
(1987) 09 RAJ CK 0029
In the Rajasthan High Court
Case No : Civil Second Appeal No. 87 of 1981

Gheesa	Vs	APPELLANT
Mangala and Others		RESPONDENT

Date of Decision : 15-09-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (1988) 1 WLN 149

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

G.M. Lodha, J.—This is a civil second appeal u/s 100 CPC, against the judgment and decree of Additional District Judge Alwar affirming the decree passed by the Munsif Thanagaji. The agricultural field as alleged by the defendant of Khasra No. 377 measuring 2 bighas and 7 biswas situated in village Narainpura, out of which 1 bigha 7 biswas was used for cremation ground by the villagers of the village and dhanis is subject matter of litigation. The plaintiff's case was that one bigha land banjar kadim and the other part of 2 bighas and 7 biswas is cremation ground. The sale was made by the biswedhar Shetan Singh, Madan, Bane Singh, Ranjeet Singh resident of Kharkhadi Khurd to the appellant and the appellant wanted to cultivate it on 1971 which was objected by the village People. The suit was then brought in representative capacity.

2. The defendant appellant contested the suit and pleaded that the claim of the respondent is absolutely false and the land in question has never been a cremation ground. The defendant case was that on 10-1-1952 the appellant purchased the same including other fields.

3. Other pleas were also taken.

4. After trial the suit was decreed on 4-8-1977 and the appeal against it had been dismissed.

5. The following questions were recorded by this court on 28-7-1981 at the time of admission:

(1) Whether the lower appellate court was legally justified in treating the land in dispute as not available for cultivation within the meaning of Rule 84 of the Rajasthan Land Revenue (Land Records) Rule, 1957. because it has been recorded as Banjar Kadim in the Record of Rights?

(1) Whether the lower appellate court was legally justified in drawing an inference to the effect that cremation ground from the mere fact that it had been recorded as Banjar Kadim?

6. No other question as substantial question of law was framed by this court.

7. Arguments have been heard and Mr. Goyal, learned Counsel for the appellant has pointed out that the finding of both the lower courts are patently erroneous in as much as this land was of the bisweddar and in their cultivation and therefore they could sell it. My attention was also invited to Rule 83 and Rule 84. Mr. Goyal also argued that the evidence of the plaintiff itself have admitted cultivation and therefore there was no question of this land being treated as "Samsan" or land not available for cultivation for the purpose of Rule 84.

8. Mr. Jain has opposed the contentions of Mr. Goyal.

9. I have carefully gone through the relevant evidence referred to by the learned Counsel for the parties and also perused the relevant rules and judgments of both the lower courts.

10. There is no doubt that there is a concurrent finding of fact of both the lower courts that the land in dispute is banjar land which is not being used for cultivation and part of it is cremation ground.

11. This has been held to be so on oral and documentary evidence including the site inspection note which has been taken support of where the learned Munsif who was trying the case found that not only ashes of persons whose funeral was made available at many places but even other parts of the dead bodies like bones were also available. Both the lower courts have also taken into consideration that in the Record of Rights it has been shown as banjar kadim.

12. Mr. Goyal did not challenge that the record of rights shows as banjar kadim but his argument is that from that no conclusion can be drawn that the land was not cultivable or fit for cultivation.

13. Rules 83 and 84 of the Rajasthan Land Revenue Land Record Rules, 1957 are relevant for the purpose of this consideration. Rule 83 mentions that uncultivated land can be classified into two heads, one available for cultivation, two, not available for cultivation. The land which is available for cultivation as then be mentioned in Clause (2) and it is culturable product or fallow land. Then the fallow land which can be called as available for cultivation is current for one year or two to five years or six years and more. Groves and orchards containing fruit

bearing tree and shady trees, Bir or grass preserves. Land which has never been cultivated but is lying fit for cultivation.

14. Now then we have turned to rule 38 which has been referred to by Mr. Goyal. Rule 38 of these rules mentions that in Rule 39 of the Rajasthan Land Revenue (Survey Record and Settlement) Government Rules, 1957 dry uncultivated land has been classified into two parts. One, is padat or banjar and other is keed.

15. The present land certainly comes in dry and uncultivated land and it is banjar. However nothing turns upon that, because ultimately one has to go to Rule 83 and 84. Rule 39 mentioned above is only for soil classification. Now soil classification can be of many types and one is which can be of banjar.

16. As mentioned above it is the Rule 83 which contains two types of land: available and not available for cultivation. Now fallow lands means of some years have been mentioned there and then there is a last Clause (2) which says that the land which has never been cultivated, is lying waste but is fit for cultivation.

17. It would thus be seen that so far as the question of land not available for cultivation is concerned, Rule 83 is silent. Rule 83 says that land which is fit for cultivation it has not been mentioned, which is the land fit for cultivation Now that being so then we turn to Rule 84. In Rule 84 Clause (3) expressly mentions that the lands which are cremation grounds are not available for cultivation. Then the lands which are of other categories mentioned in it are not available for cultivation.

18. From the above, it would be seen that the reading of Rules 39, 83 and 84 would show whether the land is fit for cultivation or not is a matter which cannot be solved from these rules because these rules partially cover that field.

19. It would thus be seen that so far biswedars are concerned, it is common ground that they never got the rights of khudkhast or malkhana hak in land. This is also not in dispute that so far as revenue records are concerned, it is entered as banjar kadim. In my opinion in view of the above, the findings of the lower court that part of it is used as cremation ground i.e. Samsan is based on proper appreciation of evidence and even if part of it is not being used as is obvious it is banjar kadim and not khudkahst or malakhana of the biswedari.

20. That being so after coming into force the Biswedari Abolition Act, the lower courts have rightly held that the State became the owner, because all properties of biswedari except the property which was declared as personal property khudkahst property or as malakhana vested in the State.

21. In view of this the sale would not be valid, the lower court has rightly held it to be so.

22. Mr. Goyal also tried to raise ancillary argument that the suit for cancellation of the document having not been filed the mere suit for injunction could not be entertained. Neither any issue was framed, nor any such objection was taken nor

any discussion was made in any of the judgments because it was not pressed, nor this court while framing the substantial questions of law have mentioned it.

23. In view of this I do not think it is worthwhile to entertain this controversy in this appeal.

24. Consequently the appeal fails and is hereby dismissed without any order as to costs.