

(2013) 01 RAJ CK 0277

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 4981 of 2009

Kalli Devi Meena (Smt.)

APPELLANT

Vs

Bharat Bhawan Housing Co-op. Society Ltd. and Another

RESPONDENT

Date of Decision : 04-01-2013

Acts Referred:

Citation : (2014) 1 RLW 189

Hon'ble Judges : Mahesh Chandra Sharma, J

Bench : Single Bench

Advocate : Bharat Vyas, Amit Changanai and Kishore Gaur, for the Appellant;
N.K. Maloo and Vinod Kumar Tamoliya, for the Respondent

Final Decision : Dismissed

Judgement

Mahesh Chandra Sharma, J.—This Civil Misc. appeal under Order 43 Rule 1 CPC has been filed by the appellant against the order dated 3.10.2009 of Additional District Judge No. 5 Jaipur City Jaipur by which the application No. 63/2007 filed by the appellant seeking grant of the temporary injunction in a civil suit for declaration and the permanent injunction was rejected. The facts have been set out in the impugned judgment and hence I am not repeating the same here except wherever necessary.

2. Brief facts of the case are that the appellant filed a suit for declaration and permanent injunction against the respondents 1 and 2 herein along with application under Order 39 Rule 1 and 2 CPC in the court of District Judge Jaipur City, Jaipur. The matter was assigned to Additional District Judge No. 5 Jaipur City Jaipur. The appellant stated in her application that her deceased husband Gyarsi Lal was holding agricultural land measuring 4 bigha 8 biswa forming part of Khasa Nos. 1, 2 and 3 situated in revenue village Nagriyawala, Tehsil Sanganer, District Jaipur which is now a days commonly known as Pratap Nagar, Sanganer, Jaipur. The subject land is situated opposite to NRI Colony developed by the Rajasthan Housing Board commonly known as " Raj Aangan, Jaipur." It was stated that her husband died on 22.4.2006. The appellant stated that she

has never sold the land or otherwise transferred any part of it to any person or society for non-agricultural purposes. Nor her husband either sold or parted with the subject land or any portion thereof during his life time. It was further stated that the appellant and her family members are residing over the subject land. They are cultivating it without any hindrance as is apparent from the perusal of the girdavari in which cultivation is being done. It was also stated that they are holding electricity connection for agricultural purposes and they are paying regularly the charges to the concerned company. In the plaint she alleged that the respondents are society and its office bearer. They fabricated certain agreement showing the sale of I/4th portion of the subject land by late Gyarsi Lal in favour of the society. The society in connivance with the officers of the JDA are trying to encroach her land forcibly. On. 4.11.2007 after harvesting the kharif crop when the appellant and her family members were preparing the field for Rabi sowing, the respondent No. 2 with his henchmen and other unsocial elements came to the spot equipped with lathies and sarias etc. wanted to forcibly take possession. On account of severe resistance by the appellant, her family members and nearby neighbours they fled away however threatened the appellant that they will take the forcible possession by all means to develop illegal residential colony. After service of notice the respondents filed reply to the application for the grant of temporary injunction inter alia stating therein that the subject land was sold by deceased Gyarsi Lal to the society through several agreements entered into in the year 1981, 1985, 1988, 1993 and 1995. According to the respondents late Gyarsilal sold entire 4 bighas 8 biswas of his share to the society vide above stated agreements and also handed over possession after receiving the consideration. The society carved out a scheme Geeta Vihar B and submitted list of Member allottees in the JDA. It was stated that the member allottees raised construction of the houses and boundary wall over the subject land. The land was summarily resumed by the Jaipur Development Authority vide order dated 7.8.2000 under the provisions of Section 90B of the Rajasthan Land Revenue Act, 1956. The mutation was also entered in the name of the Jaipur Development Authority on 10.11.2000. An appeal was filed by Gyarsa against the aforesaid order, which was withdrawn on 8.4.2000. The appellant further stated that the subject land is an ancestral land in which the appellant and her other family members were having share since inception, which could not have been sold by Gyarsi Lal, who was also one of the coparceners. The trial court did not pass any order on the temporary injunction application therefore the petitioners filed Civil Writ Petition No. 10204/2007 Kalli Devi v. ADJ No. 5 and others on 13.12.2007 and this Court directed for maintaining status quo in regard to the land in question. The writ petition was decided by this Court on 21.8.2009 directing the trial court to decide the application for the grant of temporary injunction within a period of 30 days. The trial Court decided the injunction application vide order dated 3.10.2009 and refused to grant any injunction to the appellant. Hence this misc. appeal was filed by the appellant.

