
(1984) 03 RAJ CK 0007

In the Rajasthan High Court

Case No : Civil Special appeal No's. 14, 15 and 41 of 1984

Jaswant Singh and Others

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 22-03-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Specific Relief Act, 1963 — Section 31

Citation : (1984) RLW 573 : (1984) WLN 608

Hon'ble Judges : Kanta Bhatnagar, J; Dwarka Prasad Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dwarka Prasad Gupta, J.—These three appeals arise out of an order passed by a learned Single Judge of this Court on November 18, 1983 dismissing the writ petitions filed by the appellants.

2. The Only question which arises in theses appeals is as to whether the suits filed, by the respondent No. 3 in each of these anneals in the court of Assistant Collector, Hanumangarh was properly triable by a revenue court or was triable by a civil court.

3 The respondent No. 3 filed three suits, one each against each one of the appellants, in the court of Assistant Collector, Hanumangarh for possession of a piece of agricultural land and claiming a declaration of her right as a khatedar tenant of such land and for recovery of damages The appellants, who were the defendants in the three suits took the objection that the suits were triable by a civil court and that the revenue court had no jurisdiction Issues No. 8 and 9 were framed by the trial court in this respect and were tried as preliminary issues. The Assistant Collector held that the revenue court had jurisdiction to entertain the suits Revision petitions preferred by the appellants before the Board of Revenue were dismissed and it was held that the suits were mainly for declaration of Khatedari rights and for ejectment and as there was no prayer for cancellation of

sale-deeds nor any such prayer was necessary to be made, the suits were triable by the revenue court. Dissatisfied with the order passed by the learned Member of the Board of Revenue, all the three appellants filed separate writ petitions in this Court which were dismissed by the learned Single Judge by his order dated November 18, 1983, as mentioned earlier.

4. It is well settled that the question of jurisdiction ought to be decided on the basis of allegations made in the plaint. There is no doubt that some times the plaint is so drafted as to camouflage the real purpose thereof and as such it has often been held that the substance of the plaint should be considered by the court for the purpose of determination of the question of jurisdiction.

5. In *Chandanmal v. Dawar* RLW 1954 184 it was observed that the question of jurisdiction must be initially determined on the basis of the allegations made in the plaint and that the substance of the plaint and its main object should be kept in view and not merely its outward form. Modi J., observed in that case that if the aforesaid principles were not kept in view it may be open to a party to evade the liability as to exclusiveness of jurisdiction. However, it was made clear that care should be taken not to introduce anything in the plaint which may not be found there or which may be foreign to its main purpose. In another decision, in the case of *Sukh Lal and Others Vs. Devi Lal and Others*, Modi J., speaking for the court, enunciated the true principles, by observing that the plaint as a whole should be looked at and that the substance of the plaint and not its ostensible form really matters. Further nothing should be imported into the plaint, which it really does not contain, either actually or by necessary implication. Thus, a plaint should be construed as it is and not as it ought to be.

6. In *Ratanlal v. Gram Panchayat Agolai* RLW 1977 143 one of us, sitting singly observed as under:

It is well settled that the question of jurisdiction has to be decided on the basis of the averments made in the plaint. It is of course true that not only the relief claimed in the plaint but all the allegations made therein should be taken into consideration for the purpose of deciding the question as to whether the suit is exclusively triable by a revenue court or not. The court must be guided by the substance of the plaint and not merely by its form. Therefore, in order to arrive at a correct conclusion on the question of jurisdiction, the substance of the plaint must be taken into consideration to find out the true nature or the object of the suit.

7. In *Shyam Kumar v. Budh Singh* RLW 1977 131 Sachar, J. observed as under:

It is well settled that the question of jurisdiction, namely, whether a suit is exclusively triable by a revenue court or a civil court can take cognizance of it has to be decided on the allegations made in the plaint. It is also further settled that it is the substance of the plaint and the true nature of the suit that is to be seen to determine the question of jurisdiction. If in substance the relief claimed is one which the revenue courts alone are entitled to give the jurisdiction of the

civil courts will be ousted even though it may require the revenue court to incidentally determine some ancillary facts.

