

(2001) 12 RAJ CK 0050
In the Rajasthan High Court
Case No : Civil Writ Petition No. 734 of 1987

Moola and Others

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 15-12-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 141
Constitution of India, 1950 — Article 226, 227
Transfer of Property Act, 1882 — Section 52

Citation : (2002) 5 WLC 481 : (2003) 1 WLN 249

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Arun Madan, J.—The petitioners by this petition under Articles 226 & 227 of the Constitution of India have sought a writ in the nature of certiorari or any other appropriate order for quashing the judgment dt. 17.7.1986 passed by the Board of Revenue as well as the judgment dt. 5.11.1984 passed by the Assistant Collector, Bhinmal and that the suit filed by the petitioner should be decreed.

2. Facts relevant for disposal of this petition are epitomised. The petitioners' predecessor in title Taja (since deceased), who was father of petitioner Nos. 1 to 4 and 6 to 10 and husband of petitioner No. 5, filed a suit on 21st April, 1975 in the Court of Assistant Collector, Bhinmal for declaration of Khatedari rights in respect of agriculture land measuring 16 bighas of Khasra No. 366 situated in village Bhadvi, Tehsil Bhinmal, District Jalore. The total area of the land bearing Khasra No. 366 is 112-3 Bighas. The plaintiff Taja's case was that 16 bighas of land lying on the northern side out of the Khasra No. 366 measuring 112-3 Bighas was his Khatedari land and the remaining portion of the land of Khasra No. 366 was in cultivatory possession of defendant Dharma (since deceased), now represented by defendants No. 2 to 7. It was further alleged by the plaintiff Taja that on account of a mistake, the entire land of Khasra No. 366 was entered

in the name of defendant No. 1. It was also alleged by the plaintiff Taja that he had taken the disputed 16 Bighas of land of Khasra No. 366 in exchange of his another field from defendant No. 1 Dharma in the month of Bhadva Badi of Samwat year 2009 and a written deed in respect of which had been executed by the defendant No. 1 Dharma in favour of the plaintiff. In short, on the basis of a deed to be a deed of exchange, the plaintiff Taja claimed Khatedari rights over the disputed 16 Bighas of land of Khasra No. 366 and in his suit he prayed for declaration of his Khatedari rights. The suit was dismissed by the Assistant Collector, Bhinmal vide judgment dated. 5.11.1984. The first appeal was filed before the Revenue Appellate Authority against the judgment dated 5.11.1984 passed by the Assistant Collector, Bhinmal. The first appeal was dismissed by the Revenue Appellate Authority, Jodhpur vide judgment dated 17th June, 1986. The second appeal was preferred before the Board of Revenue, but the same was also dismissed by the Board of Revenue vide judgment dated 17th July, 1986.

3. Hence, this writ petition. However, the petitioners claiming themselves as legal heirs of the original plaintiff Taja have entered into a compromise with Jugta Ram respondent No. 7 (defendant No. 2) who have prayed that the writ petition should be disposed of on the basis of the compromise dt. 29.6.1995, attested on 4.7.1995 by the Sub-Divisional Officer, Bhinmal. This prayer was opposed by the respondent No. 3 (Achlam) in reply dt. 29.8.1996 stating inter-alia that Jugta Ram respondent No. 7 (defendant No. 2) has sold the disputed land to Dana and Achla S/o Dharamji (respondent Nos. 2 & 3) for a consideration of Rs. 29,000/- and a sale-deed was executed on 2nd July, 1988 and it was duly registered and thereby the respondent No. 7 ceased the right or title in the disputed land and, therefore, he is not competent to enter into any compromise in respect of the disputed land and the writ petition cannot be decided in terms of the alleged compromise and that apart, Sarju son of Teja & Smt. Pemi widow of Karma have died. As per registered sale deed dt. 2.7.1988 Jugtaram (respondent No. 7) had sold 16 Bighas of land of Khasra No. 366 to Dana and Achla son of Dharmaji for a consideration of Rs. 29,000/- but, the petitioners and respondent No. 3 have not produced any document to show that the sale deed dt. 2.7.1988 is not in respect of the land in dispute.

