

(2015) 03 RAJ CK 0054
In the Rajasthan High Court
Case No : Civil Second Appeal No. 54/2013

Kasumbi and Others

APPELLANT

Vs

Basanti and Others

RESPONDENT

Date of Decision : 03-03-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Rajasthan Tenancy Act, 1955 — Section 175, 207, 42

Citation : (2015) 03 RAJ CK 0054

Hon'ble Judges : Vineet Kothari, J.

Bench : Single Bench

Advocate : L.R. Mehta, Ramit Mehta and Deepesh Beniwal, for the Appellant;
O.P. Mehta, Vasudev Gaur and Varun Goyal, Advocates for the Respondent

Judgement

Dr. Vineet Kothari, J.—Both the learned counsel for the parties have advanced arguments and have also relied upon following judgments of Hon''ble the Supreme Court and this Court in support of their rival contentions.

2. Mr. L.R. Mehta, learned counsel for the appellants/plaintiffs submitted that since initial sale dated 25.07.1975 was void-ab-initio, there was actually no need to file any suit, and the suit even if so filed by the plaintiffs, the same could not be held to be barred by limitation and he relied upon the following judgments:-

1. Amrendra Pratap Singh Vs. Tej Bahadur Prajapati and Others,
2. Lincai Gamango and Others Vs. Dayanidhi Jena and Others, .
3. State of Rajasthan Vs. Uka and Others, Bhav Singh and Others, Ranchhod Lal and Others and Hem Singh and Others, .
4. The State of West Bengal Vs. Kesoram Industries Ltd. and Others,
5. Prem Singh and Others Vs. Birbal and Others,
3. On the other hand Mr. O.P. Mehta, learned counsel appearing on behalf of

respondents/defendants submitted that even sales protected by Section 42 of the Act have to be challenged, subject to the law of limitation and he relied upon following judgments:-

1. Ram Karan (Dead) through LR"s and Ors. Vs. State of Rajasthan and Ors. reported in 2014 (2) WLC (SC) Civil 369.
2. Nathu Ram (Dead) By LR"s and Ors. Vs. State of Rajasthan and Ors. reported in 2006 (1) RRT 383 (SC).
3. Babu Singh Vs. State of Rajasthan and Others,
4. State of Punjab and Others Vs. Gurdev Singh,
5. Abdul Rahim and Others Vs. SK. Abdul Zabar and Others, .
6. Prem Singh and Others Vs. Birbal and Others, .
7. Hamida Begum Vs. Umran Bib and Ors. reported in AIR 2005 (NOC) 2423 (Cal.)
8. Hanja Ram and Ors. Vs. State of Rajasthan and Ors. reported in RRD 2007 187
9. Shri Santoshkumar Shivgonda Patil and Others Vs. Shri Balasaheb Tukaram Shevale and Others, .
10. Anandi Lal Vs. State of Rajasthan and Others,
11. Khatri Hotels Private Limited and Another Vs. Union of India (UOI) and Another, .
12. Smt. Dayawati and Others Vs. Madan Lal Varma and Others, .
13. Bogidhola Tea and Trading Co. Ltd. and Another Vs. Hira Lal Somani,
14. Kamlesh Babu and Others Vs. Lajpat Rai Sharma and Others, .
15. Gannmani Anasuya and Others Vs. Parvatini Amarendra Chowdhary and Others, .
16. Mahboob Pasha Vs. Syed Zaheeruddin and Others, .
17. Cambridge Trust of India Tatisilwai Vs. State of Jharkhand and Others--> .
18. State of Maharashtra Vs. Sadiq and Company, .
19. Raj Kumari Devi, Kanhya Singh, Bablu Singh and Chunchun under the Guardianship of her Mother Raj Kumari Devi Vs. Mundrika Devi and Others--> .
4. Mr. L.R. Mehta, learned counsel appearing for the appellants/plaintiffs, however, conceded during the course of arguments that the suit for cancellation of the sale-deed dated 25.07.1975 having been filed on 26.11.2011 by the plaintiffs/appellants, manifestly appears to be barred by law of limitation, but the relief of injunction sought in the suit which provided recurring cause of action to

the plaintiffs, could not have been refused and so also the relief declaration of status of the plaintiffs as "Khatedar(s)" also could not have been refused by the learned first appellate court also as barred by limitation.

5. Having heard the learned counsels for the parties at length, this Court is of the opinion that the present second appeal deserves to be admitted as some substantial questions of law do arise in the present case.

6. Admit. Fresh notices need not be issued as the contesting respondents are already served and represented through their counsels.

7. The following substantial questions of law are framed for consideration by this Court:-

1. Whether a sale of agricultural land by a person belonging to SC/ST category to another person outside the same category, as hit by the general restriction prescribed under Section 42 of the Rajasthan Tenancy Act, is required to be declared void and possession of such category of persons belonging to SC/ST category, has to be protected at all levels and is required to be restored to them, irrespective of any number of transfers subsequently made to a person not belonging to SC/ST category and if such suit is required to be filed and if it is actually so filed, will such suits also be governed by the relevant law of limitation or not?

2. Whether the suit filed by the plaintiffs belonging to ST category for cancellation of sale-deed dated 25.07.1975 executed by Mangilal S/o. Joga and Roopa Ram S/o. Joga Bheel in favour of Jassa Ram S/o. Peetha Ram Sargara (SC caste), for declaration of status of Khatedar of plaintiffs as ST persons holding the said land and for injunction against the defendants, has been rightly dismissed as barred by limitation by the first appellate court below though the suit was decreed by the trial court?

3. Whether the law of limitation applies to the relief claimed in such a suit by a person belonging to Scheduled Caste/Scheduled Tribe community for declaration of their status as "Khatedar/Tenant" belonging to ST community covered by the protection of Section 42 of the Rajasthan Tenancy Act, 1955 or not?

4. Whether the law of limitation applies for a relief of injunction claimed by such plaintiffs belonging to SC/ST community entitled to the protection under Section 42 of the Rajasthan Tenancy Act, 1955 for the relief of injunction claimed in civil suit instituted before the civil court?

5. Whether the bar against civil suit as per Section 207 of the Rajasthan Tenancy Act, 1955 will apply to the relief of injunction claimed before the civil court in such a suit instituted by the plaintiffs/appellants?

6. Whether in the absence of any written-statement filed by any of the defendants in the present suit and subsequent facts brought on record of the first appellate court along-with application filed by the defendants, Smt. Basanti

and others, under Order 41 Rule 27 CPC, who had sought a leave to file said appeal before the first appellate court and whether such additional evidence adduced by them could be considered by the first appellate court or not?

7. Whether the fact about the proceedings under Section 175 of the Rajasthan Tenancy Act, 1955 and other proceedings before the revenue courts for mutation in the revenue record undertaken by the plaintiffs/appellants and having terminated against them before filing of the present on 26.11.2011, having not been disclosed in the plaint disentitled the plaintiffs from any relief in the present suit?

8. Heard on interim relief also.

9. In the circumstances of the case, the status quo of the suit land in question measuring 32 Bigha covered under Khasra No. 560/1 and 560/2 situated at Village - Dhinano-Ki-Dhani, Village Pal, Tehsil and District: Jodhpur, as it exists today, shall be maintained by all the concerned parties.

10. The stay application is, accordingly, disposed of. Record of the courts below has already been received.

11. List the appeal for hearing in due course.