8. Another principle which has to be kept in view is that exclusion of jurisdiction of a civil court cannot be lightly inferred and the jurisdiction of the civil court cannot be ousted until the exclusion is clearly established. u/s 9 of the Code of Civil Procedure, a civil court can entertain suit of a civil nature except a suit of which cognizance is either expressly or impliedly barred. In *Abdul Waheed Khan Vs. Bhawani and Others*, their Lordships of the Supreme Court observed that it was also equally well settled that a statute ousting the jurisdiction of the civil court must be strictly construed.

9. Now Section (sic) 207 of the Rajasthan Tenancy Act, 1955 provides that all suits and applications of the nature specified in the Third Schedule shall be heard and determined by a revenue court and further it has been provided that no court other than a revenue court shall take cognizance of any such suit or application or of any suit or application based on a cause of action in respect of which any relief could be obtained by means of any such suit or application. The explanation appended to Section 207 provides that if the cause of action is one in respect of which relief might be granted by the revenue court, it is immaterial that the relief asked for from the civil court is greater than, or additional to or is not identical with that which the revenue court may possibly grant. Section 88 of the Tenancy Act provides for filing of a suit for declaration by a person claiming to be a tenant, in respect of his right as a tenant or for declaration of his share in a joint tenancy. Further Section 183 of the Tenancy Act provides for filing a suit for ejectment of a trespasser who has taken or retained possession of land without any lawful authority. The suits covered by Section 88 and 183 of the Tenancy Act are included at items No. 5 and 2 respectively in the Third Schedule appended to the Tenancy Act. Thus in respect of matters covered by the aforesaid items included in the Third Schedule, the revenue courts alone have exclusive jurisdiction to entertain suits, for declaration of the plaintiff's right as a tenant of agricultural land and for ejectment of a trespasser therefrom. According to the provisions of Section 207 of the Tenancy Act, the jurisdiction of the revenue court to try a suit of the nature specified in items No. 5 and 23 relating to agricultural tenancies, would be based on the cause of action for filing such suit. The term "cause of action", though (sic) where defined is now very well understood. It means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. ((sic) See AIR 1949 78 (Federal Court)) It follows that in each and every case the cause of action for filing of the suit shall have to be strictly scrutinised in order to determine whether the suit is exclusively cognizable by a revenue Court or is impliedly cognizable only by a revenue court or is cognizable by a civil court. If more than one reliefs are claimed in the suit, then the jurisdiction of the civil or revenue courts to entertain the suit shall be determined on the basis as to what is the real or substantial or main relief claimed in the suit.

10. In *Ram Awalamb and Others Vs. Jata Shankar and Others*, a Full Bench of the Allahabad High Court classified cases under the following two sub-heads on the basis of relief claimed or ostensibly claimed in the suit:

(a) Where several reliefs closely connected with each other can be claimed on the basis of the cause of action set forth in the plaint it has to be examined which of them is the main relief and which others are ancillary reliefs. If upon a consideration of facts constituting the cause of action the main relief is such which can be granted by the civil court the suit will be cognizable in the civil court which will proceed to grant the ancillary reliefs also. On the other hand if the main relief is specifically cognizable by a revenue court only, but ancillary reliefs may be such as could be granted by the civil court, the matter was cognizable only by a revenue court.

(b) The pith and substance of the allegation made in the plaint constituting the cause of action must be scrutinized in order to determine whether or not if on the same cause of action any adequate or satisfactory alternative remedy could be available to the plaintiff in the revenue court. If the answer to the scrutiny be in the affirmative, then the suit brought in the civil court must fail regardless of the consideration that in respect of the reliefs actually claimed the suit was on the face of it cognizable, by a civil court.

