
(1968) 07 RAJ CK 0015
In the Rajasthan High Court
Case No : Civil Writ Petition No. 41 of 1961

Manphool and Another

APPELLANT

Vs

Dulichand and Others

RESPONDENT

Date of Decision : 15-07-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Rajasthan Revenue Courts (Procedure and Jurisdiction) Act, 1951 — Article 10

Citation : AIR 1969 Raj 169 : (1969) RLW 142

Hon'ble Judges : D.S. Dave, C.J.; V.P. Tyagi, J.; D.M. Bhandari, J

Bench : Full Bench

Advocate : M.M. Vyas, for the Appellant; Sumerchand Bhandari, for the Respondent

Final Decision : Dismissed

Judgement

Dave, C.J.—This is a writ application under Article 226 of the Constitution of India by Manphool and Sheoram who are residents of Rejri in district Ganganagar. It is urged that the decision of the Board of Revenue dated 25-10-60 passed in Second Appeal No. 6/56 Dulichand and Ors. v. Manphool and Sheoram is manifestly wrong and therefore it is prayed that it should be set aside and the learned members of the Board should be directed to rehear the said appeal and decide it afresh on merits. In order to appreciate the contention of the petitioners, it would be proper to narrate briefly the facts which have given rise to this application.

2. The petitioners filed a suit on 14-3-52 in the court of Assistant Collector, Rajgarh, It was averred by them that their father had Khatedari rights over a field of 90 kachcha bighas, namely khasra No. 142 in village Rejri. He died in Samwat 1992 and at that time, petitioner No. 1 was four years old. while petitioner No. 2 was only a few months old. In Samwat 1994, the petitioners' mother shifted to Bikaner. leaving the said field under the supervision and management of Chimnaram, father of the present non-petitioners, since he was

distantly related to them. It was further averred that in Samwat 1996 the said land came under the management of the Court of Wards, that thereafter, Chimnaram, in collusion with the stall of the Court of Wards, got certain entries made in his favour in revenue records. It was alleged that Chimnaram was unlawfully retaining possession of the land, that he was a trespasser and therefore, the plaintiffs prayed for declaration and restoration of possession of the disputed land. Chimnaram contested the suit. After framing issues and recording evidence of both the parties, the Assistant Collector dismissed the suit on 31st August, 1954. Aggrieved by that decision, the present petitioners hied an appeal before the Commissioner, Bikaner Division. On 14-4-55 he allowed the appeal, set aside the judgment of the lower court and held that the land in dispute belonged to the plaintiffs. Chimnaram then filed an appeal before the Board of Revenue against the said decision. The learned members of the Board observed that the judgment passed by the Commissioner was not a proper judgment since it was incapable of execution and so they set it aside and remanded the case with direction to give a proper judgment. After this decision dated 31-10-55, the case went back to the Commissioner Bikaner Division. He heard the appeal afresh and decided it on 14-9-56 in favour of the plaintiffs. Chimnaram defendant having died, his sons and legal representatives filed an appeal before the Board of Revenue. This second appeal was decided by the Board on 25-10-60. This time it was urged by the appellants before the Board of Revenue that the plaintiffs had brought the suit for ejectment of Chimnaram from the disputed land on the ground that he was a trespasser who had retained possession of the land without lawful authority, and that such a suit was not maintainable before a revenue court. This argument found favour with the learned members of the Board. They followed the view expressed by a Division Bench of this Court in *Gordhan v. Kishan Lal* 1955 RLW 23 and held that the revenue court had jurisdiction to entertain and decide only that suit against a trespasser against whom it was alleged that he had taken possession of land without lawful authority, but it had no jurisdiction to entertain and decide suits against trespassers who, after entering upon the disputed property lawfully, retained its possession without lawful authority. The learned members allowed the appeal, set aside the judgment and decree of the trial Court and the appellate court and remanded the case to the trial Court with direction that the suit be tried and decided afresh in accordance with law.

3. It may be noted here that in the opinion of the learned members of the Board, although the Assistant Collector had no jurisdiction to entertain and decide the present suit upto 14th October, 1955 because the Rajasthan Revenue Courts (Procedure and Jurisdiction) Act was in force by that time the position had changed from 15th October, 1955 when the Rajasthan Tenancy Act came into force and the definition of "trespasser" under the new Act covered both kinds of trespassers. Thus in the view of the learned members of the Board, although the Assistant Collector had no jurisdiction to try the suit till the date of his decision, he got jurisdiction to try and decide the suit after 15-10-55 and it was for this

reason that the case was remanded.

4. When the writ application came for hearing before a Division Bench of this Court on 7-9-1964, it was urged by the petitioners' learned counsel that the view taken by this Court in 1955 RLW 23 required reconsideration, because a learned Single Judge of this Court had taken a different view in an earlier case and also in a later case *Sawa and Another Vs. Naki Mohammad and Another*. On this request, the Court thought it proper to refer the matter to a Full Bench and this is how the case has come before us.

