit, the subsequent suit itself was barred. On that ground also the orders are liable to be set aside.

(11). In the result, the petition succeeds and is allowed. The impugned orders are quashed. There will be no order as to costs.