
(1988) 02 RAJ CK 0014

In the Rajasthan High Court

Case No : Civil Writ Petition No. 840 of 1979

Hanifa and Another

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 09-02-1988

Acts Referred:

Rajasthan Tenancy Act, 1955 — Section 63(1)(viii), 88

Citation : (1988) 1 WLN 500

Hon'ble Judges : Shyam Sunder Byas, J; R.S. Verma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.S. Verma, J.—This writ petition by Mst. Hanifa and Mst. Dhanni residents of village Ranasar, Tehsil Sheo, District Banner, seeks to quash the orders and judgments of the Sub-Divisional Officer, dated 6-8-1975 of the Revenue Appellate Authority, Jodhpur, dt. 22-1-1979 and that of the Board of Revenue dated 2-3-1979 as illegal, without jurisdiction and ultra vires.

2. The writ petition has come to be filed in the following way. The facts giving rise to this writ petition lie in a narrow compass. Smt. Hanifa and Mst. Dhanni filed a Revenue Suit No. 11/74 in the court of Sub-Divisional Officer, Banner, on the allegations that deceased Subhan s/o Maluk, Mira s/o Habib, Rasid s/o Roopa had joint agricultural fields bearing Khasra No. 2008 measuring 61 Bighas 11 Biswas, Khasra No. 2116 measuring 55 Bighas 10 Biswas and Khasra No. 1973 measuring 113 Bighas 3 Biswas in "Moza" (Harsani) Ransar. Besides this land, deceased Subhan s/o Maluk and Mira s/o Habib had joint Khatedari field bearing Khasra No. 1834, 1836 and 1845 respectively measuring 21 Bighas 14 Biswas, 12 Bighas 1 Biswa, 75 Bighas 5 Biswas, total 109 Bighas in the said "Moza". Besides these fields, deceased Subhan s/o Habib had Khatedari field bearing Khasras No. 1831 and 2477 respectively measuring 99 Bighas 6 Biswas, 76 Bighas 19 Biswas in the aforesaid moja. Habib, Maluk and Roopa were real brothers and were sons of one Bhai Khan. Roopa had a son Rasid, who died in

S.Y. 2015. Subhan died issue-less in S Y. 2015. Hanifa was widow of Habib. They had a son Mira, who died in S.Y. 2020 leaving behind him his mother Hanifa and daughter Dhanni, petitioners in the present writ petition. It was averred that Rasid, Subhan and Mira died in India and after their death, Hanifa and Dhanni are in cultivatory possession of the said fields. It is averred that the revenue authorities wrongly alleging that Subhan, Mira and Rasid had gone to Pakistan, declared the aforesaid lands as Khalsa illegally and wrongly. The petitioners had no knowledge of such proceedings. When the Patwari of the area sought to eject the petitioners then they came to know that the Tehsildar had declared the land as Khalsa. On such averments, the petitioners prayed that the lands in dispute may be declared to be of their Khatedari and necessary corrections may be got made in the revenue record.

3. The suit was resisted on behalf of the State by filing a written statement (Annex. L). The averments that the lands were in Khatedari of Subhan, Mira and Rasid as detailed above, was not disputed but it was pleaded that all the three Khatedars had gone to Pakistan and as such, the field in dispute had been declared Khalsa after proper proceedings and possession of the lands had been taken by the State. It was disputed that Subhan, Mira and Rasid died in India as alleged. It was pleaded that since the original Khatedar tenants had migrated to Pakistan, Smt Hanifa and Dhanni had no title in the disputed lands and hence they cannot be declared as Khatedars of the disputed lands. It was pleaded that the plaintiff did not file any objections or appeal against the orders by which the lands had been declared Khalsa and as such, the suit was of a doubtful character.

4. Upon the aforesaid pleadings, the learned trial court framed the following issues:

1? vk;k [ksr [kljk ua0 2008] 1993] 1834] 1836] 1845] 1861] 2477 jdok dze" k% 61 ch?kk 11 fcLok] 55 ch?kk 12 fcLok] 113 ch?kk 3 fcLok] 21 ch?kk 14 fcLok] 12 ch?kk 1 fcLok] 75 ch?kk 5 foLok] 99 ch?kk 6 foLok] 76 ch?kk 19 foLok ,oa 515 ch?kk 7 fcLok ekStk gjlk.kh ?jk.kklj? ij okfnuh lEor 2012 dh lky o mlds ckn vkt fnu rd yxkrkj dk"r djrh gS flds okfnuh mijksDr [ksrks dks viuh [kkrsnkjh es ntZ djkus dh vf/kdkjh.kh gS\ & oknh