It was held in the aforesaid decision by a Full Bench of the Allahabad High Court that if the main relief is cognizable by a revenue court the suit would be cognizable by the revenue court only and the fact that the ancillary reliefs & are cognizable by the civil court would be immaterial for the determination of the proper forum for filing the suit. On the other hand, if the main relief is cognizable by a civil court, the suit would be cognizable by civil court only and ancillary reliefs are immaterial.

11. Now coming to the facts of these cases, it appears from a perusal of the three plaints, which are identical, that the plaintiff (respondent No. 3 in these appeals) claimed her tenancy right to the lands in dispute in the respective suits, on the basis that her husband Daulat Ram was a Khatedar tenant of such lands and he expired on September 22, 1979 and the plaintiff was the sole heir and successor in interest of Daulatram deceased; and as such she succeeded to the Khatedari rights after the death of her late husband. The plaintiff further averred that she came to know that after the death of her husband, the defendant in the three suits, the appellants before us, by fraud and mis-representation got fictitious sale deeds executed on July 4, 1980 by some imposter who falsely personified the plaintiff and got the alleged sale-deeds registered as well. According to the plaintiff, the entire transaction of sale was fraudulent and was undergone with the intention of unlawfully depriving the plaintiff of her khatedari rights in the disputed lands and that the fictitious sale-deeds were wholly void and a nullity and did not in any manner affect the khatedari rights of the plaintiff. The plaintiff claimed that she may be declared the khatedar tenant of the lands in question and it may also be declared that the defendant had no right or

interest in the said lands. It was also prayed that the defendant may be dispossessed and the possession of the lands in dispute may be restored to the plaintiff. The plaintiff also claimed recovery of penalty or damages. It is not in dispute that the three suits relate to rights in agricultural lands, but the argument of the learned Counsel for the appellants is that the three sale-deeds were executed by the plaintiff after taking valuable consideration and those sale-deeds created insurmountable impediment in the way of the plaintiff in obtaining possession of the disputed lands until she got the sale-deeds cancelled. According to the learned Counsel for the appellant, the plaint was deftly drafted in such a manner as to avoid the real dispute and that the main contest between the parties in the three suits is as to whether the sale-deeds were executed by the plaintiff or not. Thus according to the learned Counsel for the appellants, the plaintiff was not entitled to get any relief in the three suits unless a prayer for cancellation of the sale deeds in question was asked for and such a relief could be granted only by a civil court. On the other hand, learned Counsel for the plaintiff respondents No. 3 urged that plaintiff has denied having executed the sale deeds. I (sic) question and according to the allegations made in the plaint, the three sale deeds were fictitious documents and represented fraudulent transactions which had nothing to do with the plaintiff but were solely brought into existence with the unlawful object of depriving her of her lawful rights in the disputed agricultural lands. Learned Counsel urged that the plaintiff was entitled to make a prayer for possession or ejectment of the trespasser and for a declaration of her right as a khatedar tenant. The three sale deeds were claimed by the plaintiff to be inoperative and hence void and it is urged that in such circumstances a prayer for cancellation was wholly unnecessary and the plaintiff was justified in not making such a prayer. Thus, considerable argument was advanced before us as to whether a prayer of cancellation of the deed was imperative to be made in the plaint or that making of such a prayer was wholly unnecessary.

12. In our view, the principle which should govern such cases is that was enunciated by their Lordships of the Privy Council in *Pe (sic)therpermal Chetty v. Muniandy Servai* ILR 35 Cal 551. Their Lordships held in that case that the deed being inoperative, it is not necessary for the plaintiff to have it set aside as a preliminary to his obtaining possession of the property. In their Lordships' view, such an inoperative document did not bar the plaintiff's right to recover possession of his land.

