

(2018) 08 RAJ CK 0117
In the Rajasthan High Court
Case No : Civil Second Appeal No. 26 of 2018

LRs Of Jalam Singh @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 21-08-2018

Acts Referred:

Rajasthan Land Revenue Act, 1956 — Section 91

Citation : (2018) 08 RAJ CK 0117

Hon'ble Judges : ARUN BHANSALI, J

Bench : Single Bench

Advocate : Muktesh Maheshwari, Idan Singh, Prathistha Dave

Final Decision : Dismissed

Judgement

This appeal is directed against the judgment and decree dated 12.01.2018 passed by the Additional District Judge, Balotra, whereby the appeal filed by the appellant against the judgment & decree dated 27.10.2016 passed by the Senior Civil Judge, Barmer has been rejected.

The appellants filed a suit for permanent injunction inter-alia with the averments that land of their ownership and possession situated at Mohalla

Liladiya Dhora in Barmer measurement whereof were indicated in para 1 of the plaint was in possession from the beginning of their father / grand-

father, the patta in this regard was issued by the ex-jagirdars of Barmer in samvat 2004 since then they were in possession of the land. It was claimed

that the houses etc. are existing on the land and temple of Sanishchar Ji and Hanuman Ji was also there, some plots from the land were sold and rest

of the land has been marked, the land was never in possession of the State Government, Municipal Board, Barmer and that at no stage, the patta given

by the jagirdars was challenged.

Further submissions were made that a suit was filed by the plaintiffs and other

co-owners against one Hukma Ram for possession, which suit was decreed, wherein the patta in question was recognized.

A criminal case was lodged against the plaintiffs and other co-owners, wherein also the patta was recognized and FR was given. Submissions were

also made that notice under Section 91 of the Land Revenue Act were issued to one Sang Singh, which was responded, wherein for the first time the

plaintiffs and other co-owners came to know that the land of their patta was not recorded as abadi and has been recorded as Government land in

khassra Nos.1431, 1431/5 and 1433. Repeated notices were given for recording the land as of their ownership, which were not responded and few

days back, the respondents attempted to dispossess them.

Based on the said submissions, the relief was sought seeking permanent injunction against the respondents from dispossessing the plaintiffs and from

allotting, regularizing and transferring the land in question.

The suit was resisted by the Municipal Board, wherein the ownership and possession of the plaintiff was denied. It was claimed that the land in

question was rightly recorded as Government land and that the same was in possession and ownership of the defendants. The submissions made

regarding the previous suit and the criminal proceedings were denied.

Based on the pleadings of the parties, the trial court framed twelve issues. On behalf of the claimants five witnesses were examined and 26

documents were exhibited. On behalf of the defendants, four witnesses were examined and 06 documents were exhibited.

After hearing the parties, the trial court came to the conclusion that the plaintiffs have failed to prove important facts from their evidence and have

expressed ignorance pertaining to the said facts, the suit for permanent injunction has been filed without seeking declaration and besides the plaintiffs,

the relief has been sought for other co-tenants and transferees of the property. Whereafter, various issues were dealt with and the suit was dismissed.

Feeling aggrieved, the plaintiffs filed first appeal. The first appellate court after hearing the parties and re-assessing the entire evidence available on

record, inter-alia recorded the following findings :-

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Based on the above findings, the appeal was dismissed.

It is submitted by learned counsel for the appellants that the courts below committed grave error in dismissing the suit / appeal filed by the appellants.

It was submitted that the appellants were in possession of the land in question based on patta issued by the ex-jagirdars and that the respondents had

no right to record the land in question as Government land and therefore, when the plaintiffs were sought to be dispossessed / their possession

interfered with, the suit filed by them for injunction was maintainable and both the courts committed error in coming to the conclusion that in absence

of a suit seeking declaration, the plaintiffs were not entitled to any relief.

Further submissions were made that already findings pertaining to the validity of patta have been recorded by the competent civil court and even in

criminal proceedings, the patta has been held as valid and therefore, there was no necessity to seek declaration for protecting the possession by the

plaintiffs and therefore, the judgment impugned passed by the courts below deserves to be quashed and set-aside.

Learned counsel appearing for the respondents supported the judgments impugned. It was submitted that the nature of patta which is sought to be

relied on by the plaintiffs is wholly dubious, the same does not bear any stamp duty and/or is not registered and therefore, the patta relied on does not

create any right in favour of the plaintiffs. Further submissions were made that as in the so-called previous suit, the defendants were not party, any

finding recorded in their absence cannot be binding in the present case.

Submissions were also made that once the land has been recorded as Government land, the only option left for the plaintiffs was to seek appropriate

declaration before the competent court and a simple suit for injunction was not maintainable and therefore, the appeal filed by the appellants deserves

dismissal.

I have considered the submissions made by learned counsel for the parties and

have perused the material available on record.

As already noticed herein-before, the suit for injunction was filed based on the patta said to have been issued by the exjagirdars. Patta as noticed by

the courts below does not bear either the stamp duty and/or is also unregistered. Admittedly, the land regarding which the injunction has been sought,

is recorded as Government land, regarding which, the plaintiffs admittedly have not taken any steps for rectification of the said entries before the

courts of competent jurisdiction.

Learned counsel for the respondents is justified in her submissions that any finding recorded in the suit pertaining to the validity of the patta to which

the defendants are not a party, the said finding cannot be used against the defendants and/or the same are in any case not binding.

The appellate court in its elaborate and exhaustive judgment has recorded categoric findings that the suit filed by the plaintiffs is totally open handed,

inasmuch as, the plaintiffs have already transferred large chunks of land to about 100 persons, which presently is not in their ownership and

possession, however, the suit pertains to the land including the transferred land. Further the court was also of the opinion that the nature of injunction,

which was sought, without specifying the land presently under the possession of the plaintiffs, no blanket injunction can be granted based on a patta,

from which the land has been transferred to innumerable persons. The findings of fact recorded by the two courts below and the reasoning given

for dismissal of the suit / appeal cannot be faulted on any ground. There is absolutely no substance in the present second appeal, no substantial

question of law arises in the present appeal, the same is, therefore, dismissed.