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5. The petitioner-plaintiffs examined as many as five witnesses before the learned trial court. No evidence was led by the defendant State. Learned trial court did not rely upon the evidence of the witnesses of the plaintiffs and held that the plaintiff-petitioners had failed to prove that Mira, Rasid and Subhan had died in India. It observed that the procedure taken by the Assistant Collector, Banner for declaring the disputed lands as Khalsa was legal and proper. It further held that the plaintiff-petitioners had failed to prove their possession since S.Y. 2012 and as such, the suit was not maintainable. Upon these findings, it

dismissed the suit of the plaintiff-petitioners vide judgment Annex. C.

6. The plaintiff-petitioners went in appeal to the Revenue Appellate Authority, Jodhpur. The learned appellate court held that since the land had been declared Khalsa, the suit of the plaintiff petitioners had been rightly dismissed by the trial court. It relied upon the written statement filed by Tehsildar before the trial court in support of its finding that the original Khatedar had migrated to Pakistan. The learned appellate court further held that since orders declaring the disputed lands Khalsa, had not been challenged by way of appeal or objections, the plaintiff-petitioners were not entitled to succeed. Upon this view of the matter, the learned Revenue Appellate Authority dismissed the plaintiff-petitioners' appeal, vide judgment Annex-B. Aggrieved by this Judgment, the plaintiff-petitioners filed a second appeal before the Revenue Board, Rajasthan, Ajmer. This appeal was heard by a Division Bench of the Board of Revenue. The appeal was summarily dismissed by the Division Bench of the learned Revenue Board vide judgment dated 2-3-1979 Annex. A.

7. By this writ petition, the plaintiff-petitioners challenge that legality and propriety of the judgments of all the three courts below. Shri Ahmed Bux Sindh, learned Counsel for the petitioners submits that the crucial issue before the courts below was whether Subhan, Mira and Rasid had migrated to Pakistan and as such, their interest in the tenancies had been extinguished. The petitioners had led evidence before the trial court to the effect that Subhan Mira and Rasid had died in India. No evidence in rebuttal was produced by the State Government before the trial court or the appellate courts. Relying Upon the fact that the Assistant Collector in summary proceedings had declared the lands as Khalsa, the courts below wrongly and illegally held that the petitioners' suit was not maintainable. It is submitted that the proceedings taken by the Assistant Collector in declaring the lands Khalsa were of summary nature and were not binding upon the petitioners in a regular suit. If the State wanted to set up the case that original Khatedars Subhan, Mira and Rasid had migrated to Pakistan, then this fact ought to have been established by leading proper evidence. The summary orders of the Assistant Collector could not have been treated as res judicata in regular suit. All the courts below treated the proceedings taken before the Assistant Collector as conclusive and this has vitiated the approach of the learned courts below and has vitiated their judgments, which deserve to be set aside and quashed.

8. Learned Addl. Govt. Advocate, Shri R.P. Dave has tried to support the judgments of the courts below. He submits that the courts below have unanimously held that the lands had been declared Khalsa by the Asstt Collector. As such this court would not be justified in setting aside the concurrent judgments of the courts below. In the alternative, it is submitted that the learned trial court did not frame any issue regarding the State's plea that Subhan, Mira and Rasid had migrated to Pakistan. Due to non-framing of such an issue the State could not lead its evidence before the courts below nor could it cross examine

the witnesses produced by the petitioners before the learned trial court. This has caused serious prejudice to the case of the State and in case, this court sets aside and quashes the judgments of the courts below, the State should be afforded an opportunity to cross-examine the witnesses of the petitioners, who deposed that Mira, Subhan and Rasida had died in India and may be further permitted to lead evidence to show that in fact, Subhan, Mira and Rasida had migrated to Pakistan.

9. We have considered the rival arguments and have perused the judgments of the three revenue courts. We find that no specific issue was framed by the learned trial court on the plea of the State that Rasid, Mira and Subhan had migrated to Pakistan and as such, their rights in the disputed Khasras had been extinguished. We find that the petitioners led evidence before the learned trial court to the effect that Mira, Subhan and Rasid had died in India. Annexure-E is the statement of Sujjan Singh, the Sarpanch of the area, who has deposed that Subhan, Mira and Rasid had died in India. Likewise, Ibrahim s/o Aadam was examined to prove that Mira, Subhan and Rasid had died in India and this witness had participated in their funerals. This statement is Annexure-F. Another witness Aadam s/o Aachar was examined to the same effect. His statement is Annexure-G. To the same effect was the statement of petitioner Hanifa Annexure-H. It is surprising that Hanifa was not cross-examined on this aspect of the matter at all.