4. Hence, this Court after hearing both the parties framed two questions for determination in this petition and by its order dt. 6.7.1999 decided first question referred to hereinbelow against the respondent No. 7 (defendant No. 2):

(1) whether the application dated 5th July, 1997 filed by Shri Jugta Ram respondent No. 7 (defendant No. 2) praying that the writ petition filed on behalf of the petitioner be allowed in terms of the compromise arrived at between the petitioner and Jugta Ram (respondent No. 7--defendant No. 2), duly attested on 4.7.1995 before the Sub-Divisional Officer, Bhinmal, deserves to be allowed?

5. And this Court specifically held that since the respondent No. 7 executed a registered sale-deed in favour of respondent Nos. 2 and 3 on 2nd July, 1988, for a consideration of Rs. 29,000/-, the respondent No. 7 could not enter into the

alleged compromise dated 29th June, 1995 in respect of the disputed land. Ultimately this Court held as under:

11. In light of above reasons, the prayer to dispose of the writ petition in terms of the compromise dated 29th June, 1995 entered into by the petitioners and the respondent No. 7, deserves to be rejected on two grounds. Firstly, that such a prayer is not maintainable, because the writ petition is not a continuation of the suit or an appeal and in view of Section 141 and Rules 3 and 4 of Order XXIII of the Civil Procedure Code, the judgment and decree which have become final, cannot be interfered with on the ground that the parties have entered into a compromise regarding the subject matter. The second ground on which the prayer must be rejected is that the respondent No. 7 sold the disputed 16 Bighas of land of Khasra No. 366 to the respondents No. 2 and 3 for a consideration of Rs. 29,000/- by registered sale-deed dated 2nd July, 1988 and having transferred his right and interest in the land in dispute to the respondent Nos. 2 and 3, ceased to have any right to enter into any compromise with the petitioners regarding the disputed land. Unless, of course he can establish in a court of competent jurisdiction by appropriate proceedings that the alleged sale deed dated 2nd July, 1988 is not binding on him. The prayer to dispose of the writ petition in terms of the compromise dated 29th June, 1995 deserves to be rejected and is hereby rejected.

6. However, second question mentioned below remained undecided and therefore, the matter has come up for consideration before me:

(2) Whether the judgment dated 5.11.1984 passed by the Assistant Collector dismissing the suit filed by the petitioner, the judgment dated 17.6.1986 passed by the Revenue Appellate Authority, Jodhpur dismissing the first appeal filed on behalf of the petitioner and the judgment dated 17.7.1986 passed by the Board of Revenue dismissing the second appeal filed on behalf of the petitioner, suffer from any illegal infirmity so as to warrant interference by this Court under Article 226 of the Constitution of India?

7. Despite the question of compromise having been decided against the applicant (respondent No. 7) on his application dt. 5.7.1997 under order dt. 6.7.1999 of this Court (supra) though the learned Counsel for the petitioners reiterated the contentions to allow this petition on the basis of compromise arrived at between the petitioner and respondent No. 7 (Jagta) on 29.6.1995, but in my considered view, such an objection muchless any plea cannot be allowed to be raised especially keeping in view a categorical finding arrived at by this Court in its order dt. 6.7.1999 that once the decree passed by the trial Court has become final, because the same has been affirmed by a court of competent jurisdiction, hearing the first appeal and the second appeal, the parties cannot seek the reversal of the judgment and decree which has become final by filing a compromise during the pendency of the writ petition filed under Article 226 of the Constitution.

8. At the very outset, I must hasten to add that the matter has been complexed by both the parties for one reason or the other by way of consecutive applications instead of getting the dispute resolved on merits in this petition inasmuch as no reply to this petition has been filed by respondent Nos. 3 & 5 except by raising only preliminary objections dt. 24.2.1997 whereas writ's reply has been filed by the respondent No. 7 (defendant No. 2) dt. 5.7.1997. Even while not disputing any of the averments of this petition including grounds, rather raised additional pleas inter-alia that the petitioners and the respondent No. 7 have arrived at a compromise on 29.6.1995 which was got attested on 4.7.1995 before the Sub-Divisional Officer (Asstt. Collector) Bhinmal and Original compromise dt. 29.6.1995 duly attested by the SDO on 4.7.1995 has been produced in this petition before this Court. Even in his reply, the respondent No. 7 specifically pleaded that respondent Nos. 2 & 3 (Dana & Achla) have got no right to deprive the respondent No. 7 of cultivatory possession of the suit land on the basis of a registered sale deed dt. 2.7.1988 executed in between them, inasmuch as neither Dharma (original defendant) nor whose legal heirs viz. the respondent Nos. 2 to 5 were the contesting defendants at any stage of the suit; obviously because their case even right from very inception at the initial stage was specific that they have got no right, title and interest in the suit land as they transferred the suit land in favour of the respondent No. 7 before filing of the suit and the possession stood transferred and handed over to him and in this view of the matter, the respondent No. 7 specifically pleaded that neither Dharma (original defendant) nor the respondents (Dana and Achla) were the main contestants in the suit so also in this writ petition rather merely proforma, respondent Nos. 2 and 5 (defendants) but they claimed right on the basis of a sale deed executed on 2.7.1988 which was not only admittedly but also undisputably executed during the pendency of lis without consideration. That being so, it will create no right in respondents No. 2 & 3 (Dana & Achla) in view of Section 52 of the Transfer of Property Act, as per which the principle of lis pendens always stands in the way of purchase of the suit land to the result in proceedings.

