

(2013) 10 RAJ CK 0025
In the Rajasthan High Court
Case No : Civil Revision Petition No. 45/2011

Gopali Bai and Another

APPELLANT

Vs

Pushpa Bai and Others

RESPONDENT

Date of Decision : 21-10-2013

Acts Referred:

Citation : (2014) 1 WLN 529

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.S. Chauhan, J.—The applicant-petitioners are aggrieved by order dt. 21.08.2009 passed by the District Judge Baran whereby the learned Judge has rejected the petitioners' application under Order 7 Rule 11 CPC. Briefly, the facts of the case are that two sisters, Pushpa Bai and Samudra Bai, filed a civil suit for declaration and cancellation of sale deeds dt. 29.09.2008 and 17.09.2008 by which the property allegedly belonging to their parents were sold by Ram Kishan who claimed to be their adopted brother. According to the plaintiff-respondents. Ram Kishan was never adopted by their mother, Manni Bai. Therefore, they also sought the relief that it be declared that Ram Kishan is not an adopted son of their parents.

2. Further, according to the plaintiffs-respondents, their father, Kanhaiya Lal, had one-fourth share in Khasra No. 671 Rakba 342 Hectare, and in Khasra No. 566 Rakba 2.24 Hectare in Village Samaspur, Tehsil Baran, District Baran. After their father's death, the said land devolved upon their mother, Manni Bai, and upon the plaintiffs-respondents. Moreover, after the death of Manni Bai, the said land devolved upon the plaintiffs-respondents. However, treating Ram Kishan as the adopted son, on 25.09.1998 a mutation was opened in his name. Although he was never adopted as a son, but using the mutation in his favour, on 29.09.1998, Ram Kishan sold 1/12th part of the share in Khasra No. 671 to Gopali Bai (the petitioner No. 1 before this Court), and sold another 1/12th share

of the land in Khasra No. 566 on 17.09.2008 to Anisa Bano (the petitioner No. 2 before this Court). Therefore, the plaintiffs-respondents not only prayed for declaring Ram Kishan as having not been adopted by their parents, but also prayed for cancellation of the sale deeds dt. 29.09.2008 and 17.09.2008.

3. The defendant-petitioners filed joint written-statement and disputed the averments made in the plaint. It was mentioned that at the time of death of Kanhaiya Lal, Ram Kishan performed his last rites as his son; in the year 1985, on the day of Basant Panchami, Manni Bai adopted Ram Kishan and declared him as her son in the presence of caste Panchas. She also executed a Will in this regard. It was also mentioned that the plaintiff-respondents were never in possession over the land in dispute; the land, in question, had already been entered in the name of Ram Kishan. It was also mentioned that the suit has been filed on insufficient Court fees; the same is also not maintainable on the ground that without getting their rights decided by the revenue Court, suit for declaration and cancellation of the sale deed cannot be maintained by them. Thus, it was prayed that the suit be dismissed as pre-mature, or the same be returned to the plaintiffs.

4. During the pendency of the proceedings, the petitioners filed an application under Order 7 Rule 11 CPC ostensibly on three grounds : firstly, that the plaintiff-respondents had filed the suit for cancellation of registered sale-deed and for declaration of khatedari rights of the entire land. Since this was the main prayer made by the plaintiff-respondents, the Civil Court did not have the jurisdiction, as the jurisdiction vested in the Revenue Court. Secondly, since various sale-deeds have been challenged and different relief's have been prayed for, the suit suffered from mis-joinder of causes. Thirdly, since sufficient Court fees had not been paid, the plaint should be returned. However, by order dt. 21.08.2009 the learned Judge has rejected the said application. Hence, this petition before this Court.

5. Mr. Jitendra Pandey, the learned counsel for the petitioner, has vehemently contended that since the main relief related to the cancellation of the sale-deed, and the declaration of the plaintiffs as the khatedars of the land, the suit should have been filed before the Revenue Court. Therefore, the suit was not maintainable before a Civil Court. Secondly, Ram Kishan, the seller and the defendant No. 1, had inherited the land on the basis of a Will, Therefore, the learned Judge was not justified in claiming that the issue related to Ram Kishan being adopted by the mother of plaintiff-respondent Nos. 1 and 2.

6. Heard the learned counsel, and perused the impugned order as well as the copy of the plaint which has been submitted before this Court.

7. A bare perusal of the plaint clearly reveals that three relief's were prayed for by the plaintiff respondent Nos. 1 and 2 namely -

8. Thus, the relief prayed by him was not merely limited to cancellation of sale-deeds dt. 29.09.2008 and 17.09.2008, but also extended to the declaration that

defendant No. 1, Ram Kishan, as not a validly adopted son. The said relief, obviously, cannot be granted by a Revenue Court. Naturally, the said relief can be granted only by a Civil Court. Moreover the grievance of the plaintiff is that although Ram Kishan was not a legally adopted son of their mother, but still on the basis of his alleged adoption he has become her successor. Further, on the said basis, he had sold the property in dispute to other defendants. Therefore, the issue whether he is a legally adopted son or not is a crucial one. Even the other two relief"s prayed by plaintiff-respondents would depend on the decision of the crucial issue, mentioned above. Thus, the learned Judge was justified in concluding that the issue with regard to the adoption of Ram Kishan could not be decided by a Revenue Court, and could only be adjudicated upon by a Civil Court.

9. The learned Judge is also justified in claiming that mis-joinder of cause of action is not a valid ground for rejecting a plaint at the threshold. After-all, such a ground has not been provided for in Order 7 Rule 11 CPC.

10. Moreover, the learned Judge is also justified in concluding that as far as the Court fees is concerned, the same can be paid by the plaintiff-respondents after an order is passed by the Civil Court. For the reasons stated above, this Court does not find any illegality or perversity in the order dt. 21.08.2009. This petition being devoid of merit is, hereby, dismissed.