

(2015) 04 RAJ CK 0156

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2751 of 2015

Kulveer Singh and Others

APPELLANT

Vs

The Board of Revenue

RESPONDENT

Date of Decision : 22-04-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 96
Constitution of India, 1950 — Article 227
Rajasthan Tenancy Act, 1955 — Section 188, 53, 92A
Transfer of Property Act, 1882 — Section 52

Citation : (2015) 04 RAJ CK 0156

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : S.L. Jain, for the Appellant; Sudhir Sharma, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Arun Bhansali, J.

1. This writ petition has been filed by the petitioners aggrieved against judgment dated 12.03.2015 passed by the Board of Revenue, Ajmer ("the Board"), whereby its appeals against the judgment and decree dated 08.08.2006 passed by the Revenue Appellate Authority, Sriganganagar ("the RAA") has been dismissed.

2. The petitioners, claims themselves to be the bonafide purchasers of land situated at Chak 2 BWSM (Barewala), Murabba No. 4 at Stone No. 289/335 from Smt. Sujan Kaur vide sale deed dated 08.03.1996 and 01.12.2000. Respondents No. 4 to 7 filed suit under Section 53, 92A and 188 of the Rajasthan Tenancy Act, 1955 ("the Act") against Sujan Kaur and two other legal heirs of Tara Singh, who had died on 01.05.1990, claiming that they had equal share in the property. It was alleged that the Will dated 19.02.1990 allegedly executed in favour of Sujan Kaur was forged and fabricated and they were entitled to their share in the

property.

3. Sujan Kaur filed written statement and controverted the averments made in the plaint and claimed right based on the Will executed by Tara Singh.

4. The SDO by his judgment dated 24.12.2001 came to the conclusion and passed preliminary decree holding that the defendant Sujan Kaur was entitled to 1/7th share only and rest of the sale was void and directed partition based on proposal to be given by Tehsildar. Whereafter, the final decree dated 21.03.2002 was also passed by the SDO.

5. The petitioner having come to know of passing of the decree, filed appeals after seeking permission under Section 96 CPC, however, the appeals were dismissed by the RAA by its judgment dated 08.08.2006 holding that the property was sold during the pendency of the suit and, therefore, the same was effected by lis pendens and dismissed the appeals filed by the petitioners.

6. Feeling aggrieved, the petitioners filed second appeals before the Board, the Board after hearing the parties by its judgment dated 12.03.2015 upheld the judgment and decree passed by the SDO and the RAA and held that the appellants do not get right more than that of Sujan Kaur as the suit property was transferred during the pendency of the proceedings before the SDO and, consequently, dismissed the appeals.

7. It is submitted by learned counsel for the petitioners that the SDO was not justified in decreeing the suit filed by Ranjeet Singh and others as Tara Singh had already executed a Will in favour of Sujan Kaur. Sujan Kaur in her written statement clearly relied on the Will, however, though the SDO came to the conclusion that the validity of the Will can only be examined by Civil Court, the SDO committed error in ignoring the Will. It was further submitted that the petitioners were bonafide purchasers of the land in question and were granted liberty by the Board itself to contest the decree passed by the SDO on merits, however, the Board has dismissed the appeal merely on account of fact that the appeal filed by Sujan Kaur had been dismissed by the RAA and, therefore, the petitioners cannot be heard beyond the rights of Sujan Kaur, which resulted in grave injustice to the petitioners.

8. Learned counsel for the respondents supported the judgment passed by the three authorities below. It was submitted that all the three authorities below have concurrently held against the petitioners and the findings recorded by the three authorities below are not open to challenge under Article 227 of the Constitution of India in the extra-ordinary jurisdiction of this Court. It was submitted that admittedly the sale took place during the pendency of the suit not only once but on two occasions i.e. in the year 1996 and 2000 only with a view to deprive plaintiffs from their share in the suit property, which cannot be sustained. It was further submitted that from the statement of Sujan Kaur herself, the Will was surrounded by suspicious circumstances and the burden lay on her to get a declaration regarding validity of the Will and the authorities below

were justified in ignoring the Will and, consequently the writ petition filed by the petitioners deserves to be dismissed.