5. Learned counsel for the petitioners has urged before us that according to the well known meaning of the term "trespasser", it includes both a person who enters into or upon property in the possession of another person unlawfully and a person who having lawfully entered into or upon such property of another person unlawfully remains there. It is contended that the narrow interpretation of the term, as given in 1955 RLW 23 and followed by the members of the Board of Revenue, so as to include only the first kind of trespasser, is not correct.

6. Learned counsel for the respondents, on the other hand, contends that in 1955 RLW 23, the learned Judges were called upon to interpret the meaning of the term "trespasser" as it appeared in Article 10 of Group B of the First Schedule of the Rajasthan Revenue Courts (Procedure and Jurisdiction) Act, 1951, that the meaning given by them to that term in the context in which it appeared was unexceptionable and the view expressed by them was quite correct.

7. We have given due consideration to the arguments of learned counsel appearing on both the sides.

8. It may be observed that before the integration of the various covenanting princely States of Rajasthan, different tenancy laws were in force in different States. After the formation of the State of Rajasthan, it was considered necessary that the revenue courts of the integrated State of Rajasthan should have uniform jurisdiction and uniform procedure of law and, therefore, the Rajasthan Revenue Courts (Procedure & Jurisdiction) Act (No. 1 of 1951) was enacted. The underlying purpose of the law is clear from the preamble of that Act which was in the following language:--

"Whereas it is expedient, pending the enactment of a comprehensive law for the whole of Rajasthan relating to agricultural tenancies, land tenures, revenue, rent, survey, record, settlement and other matters connected with land, to provide for and regulate the jurisdiction and procedure of revenue courts and officers in relation to such matters arising under the laws in force in the covenanting States of Rajasthan."

Section 7 of the said Act which is reproduced below provided that all suits and applications of the nature specified in the first and second schedules shall be heard and determined by a revenue court and that no court other than a revenue

Court shall take cognizance of any such suit or application or of any suit or application which is based on a cause of action in respect of which any relief could be claimed by means of any such suit or application. Section 7 runs as under :--

"Section 7 -- Suits and applications cognisable by revenue courts only-

(1) All suits and applications of the nature specified in the first & second schedules shall be heard and determined by a revenue court,

(2) No Court other than a revenue Court shall take cognizance of any such suit or application, or of any suit or application based on a cause of action in respect of which any relief could be claimed by means of any such suit or application.

Explanation :-- If the cause of action is one in respect of which relief might be granted by the revenue court, it is immaterial that the relief asked for from the civil Court is greater than, or additional to, or is not identical with, that which the revenue court could have granted."

9. In the First Schedule, Group B, Article 10 appeared in the following language-

8. No.

Description of suit or application

Period of limitation

Time from which period begins to run

Proper Court-fee

Remarks

1 to 9.

10.

For the ejectment of trespasser taking possession of land without lawful authority.

12 years

When the act of trespass is committed.

Aa in the Court-fees Act on the rent payable,

The Rajasthan Revenue Courts (Procedure and Jurisdiction) Act, 1951, was repealed by Section 3 of the Rajasthan Tenancy Act No. 3 of 1955 which came into force with effect from 15-10-55. Section 5, Clause (44) of this Act defines the term "trespasser" as follows:--

"Section 5. Clause (44) -

"Trespasser" shall mean a person who takes or retains possession of land

without authority or who prevents another person from occupying land duly let out to him."

A comparison of Article 10 and Clause (44), given, above, would at once show that while in the Rajasthan Tenancy Act the definition of the term "trespasser" includes both a person who takes possession of another man's land without authority and a person who retains possession of another man's land without authority, Article 10 of Group B of the First Schedule of the Rajasthan Revenue Courts (Procedure & Jurisdiction) Act, 1951, qualified the term "trespasser" with the words "taking possession of the land without lawful authority". The absence of the words "or retaining" between the words "taking" and "possession" in the said Article is significant.

10. In 1955 Raj LW 23, it was alleged by plaintiff Gordhan and his brother that their land was made over to defendant Kishenlal and others during their minority on the condition that it would be returned to them when they would attain the age of majority and would like to manage their own land. It was further alleged that even though the plaintiff's had asked the defendants to return their land, they declined to do so and thus they are liable to ejectment as trespassers. The suit was instituted in the Court of Assistant Collector, Bharatpur, who returned the plaint to the plaintiffs for presentation to the civil court on the ground that it was triable by a civil court. When the plaint was presented before the Civil Judge, he thought that it was covered by Article 10 of Group B of the First Schedule of the Rajasthan Revenue Courts (Procedure and Jurisdiction) Act, 1951, and was triable by a revenue Court A reference was, therefore, made by the Civil Judge to the High Court u/s 40 of the said Act which provided for such a reference in case there was a doubt whether it was the civil court or the revenue court which was competent to entertain and decide the suit. After hearing the parties, the learned Judges came to the conclusion that the jurisdiction of the civil court was not excluded and that it was triable by the Civil Judge. It was observed by them as follows after referring to Article 10, reproduced above:--

"That Article provides for a suit for the ejectment of a trespasser, taking possession of land without lawful authority. It does not include a suit for dispossession of a person who entered into possession lawfully but whose possession became unlawful by subsequent events. Technically, a person who wrongfully takes possession and a person who lawfully enters into possession but continues to be in possession unlawfully are both trespassers. But Article 10 only provides for a suit to lie in a revenue court in case a person who unlawfully takes possession of land and not for a suit in the case of a trespasser of the second kind. The case is not covered by any of the articles in the Schedule, and the civil courts have not been ousted of the jurisdiction to try a case of this nature."

