
(1971) 12 RAJ CK 0011

In the Rajasthan High Court

Case No : Civil Revision Application No. 405 of 1970

Lal Singh and Others

APPELLANT

Vs

Tejsingh and Another

RESPONDENT

Date of Decision : 22-12-1971

Acts Referred:

Hindu Minority and Guardianship Act, 1956 — Section 7(2), 8(2), 8(3)

Rajasthan Court Fees and Suits Valuation Act, 1961 — Section 24(a), 38(1)(a), 7(2)(a)

Citation : AIR 1972 Raj 137 : (1971) 4 WLN 674

Hon'ble Judges : Jagat Narayan, C.J

Bench : Single Bench

Advocate : L.R. Mehta, for the Appellant; S.T. Porwal, for the Respondent

Final Decision : Allowed

Judgement

Jagat Narayan, C.J.—This is a revision application by defendants Nos. 1 to 3 against an appellate order of the Additional District Judge, Ganganagar, holding that the Civil Judge, Ganganagar has jurisdiction to try the present suit.

2. The suit was instituted by Tej Singh, and Gurucharan Singh sons or Narendra Singh in 1967 for a declaration that the sale-deed dated 18-7-57 by which their father Narendra Singh transferred 2 squares of agricultural land in Chack 51 GG for Rs. 24,000/- to the defendants is not binding on them and for possession over the land sold under the sale-deed. Mesne profits were also claimed. The rent of the agricultural land over which possession was claimed is Rs. 1.62 per Bigha and the area is 50 Bighas. The suit for possession was valued at Rs. 2,031.25 u/s 7(2)(a) of the Rajasthan Court-fees and Suits Valuation Act. A sum of Rs. 430/- was claimed as mesne profits. The valuation of the suit was thus Rs. 2,461.25. It was instituted in the court of the Civil Judge, Ganganagar. On an objection by the applicants the learned Civil Judge returned the plaint for presentation to the court of the Senior Civil Judge. This order was set aside by the learned Additional District Judge on appeal. He held that the suit was one for declaration and possession and court-fee was payable u/s 24(a) of the Rajasthan

Court-fees and Suits Valuation Act.

3. On behalf of the applicants it is contended that the suit is substantially one for the cancellation of the sale-deed and that court-fee is payable u/s 38(1)(a) of the Rajasthan Court-fees and Suits Valuation Act, which runs as follows:--

"38. Suits for cancellation of decrees etc.-- (1) In a suit for cancellation of a decree for money or other property having a money value, or other document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest in money, movable or immovable property, fee shall be computed on the value of the subject-matter of the suit, and such value shall be deemed to be-

(a) if the whole decree or other document is sought to be cancelled, the amount or value of the property for which the decree was passed or other document was executed."

Reliance is placed on the decision of a Division Bench of this Court in Sukh Lal and Others Vs. Devi Lal and Others, The appellants were the defendants in the trial court. The plaintiffs-respondents were the sons of respondent Bakhtawarlal who was impleaded as defendant No. 5 in the suit. The plaintiffs' case was that their father Bakhtawarlal and the plaintiffs were members of a joint Hindu family, and that Bakhtawarlal sold certain property to defendants Nos. 1 to 4 namely Snkhilal, Hukmichand, Kastoorchand and Gahrilal by a sale-deed dated 10th June, 1944 for a sum of Rs. 800/-, and that the said property was ancestral property of the family and had been sold to the vendees above named without the consent of the plaintiffs and without any family necessity. It was observed as follows:--

"There is a difference between a suit for the cancellation of an instrument and one for a declaration that the instrument is not binding on the plaintiff. 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 notwithstanding the fact that the suit may have been framed as a suit for a declaration. On the other hand, when the plaintiff is seeking to establish a title and finds himself threatened by a decree or 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 he himself is concerned, and therefore, he may sue for a declaration to that effect and not for the cancellation of the decree or the deed. In this case it is obvious that it would be impossible for the plaintiffs to establish their title to the property in question unless they sued to remove an obstruction which would otherwise be insuperable because the sale made by the father would be binding upon the sons, unless it is set aside. We therefore hold that the present suit of the plaintiffs was

substantially a suit not for a declaration that a certain sale-deed was inoperative against them, but for the cancellation of the said sale-deed in toto."

Having heard the learned counsel for the plaintiffs I am of the opinion that the above decision is applicable to the facts of the present case. The sale-deed in the present case was executed by the father of the plaintiffs when they were minors. It was executed on their behalf. The plaintiffs cannot get possession over the property in suit till the sale-deed executed by their father on their behalf is cancelled.

4. The suit is based on there grounds. One is that the sale-deed was without consideration. Another is that it was executed without obtaining the permission of the Court as required by Section 8(2) of the Hindu Minority and Guardianship Act and the last ground is that the sale was not for the benefit of the minors or their estate. Section 8(3) of the Hindu Minority and Guardianship Act provides that any disposal of immovable property by a natural guardian in contravention or Sub-section (1) or Sub-section (2) is voidable at the instance of the minors. If a sale-deed is voidable then it is necessary to get it cancelled before one can be entitled to the property disposed of by it. The relief of cancellation of a sale-deed or a decree can only be granted by a civil court and not by revenue court. The suit therefore lies in the civil court.

5. As the suit is substantially one for cancellation of the sale-deed dated 18-7-57 court-fee shall be computed u/s 33(1)(a) of the Rajasthan Court-fees and Suits Valuation Act on the value of the property for which the sale-deed was executed namely Rs. 24,000/. The valuation for purposes of jurisdiction will be the same. The suit is therefore beyond the pecuniary limits of the jurisdiction of the Civil Judge. It is only triable by the District Judge.

6. I accordingly allow the revision application, set aside the appellate order of the learned Additional District Judge and direct that the plaint shall be returned to the plaintiffs for presentation to proper Court.

7. In the circumstances of the case, I leave the parties to bear their own costs of this revision application.