13. Section 31 of the Specific Relief Act, 1963 runs as under:

31. When cancellation may be ordered:--(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable."

14. In *Sukh Lal and Others Vs. Devi Lal and Others*, the difference between a suit for cancellation of a document and a suit for declaration that the instrument

is not binding on the plaintiff was brought out in the following words:

When the plaintiff seeks to establish a title in himself and cannot establish that title without removing an insuperable obstacle such as a decree or a deed to which he has been a party or by which he is otherwise bound then quite clearly he must get that decree or deed cancelled or declared void in toto and his suit is in substance a suit for the cancellation of the decree or deed not with standing the fact that the suit may have been framed as a suit for declaration. On the other hand, when the plaintiff is seeking to establish a title and finds himself threatened by a decree or a transaction between third parties, he is not in a position to get that decree or deed cancelled in toto. The proper remedy in such a case is to get a declaration that the decree or deed is invalid so far as himself is concerned and, therefore, he may sue for a declaration to that effect and not for cancellation of the decree or the deed.

Lal Singh and Others Vs. Tejsingh and Another, was a case where the sale-deed was executed by the father of the plaintiff on their behalf when they were minors. It was held that the sale-deed was voidable at the instance of the minors and if the plaintiff desired to establish their right to the property, then it was necessary for them to get the sale deed cancelled. In such circumstances, the relief of cancellation of sale deed was considered to be imperative and it was held that as the relief of cancellation or of the sale-deed or a decree could only be granted by a civil court and not by a revenue court, the suit was triable by a civil court.

15. In Mohanlal Vs. Ratna, the plaintiff came with an allegation that the defendant by practising fraud on him managed to get a document executed in favour of the defendant, in which the plaintiff was made to acknowledge that he had only 1/3rd share in the land in dispute, while the remaining 2/3rd belonged to the defendant. In that case, it was held that when the plaintiff subsequently discovered the fraud it was not necessary for him to get the document cancelled. The learned Single Judge of this observed as under:

It is well established that in order to determine the true nature of the relief claimed in a suit, the pith and substance, and not the form in which the relief may be couched has to be considered. On considering the pleadings in the plaint in the present case carefully and applying the doctrine of pith and substance of the pleadings. I have come to the conclusion that the relief claimed in the suit really amounted to a relief for a declaration that the plaintiff had half share in the land in question. The suit in the present case cannot be said to be one for mere avoidance of the document.

The same learned Judge in Jagan Singh v. Chotylal RLW 1973 674 referred the provisions of Section 31 of the Specific Relief Act and held that where the main relief sought for by the plaintiff was restoration of possession, the relief for cancellation of the document need not be asked for, if the document was wholly void, the learned Judge observed as under in the aforesaid case:

No doubt Section 31 of the Specific Relief Act gives a right to the plaintiff to approach a civil court to have the sale deed adjudged void or voidable if he has reasonable apprehension that such instrument, if left outstanding may cause him serious injury. But in a suit where the main relief asked for by the plaintiff is restoration of the possession of the property which is subject-matter of the instrument, the question whether relief for cancellation must be asked f(sic)r, could depend upon an answer to the other important question whether the instrument is void ab initio or is voidable. If the instrument is voidable and the avoidance of the same is necessary, the relief for cancellation of the instrument is indispensable and in that case I have, no doubt, the revenue court can give no relief as long as the sale deed is not cancelled. But the position in my view would be different if the instrument is alleged to be or proved to be void ab initio. In that case it would not be necessary to avoid the document and merely by proving that it was a void document, the plaintiff would certainly get the possession of the property without cancellation of the sale deed.

16. In the aforesaid case, the learned Judge held that the document was alleged to be void ab initio and the real and substantial relief claimed by the plaintiff was for the possession of the land as such relief for cancellation was not necessary and the suit was triable by the revenue court.

17. In *Asala v. Narain* RLW 1963 323 the suit was for restoration of possession and for a declaration that the order or decree for ejectment obtained by the defendants against the pro forma defendants was not binding on the plaintiffs and was void and of no effect. The learned Single Judge of this Court laid emphasis on the words "of the nature" occurring in Section 207 of the Tenancy Act and held that not only the suits or applications which directly fall in the various items specified in the third Schedule but if they also partake of the nature thereof, they can be heard and determined by the revenue courts only. It was pointed out by the learned Judge that there was prohibition contained in Section 207 against any other court taking cognizance of any suit or application exclusively triable by a revenue court. If the relief could be obtained in a suit or application based on the same cause of action in a revenue court, the learned Judge was of the view that plaintiff's suit was virtually one for declaration of their rights as tenants with respect to the land in dispute and for recovery of possession, if they were found to be out of possession and that such a suit was exclusively triable by a revenue court.