3. The arguments were heard on December 18, 2012 and both the parties requested for filing the written submissions. The learned counsel for the respondents filed written submissions on December 20, 2012 and the counsel for the appellant filed written submissions on December 21, 2012.

4. The learned counsel for the appellant in its written submission submitted that the appellant is a khatedar tenant of Revenue land comprised in Khasra Nos. 1, 2 and 3 in Revenue village Nagariawala, tehsil Sanganer Dist. Jaipur measuring 4 bigha and 8 biswas. She is in actual physical possession of the subject land and at present residing there with her family having Pucca residential house, well for irrigation and shelter for cows etc. The entire land is enclosed by boundary wall. It is submitted that the appellant is Scheduled Tribe and the agricultural holding in the family is subject to the provisions of the Rajasthan Tenancy Act wherein it has been provided that the agricultural land of the Scheduled Tribe can only be transferred to a Scheduled Tribe. This embargo is placed in terms of section 42(b) of the Act of 1955 which provides that transactions contrary to these provisions shall be void. Reliance has been placed on State of Rajasthan v. Aanjaney Organic Herbal Pvt. Ltd. Civil Appeal No. 6741-6742 of 2012 decided on 20.9.2012 by the Apex Court. The learned counsel has stated that the subject land's transaction is void as it is contrary to the aforesaid provisions.

5. The learned counsel for the appellant has further submitted that after service of notice the respondents filed reply to the temporary injunction and it has been stated that the Samiti purchased the land through an agreement of the year 1981. Further agreement were entered into between the parties on 4.3.1985, 18.2.1988, 19.11.1993 and 25.4.1995. The learned counsel has submitted that all these agreements are fabricated as the society wants to grab the appellant's land. The transactions are hit by section 42 of the Act of 1955 and the provisions of section 90B of the Land Revenue Act do not override these provisions. The land was resumed by the Authorised Officer u/s 90B vide order dated 7.8.2000. Against this resumption appeal No. 75/2000 was filed and the same was withdrawn on 8.4.2002. The learned counsel for the appellant has further stated that when the application for injunction was kept pending the appellant filed Civil Writ Petition No. 10204 of 2007 before this court and this court passed interim order directing thee parties to maintain status quo in regard to subject land but the said writ petition was decided on 21.8.2009 directing the trial court to decide the temporary injunction application within a period of thirty days. The court below appointed Court Commissioner and he submitted its report on 24.9.2009 stating that the entire land is enclosed by Pucca Boundary wall and crop is standing. Residential houses stands constructed in large number and trees were also found. The trial court after hearing both the parties rejected the application vide order dated 3.10.2009. This court on 12.10.2009 directed the parties to maintain status quo in regard to the subject land. Placing reliance on Wander Ltd. and Another Vs. Antox India P. Ltd., and Laxmikant V. Patel Vs. Chetanbhat Shah and Another, , it was argued that the trial Court did not take into consideration that thee defendant alleged to have purchased the land in 1981

kept on making further agreements till 1996 and no suit for specific performance was filed by the society yet the court below refused to grant temporary injunction, which establish occasioning of failure of justice requiring interference by this court.