11. A similar question had arisen in an earlier reference in *Deokishan v. Bhagwandass*, Civil Ref. No. 22 of 1953 decided by a learned single Judge of this Court on 18-12-1953 (Raj). In that case, the learned Judge interpreted Article 10 as including the cases against both kinds of trespassers, that is, those who took

possession of another person's property unlawfully and those who retained possession of another person's property unlawfully. The learned Judge took the help of Section 180 of the U. P. Tenancy Act, 1939, which read as follows:--

"A person taking or retaining possession of a plot of land without the consent of the person entitled to admit him to occupy such plot and otherwise than in accordance with the provisions of the law for the time being in force, shall be liable to ejectment under this section on the suit of the person so entitled and also to pay damages....."

It was not pointed out by the learned Judge if the provisions of the Rajasthan Revenue Courts (Procedure & Jurisdiction) Act, 1951, were borrowed from the U. P. Tenancy Act, 1939. It is obvious that Section 180 of the U. P. Tenancy Act itself covered both kinds of trespassers. In our opinion, Article 10 ought to have been interpreted as it stood and should not have been interpreted by referring to Section 180 of the U. P. Tenancy Act, 1939, when there was nothing to show that the former was borrowed from the U. P. Act.

12. In Sawa and Another Vs. Naki Mohammad and Another, referred to above, a similar type of reference came before the same learned single Judge but by the time the reference was made, the Rajasthan Tenancy Act, 1955, had come into force and Section 183 thereof provided for a suit against trespassers of both kinds in the revenue court. It was, therefore, rightly held by the learned Judge that the suit was exclusively triable by the revenue court.

13. It is true that in 1955 Raj LW 23 the attention of the learned Judges was not drawn to the views of the learned single Judge expressed in Civil Ref. No. 22 of 1953, D/- 18-12-1953 (Raj), referred to above. But that does not affect the soundness of the opinion expressed therein. It is well settled that wherever some special law provides for excluding the jurisdiction of a civil court in a case of a civil nature, the exclusion of the Civil Court's jurisdiction should not be presumed unless the provision relating to exclusion of the Civil Court's jurisdiction is made in clear and unambiguous language. Section 7 of the Rajasthan Revenue Courts (Procedure & Jurisdiction) Act, 1951, provided for exclusive jurisdiction of the revenue Courts in certain cases which were by that time heard by the Civil Courts. The learned Judges interpreted the language of Article 10 literally as it stood and they considered it proper to give full meaning to the words "taking possession of the land without lawful authority" qualifying the term "trespasser". They thought that if the Legislature meant to cover by this Article both kinds of trespassers, there was nothing to prevent it from inserting the words "or retaining" between the words "taking" and "possession" appearing in the said Article. It is urged that there could be no reason for the Legislature to empower the revenue courts to deal with the cases of one kind of trespassers under the said Article 10 and not to deal with the cases against the second kind of trespassers. For aught we know, one of the reasons may be that the cases of the second kind of trespassers are not easy and very often they involve difficult questions about possession and title. It may be that since the Legislature was for

the first time giving exclusive jurisdiction to the revenue courts to hear the cases against trespassers, it may not have thought it proper to invest the revenue courts with the exclusive jurisdiction to deal with the cases of both kinds of trespassers and, therefore, it might have considered it proper to retain with the civil Courts their jurisdiction to deal with the cases relating to the second kind of trespassers. At any rate, it appears from the judgment of the learned Judges that they were not unaware of the wider meaning of the term "trespasser" as given in other Acts, but since the Legislature restricted the meaning of the term "trespasser" in Article 10, they considered it proper to confine its scope strictly according to the language of the said Article. In our opinion, it cannot be said in the absence of any other data giving a clear indication about the intention of the Legislature to the contrary, that the learned Judges were wrong in giving literal interpretation to Article in. The learned members of the Board of Revenue have only followed the view expressed in 1955 RLW 23. It appears from their judgment that they have been following this view ever since that case was decided. Under the circumstances, it cannot be said that their decision which is sought to be impugned, is manifestly wrong.

14. We do not see any good ground for interference and the writ application is, therefore, dismissed. In view, how ever, of the conflict of the views in the decisions of this Court, the parties are left to bear their own costs.