9. In Goudappa Appaya Patil Vs. Shivari Bhimappa Pattar and another, as held by the Division Bench of the Karnataka High Court, it cannot be said that the words any "suit" or "proceeding" occurring in Section 52 of the Transfer of Property Act must be read as contemplated either a suit or a proceeding instituted in an ordinary civil court and further it cannot be said that the word "proceeding" occurring in Section 52, *ibid*, only relates to original proceeding. It has further been held that if the plea that Section 52 of the T.P. Act does not contemplate writ proceeding or does not take into its fold the writ proceeding, if accepted, it would lead to disastrous consequences. That being so it has also been held that a proceeding instituted under Articles 226 & 227 of the Constitution which is not collusive and in which any right to immovable property is directly and specifically in question will be a proceeding attracting Section 52 of the T.P. Act.

10. In Ghasiram v. Board of Revenue 2001 (1) RLR 598 the Division Bench of this

Court held that it was not permissible in law for the Board of Revenue to reappreciate evidence on second appeal and that two when High Court had remanded the case with specific direction. It was a case where possession over land since last 60 years therefore it was held that it would be traversity of justice in disturbing possession of plaintiff petitioners after so many years.

11. Having considered the rival contentions urged at the bar so also in the memo of writ petition, reply of respondent No. 7 and preliminary objection raised on behalf of the respondent Nos. 3 & 5 who have failed to file reply to the writ petition till date, I find that there have been concurrent findings arrived at by three courts that the theory of exchange is not supported by document (Ex.P-1) as it does not refer to any exchange of land rather it is also not clear from its contents that the land sold by Dharma in favour of Jagta on 18.4.1972 was given by document (Ex.P. 1) and it being neither stamped nor registered, was therefore, ineffective to create any right, title or interest over the suit land in favour of Taja (plaintiff). That apart, the learned Board of Revenue categorically concluded that there has also been variance between the pleading and proof inasmuch as the theory of exchange as pleaded by the plaintiff (petitioners herein) in the plaint does not find support from plaintiffs statement recorded before the SDO. I am also in agreement with the finding that despite the plaintiffs claim that Dharma had given 16 Bighas of suit land to them in Samvat 2009 they failed to take any steps to get the land mutated in their favour for last so many years, nor did they pay any rent in their own name at any time. That apart, in my considered view also, once plea of adverse possession was neither taken by the plaintiffs in the plaint nor proved, the plaintiffs or the petitioners cannot be allowed to raise such a plea indirectly at any stage even in this petition, and further more, entry of name Taja (plaintiff) alongwith Dharma in Khasra Girdawari of only four years (Samvat 2012 to 2015) neither does in any help them nor create any right, title or interest by way of any plea either of adverse possession or otherwise including the theory of exchange pleaded in the plaint, or have any case at any stage muchless in this petition on merits warranting interference by way of issuing writ of certiorari in the impugned orders of the revenue courts whereby plaintiffs revenue suit stood dismissed with three courts" concurrent findings, which are based on proper appreciation of evidence on record and points of law.