6. The learned counsel for the respondents has submitted that the respondent purchased 4 Bighas 8 Biswas land of Khasara No. 1, 2 and 3 in village Nagriyawala by agreement to sale dated 5.4.1981, 7.7.1981, 4.3.1985, 18.2.1988, 19.11.1993 and 25.4.1995 from Gyarsa (husband of appellant). Possession of the land was handed over to the respondent and it was mentioned in the agreement that the society is free to demarcate plots and sale the plots. Full consideration was paid. Proceedings u/s 90B of the Land Revenue Act were started by JDA. Notice was published in Newspaper inviting objections. Nobody including the appellants filed the objections. On 7.8.2000 the competent authority passed order u/s 90B. Thereupon land is to vest in JDA and mutation was effected in favour of JDA on 10.11.2000. Gyarsa (vendor) filed appeal before the Divisional Commissioner (Appeal No. 75/2000) against order dated 7.8.2000. On 8.4.2002 Gyarsa moved application before Divisional Commissioner that the matter has been compromised and therefore he does not want to continue the appeal. Hence the appeal was dismissed in view of the compromise, by order dated 8.4.2002. This order became final.

7. Gyarsa died on 22.4.2006, thereafter his sons and wife started fresh and multiple proceedings. As heirs of Gyarsa they step into the shoes of Gyarsa and therefore they are not entitled to challenge the same matter again which was concluded by dismissal of appeal filed by Gyarsa. Moolchand and Sitaram, sons of Gyarsa filed another appeal before the Divisional Commissioner against the order dated 7.8.2000 passed in proceedings u/s 90B, before the Divisional Commissioner but this appeal was also dismissed on 16.12.2008. This order became final as no further appeal was filed. Thereafter, Moolchand and Sitaram sons of Gyarsa filed a civil suit No. 27/2006 on 1.7.2006 in the same matter without impleading Smt. Kalli Devi (mother) as a party. However the suit was dismissed on 23.12.2006. No appeal was filed hence the order became final.

8. Thereafter Moolchand filed a reference case before the JDA Tribunal which was also dismissed on 29.8.2008. Earlier stay application was dismissed on 18.12.2006. These orders also attained finality. Thereafter again the appellant (wife of Gyarsa) filed Civil suit for declaration and injunction in the court of ADJ No. 5 Jaipur for same relief along with application for temporary injunction which has been dismissed by order dated 3.10.2009. Against this order the present appeal has been filed. Initially an interim order was passed on 12.10.2009 on the undertaking of the respondent, to maintain status quo. It was extended on 14.10.2009 till next date. On next date that is 9.11.2009 it was not extended. Therefore, there is no interim order after 9.11.2009. The appellant adopted delaying tactics and took several adjournments. The learned counsel for the respondents submits that the appeal deserves to be dismissed because there is

no prima facie case, balance of convenience, and irreparable loss in favour of the appellant. The finding of the trial court is just and proper and does not call for interference. There is no prima facie case in as much as all the proceedings till now have been dismissed against Gyarsa, his wife, and his sons. In the proceedings u/s 90B Gyarsa did not file any objection. Appeal filed by him before the Divisional Commissioner was dismissed as not pressed. Another appeal was filed by sons of Gyarsa was also dismissed by Divisional Commissioner. Reference application was also dismissed by JDA tribunal. Civil suit filed by the sons was also dismissed. Hence even the present suit filed by wife of Gyarsa is not even maintainable. It is prima facie barred by the principles of res judicata. It was in these circumstances argued by learned counsel for the respondents that there is no prima facie case in favour of the appellant as rightly held by the trial court.