18. In *Lal Singh and Others Vs. Tejsingh and Another*, the suit was of the same nature as was in *Sukhlal's case*(2), It was a minor's suit to avoid sale alleged to have been made by the guardian during their minority and it was held that the transaction was voidable at the instance of the minor. The learned Judge observed that the sale deed was voidable and it was necessary to get it cancelled before the plaintiff could be entitled to the property disposed of by the same and as the relief of cancellation of sale deed or a decree could be granted by a civil court and not by a revenue court, the suit, therefore, was held to be triable by a

civil court We have already referred to above the decisions of this court in Shyam Kumar's case RLW 1977 131 and Ratanlal's case RLW 1977 143. In Shyam Kumar's case RLW 1977 131 the main relief sought for in the suit was cancellation of the disputed sale deeds and unless the sale deeds were cancelled no other relief could be given by the court to the plaintiff. Thus, the main relief sought in the suit, namely, cancellation of sale deed could not be given by the revenue courts and the suit was apparently triable by a civil court. In Ratan Lal's case RLW 1977 143 also the question in dispute in the suit was the natural source of water which was subject matter of a civil right of the villagers. As such the aforesaid two cases are clearly distinguishable from the present case.

19. The case in Sangram Singh Vs. Roop Lal and Others, was one like the case in hand. It was held in that case by P.N. (sic)hinghal, J., as he then was, that when the plaintiff claimed the sale to be void ab initio and the substantive relief which was claimed by him was delivery of possession, the relief of cancellation of the document claimed to be ab initio void was not necessary and the suit was triable by a revenue court, which was competent to grant the relief of possession. In the case of Badrilal and Another Vs. Moda and Others, the dispute between the parties related not to any right in land, but in that case the suit was for perpetual injunction relating to the right to draw water from a well. It was held in that case the alleged right was claimed on the basis of easement and the suit was triable by a civil court.

20. In a recent decision of this court in Gurucharansingh and Others Vs. Mst. Gurdayal Kaur and Others, the same view was taken by a Bench of this Court which we are inclined to take. In that case, a suit was filed seeking a declaration that the decree passed by the revenue court was void and ineffective and was based upon the allegation that the decree was fraudulent and against the tenancy rights of the plaintiff. As the plaintiff wanted a declaration to the effect that the decree passed by the revenue court was void and such declaration could only be given by the civil court, the suit was rightly held to be triable by a civil court.

21. Thus upon a consideration of the several cases of this Court on the point, it clearly emerges that if the suit was filed by the plaintiff for possession treating the deed as wholly void or a nullity, then a prayer for cancellation of the deed was unnecessary and was not required to be made by the plaintiff, who could ignore the void document. In such cases there was no unsurmountable difficulty in the way of the plaintiff in seeking relief by way of declaration of tenancy rights and claiming possession before a competent revenue court. The present case is not one in which the alleged sale deed was admitted to have been executed by the plaintiff or her predecessor-in-interest or that she sought to avoid the same on the ground that she was made to execute the deed by fraud or misrepresentation. The plaintiff claimed in the suits that sale deeds were not executed by her. In such circumstances the sale deeds were alleged to be void and not voidable and the same could be ignored by the plaintiff.

22. We, therefore, agree with the learned Single Judge that the three suits, relating to which these appeals have been filed, are exclusively triable by the competent revenue courts. Consequently, the orders passed by the Board of Revenue for Rajasthan as well as by the learned Single Judge of this Court are affirmed. All the three appeals are, therefore, dismissed. The parties are left to bear their own costs.