10. From a perusal of the judgments of the courts below, it appears that they treated the proceedings taken by Assistant Collector u/s 63(1)(viii) as conclusive and binding against the petitioners and upon such view of the matter, held that Subhan, Mira and Rasid had migrated to Pakistan. We find a lot of substance in the argument of Shri Sindhi that proceedings u/s 63(1)(viii) of the Rajasthan Tenancy Act, held by the Assistant Collector were of a summary nature and they could not be held conclusive and binding between the parties in a regular suit. When in the regular suit, the petitioners had specifically pleaded that Subhan, Mira and Rasid had died in India and the petitioners were their heirs, then this question ought to have been tried by the learned courts below and a proper issue should have been framed on this question. Finding during the course of summary proceedings should not preclude the petitioners from showing that in fact, Mira, Subhan and Rasid had not migrated to Pakistan and had died in India and the petitioners were their heirs and thus were entitled to be declared as Khatedar tenants of the disputed lands. We are, therefore, of the firm view that the learned courts below erroneously assumed proceedings u/s 63(1)(viii) of the Tenancy Act to be binding upon the petitioners. Section 88 of the Rajasthan Tenancy Act provides for a regular suit and the question that Subhan, Mira and Rasid had or had not migrated to Pakistan, could have been very appropriately decided in the suit after affording opportunity to both the sides to lead proper evidence. We find that the learned trial court failed to frame a proper issue on this crucial aspect of the matter with the result that its approach was completely vitiated. The judgments of the learned Revenue Appellate Authority and the

learned Members of the Board of Revenue suffer from the same infirmity.

11. Learned Additional Government, Advocate strenuously contended before us that besides proceedings u/s 63(1)(viii) of the Rajasthan Tenancy Act, summary proceedings had been taken against Smt. Hanifa u/s 91 of the Rajasthan Revenue Act as would be evident from Annexure-R/1 dated 15-4-1974, Annexure-R/2 dated 16-4-1974, Annexure-R/3 dated 16-4 1974, Annexure-R/4 dated 16-4-1974 and Annexure-R/5 dated 10th September, 1975. He submits that the petitioners should have participated in those summary proceedings and since they did not do so, they could not have been permitted to say that these proceedings were do not binding upon them. We are not impressed by this argument as suffice it to say that all these proceedings were summary proceedings and were not conclusive and binding against the petitioners.

12. We find a lot of force in the submission of the learned Additional Government Advocate that the interests of the State have been prejudicially, affected by non-framing of an issue on this vital aspect of the case. Learned Additional Government Advocate submitted that the petitioners had filed the revenue suit after a good deal of delay and on this score, they were disentitled from bringing the suit. He has relied upon Ex.R/4, dated 14-6-1968, the final order passed u/s 63(1)(viii) by the Assistant Collector, Barmer. Schedule-III of the Rajasthan Tenancy Act lays down the period of limitation for suits, applications and appeals under the Act. Entry at Serial No. 5 pertains to suit filed u/s 88 of the Act and in the column "Period of limitation", it mentions - "None". This shows that no particular period of limitation has been prescribed for filing suit u/s 88 of the Rajasthan Tenancy Act. Hence, this argument of the learned Additional Government Advocate is of no avail.

13. In view of the above discussions, we are of the view that the learned trial court as well as the learned appellate courts failed to deal with matter before them in the right legal perspective and their approach has vitiated their judgments altogether and judgments Annexure-A, B and C deserve to be quashed and set aside.

14. We, therefore, accept this writ petition and quash the judgments Annexure-A, B and C and direct that the learned Sub-Divisional Officer, Barmer, shall re-admit the suit to its original number and shall frame an additional issue to the following effect:

1-A. Whether Subhan, Mira and Rasid had migrated to Pakistan and as such, their tenancy rights in the disputed lands were, extinguished.

The learned trial court shall thereafter allow parties to lead evidence on this issue and shall also re-call such witnesses of the petitioner as the State desires to be re-called and shall afford the State an opportunity of cross-examining such witnesses. It shall hear the matter afresh and shall decide the suit keeping in view the observations made by us. In the circumstances of the case, the parties are left to bear their own costs. Since the matter is an old one, it shall decide it

expeditiously and preferably within a period of six months.