9. I have heard the learned counsel for the parties and gone through the judgment of the Additional District Judge No. 5 Jaipur City Jaipur dated 3.10.2009. The respondent purchased 4 Bighas 8 Biswas land of Khasara No. I, 2 and 3 in village Nagriyawala by agreement to sale dated 5.4.1981, 7.7.1981, 4.3.1985, 18.2.1988, 19.11.1993 and 25.4.1995 from Gyarsa. Possession of the land was said to be handed over to the respondent. The counsel for the respondent has stated that it was mentioned in the agreement that the society is free to demarcate plots and sale the plots. Full consideration was paid. Proceedings u/s 90B of the Land Revenue Act were started by the JDA. Notice was published in Newspaper inviting objections. Nobody including the appellant filed the objections. On 7.8.2000 the competent authority passed order u/s 90B. The land is to vest in JDA and mutation was effected in favour of JDA on 10.11.2000. Gyarsa is said to have filed appeal before the Divisional Commissioner (Appeal No. 75/2000) against order dated 7.8.2000. On 8.4.2002 Gyarsa moved application before Divisional Commissioner that the matter has been compromised and therefore he does not want to continue the appeal. The appeal was dismissed in view of the compromise, by order dated 8.4.2002 and this order became final. Gyarsa died on 22.4.2006. Moolchand and Sitaram Sons of Gyarsa filed another appeal before the Divisional Commissioner against the order dated 7.8.2000 passed in proceedings u/s 90B, before the Divisional Commissioner but this appeal was also dismissed on 16.12.2008. This order became final as no further appeal was filed. Thereafter Moolchand and Sitaram sons of Gyarsa filed a civil suit No. 27/2006 on 1.7.2006 in the same matter without impleading Smt. Kalli Devi (mother) as a party. The suit was dismissed on 23.12.2006. No appeal was filed and the order became final. Moolchand filed a reference case before the JDA Tribunal which was also dismissed on 29.8.2008. These orders also attained finality. The appellant filed civil suit for declaration and injunction in the court of ADJ No. 5 Jaipur for same relief along with application for temporary injunction which has been dismissed, by order 3.10.2009. In my view in the circumstances mentioned above there is no prima facie case, balance of convenience, and irreparable loss in favour of the appellant. The Additional District Judge took all these facts into consideration in

the order dated 3.10.2009. The findings of the trial Court are just and proper and do not call for any interference. In the proceedings u/s 90B Gyarsa did not file any objection. Appeal filed by him before the Divisional Commissioner was dismissed as not pressed. Another appeal was filed by sons of Gyarsa was also dismissed by Divisional Commissioner. Reference application was also dismissed by JDA tribunal. Civil suit filed by the sons was also dismissed. The Additional Sessions Judge in the order dated 3.10.2009 observed as under:--

10. I am in agreement with the findings arrived at by the Additional District Judge in its order dated 3.10.2009. The appellant has not come with clean hands before the court and she has been described as a trespasser over the land in dispute. In relation to balance of convenience and irreparable loss, the Additional District Judge has given a clear finding that there is no balance of convenience and irreparable loss in favour of the appellant for grant of injunction. The order of the Additional District Judge does not call for any interference in the appellate jurisdiction of this court under Order 43 Rule 1 CPC.

11. in Shri Mahabir Prasad Jain Vs. Shri Ganga Singh, the Apex Court held that the party instituting different proceedings in different courts within short span of time, held, such party abusing process of court and not possessed of clean hands and thus not entitled to equitable relief under the Act and filing of multiple proceedings is an abuse of process of court. In para 22 of the judgment it was observed as under:

22. The way in which the respondent has been instituting different proceedings in different fora within a short time making inconsistent allegations shows that the respondent has been abusing the process of court and not come to court with clean hands. He is not entitled to get any equitable relief under the Specific Relief Act.

12. I am in agreement with the ratio laid down by the Apex Court in Mahabir Prasad Jain (supra). As per the ratio laid down by the Apex Court, the appellant has no case and the appeal deserves to be rejected. The appeal being devoid of merit stands dismissed. The Additional District Judge rightly rejected the temporary injunction application of the appellant. The interim order granted by this court on 12.10.2009 and extended on 14.10.2009 but was not continued thereafter and hence the stay application also stands rejected.