12. Be that as it may, a careful perusal of the plaint in revenue suit of the plaintiff (now substituted & represented by L/rs who are the petitioners herein), makes it explicit clear that admittedly Dharma (defendant No. 1 now represented by his legal heirs--respondent Nos. 2 to 5 including Dana & Achla), as having been averred in his plaint, itself, had transferred the suit piece of land measuring 16 Bighas in favour of respondent No. 7 (Jagta) by a registered sale deed on 18.4.1972, inasmuch as such a transfer has neither been denied by Dana & Achla nor by Jagta rather admitted by them in their written statement and that apart, on the one hand, plaintiff (petitioners) pleaded in the plaint that registered sale deed executed in favour of defendant (Jagta respondent No. 7) is liable to be

cancelled, and on the other hand, it is admitted case of not only the petitioners but also the respondent No. 7 that both of them have arrived at a compromise on 29.6.1995 duly attested by the SDO Bhinmal on 04.07.1995.

13. Similarly once it is an admitted pleading in the written statement so also in the plaint, itself that Dharma transferred suit piece of land in favour of respondent No. 7 (Jagta) on 18.4.1972 by a registered sale deed and handed over possession of the suit land in his favour (Jagta), for which even the trial Court (SDO) had also framed a specific issue No. 2 as to whether the sale made by defendant No. 1 in favour of defendant No. 2 is ineffective against the plaintiff, besides issue No. 1 as to whether plaintiff Taja is entitled to declaration of his Khatedari rights in respect of 16 Bighas of the land of Khasra No. 366, in my considered view, by virtue of compromise (supra) in between the petitioners and respondent No. 7, this writ petition has become infructuous and that apart, after 1972 Dharma (original defendant) had no right, title in the suit land having vested it in favour of Jagta and the respondent Nos. 2 to 5 being legal heirs of defendant No. 1 (Dharma) are merely proforma defendants as against contesting defendant No. 2 (respondent No. 7 herein) admittedly by virtue of registered sale deed dt. 18.4.1972 (supra) as disclosed in the written statement, especially when any one of them has not raised any objection to the registered sale deed dt. 18.4.1972.

14. As regards rights of other respondent Nos. 2 to 3 (Dana & Achla who are LRs. of original defendant No. 1 Dharma upon his death and being substituted pendente lite) by reason of subsequent registered sale deed alleged to have been executed by respondent No. 7 (defendant No. 2) in their favour (Dana & Achla) on 2.7.1988, (on the basis whereof they claimed while contesting application of respondent No. 7 dt. 5.7.1997 for allowing this petition, itself, on the compromise dt. 29.6.1995 (supra) that such a prayer and compromise cannot be allowed), I am of the considered view that such a right of respondent Nos. 2 & 3 on the basis of that sale deed dt. 2.7.1988 cannot be allowed in their favour to be raised in these proceedings of suit of the petitioners (plaintiff) which culminated into dismissal of the suit for declaration duly affirmed by appellate authority and second appellate Board, especially when no pleadings by way of amended written statement or filing cross-objections before the appellate authorities were made on behalf of these two respondent Nos. 2 & 3 (Dana & Achla) or the respondent No. 7 unless ofcourse any one of them establishes in a court of competent jurisdiction by appropriate proceedings that the alleged sale deed dated 2.7.1988 is either binding on him or not or creates any right in any of the parties to it, but ofcourse they cannot be allowed to claim any right or interest or title on the basis of that sale deed dated 2.7.1988 in these proceedings of the plaintiff (petitioners) in the absence of any specific pleading and proof.

15. It is trite that even a second appeal u/s 224 of the Rajasthan Tencnay Act, 1955 was not maintainable against judgment and decree based on concurrent

findings of fact. The Revenue Board dismissed the second appeal affirming the concurrent findings of fact of two courts below. And, no writ of certiorari lies against the judgment and decree of the Revenue Board in second appeal based on concurrent findings of fact in affirmation to that of three Courts including the Board. Thus viewed, once the rights of the plaintiff on the theory of exchange under the document (Ex.P-1) have been conclusively decided against him by the final judgment of the Revenue Board in second appeal holding that no right has been created on the basis of theory of exchange under document (Ex.P-1) in his favour, no matter regarding any subsequent transaction among the co-defendants can be raised and determined in this writ petition which was based and stood culminated into scrutiny of the judgment of the Board of Revenue dated 17.7.1986 only as to its legality and error of jurisdiction where also no such error has been found by this Court, as discussed above. Therefore, this writ petition deserves to be dismissed on merits, as the impugned judgments of three courts below do not suffer from any illegality muchless infirmity so as to warrant interference by this Court under Article 226 & 227 of the Constitution of India for the relief claimed therefor.

16. Resultantly, this writ petition fails and is hereby dismissed with no order as to costs.