9. I have considered the rival submissions and have perused the material placed on record.

10. It is not in dispute that Tara Singh in whose name the land in question stood died on 01.05.1990, based on a Will dated 19.02.1990, which Will was got registered on 28.03.1995 i.e. after five years of death of Tara Singh, Sujan Kaur got the mutation of the land done in her favour on 03.06.1995. The suit in question by plaintiffs, who are children of Tara Singh was filed on 01.09.1995 challenging the mutation dated 03.06.1995. However, during the pendency of the suit, Sujan Kaur transferred the suit property by registered sale deed dated 08.03.1996 and 01.12.2000 to the petitioners, however, the said fact was not brought to the notice during the pendency of the suit. In the suit the plaintiffs claimed that the Will dated 19.02.1990 was fraudulent and concocted based on several grounds and, therefore, they were entitled to partition of the suit property. The defendant Sujan Kaur defended the mutation in her name based on the fact that the Will was executed by Tara Singh in her favour and based on the said document, she was entitled to the property.

11. The SDO while deciding the suit came to the conclusion that the burden to prove the Will lay on defendant Sujan Kaur, which she failed to discharge, though the adjudication regarding the validity of the Will can only be granted by the Civil Court and ignoring the Will, decreed the suit filed by the plaintiffs for partition holding them entitled to 1/7th share each.

12. Sujan Kaur filed appeal before the RAA and the petitioners filed applications under Order I, Rule 10 CPC, the appeal filed by Sujan Kaur and the applications filed by the petitioners were dismissed by the RAA, against which, revision petitions were filed by the petitioners before the Board, which revision petitions were dismissed and it was left open for the RAA to decide the appeals, which were filed by the petitioners alongwith permission to file appeals and were pending before the RAA independent of dismissal of appeal filed by Sujan Kaur.

13. The RAA after thoroughly considering all the pleas raised by the petitioners held that the Will had no effect on the rights of the plaintiffs and as the transfer was made during the pendency of the suit, the same were hit by principles of lis pendens and, consequently, dismissed the appeal.

14. The entire claim of Sujan Kaur and the petitioners is based on the Will dated 19.02.1990 said to have been executed by Tara Singh. The plaintiffs, who are children of Tara Singh, pointed out suspicious circumstances regarding the execution of the Will and claimed the same to be fraudulent and concocted. The burden to prove a Will irrespective of the fact whether allegations have been made by any of the parties questioning the validity of the Will always lies on the propounder of the Will who is required to prove that the Will in question was the last Will of the deceased and that he was in valid disposing state of mind while

executing the document. Much emphasis has been laid by the learned counsel for the petitioners that no efforts were made by the plaintiffs to get the Will annulled and as the revenue courts have no jurisdiction to pronounce on the validity of the Will, the SDO was bound to accept the Will. The preposition sought to be canvassed by the learned counsel for the petitioners has no basis in law as the burden to prove the Will and to get issue regarding the valid execution squarely lay on the propounder of the Will i.e. Sujan Kaur and she having failed to do the same and the revenue courts having noticed the suspicious circumstances regarding the execution of the Will mainly based on the cross-examination of Sujan Kaur, it cannot be said that in the facts and circumstances of the present case, the courts below were not justified in decreeing the suit filed by the plaintiffs for partition of the suit property.

15. It is also not in dispute that the transfer of the suit property took place during the pendency of the suit and, therefore, under the provisions of Section 52 of the Transfer of Property Act, 1882, the petitioners cannot avoid the consequence of the decree passed by the SDO. The Board was, therefore, justified in coming to the conclusion that the petitioners cannot claim any right better than that of Sujan Kaur, who had 1/7th share in the suit property.

16. In view what has been discussed hereinbefore, there is no substance in the writ petition, the same is, therefore, dismissed.