
(2013) 09 RAJ CK 0208

In the Rajasthan High Court

Case No : Civil Writ Petition No. 14871/2013

Narain (since deceased) through L.R.

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 18-09-2013

Acts Referred:

Citation : (2014) 1 WLN 39

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajay Rastogi, J.—Instant petition is directed against order of Board of Revenue dt. 08.08.2013 vacating the interim order and rejecting the application filed by the petitioner u/S 212 of Rajasthan Tenancy Act, 1955 ("Act"). However, it was further observed that the opinions expressed, inferences reached & observations given by the Board of Revenue while exercising revisional jurisdiction may not influence in any manner the judgment of the trial Court or other Courts on merits in disposal of the suits/appeals filed by the parties pertaining to the disputed land. The facts in brief which are relevant for the present purpose are that Narayan (deceased), father of the petitioner, instituted a revenue suit No. 217/1991 (Narayan v. State of Rajasthan & Ors.) under Secs. 88 & 188 of the Act, 1955 before the Sub-Divisional Officer, Kishangarh for declaration of khatedari rights & permanent injunction with regard to the subject land bearing khasra No. 1452/1 & 1452/2 situated in Kishangarh and along with the suit the petitioner also filed a misc. application No. 141 of 1991 for injunction u/s 212 of the Act, restraining the defendants from interfering in the use & occupation of the petitioner plaintiff over the subject land in question.

2. It will be relevant to note that the Municipal Council, Kishangarh whose name was entered in Jamabandi in the year 1976 was not impleaded as defendant in the pending revenue suit. After the parties to the suit being heard the learned SDO, Kishangarh on application for injunction filed u/S 212 of the Act it was

observed that the petitioner-plaintiff failed to satisfy regarding prima facie case & balance of convenience in his favour and accordingly observed that the application for injunction deserves rejection but in the same breath further observed that since the suit has been filed by the petitioner for declaration of khatedari rights under Secs. 88 & 188 of the Act, keeping in mind the principles of natural justice directed the parties to the suit to maintain status-quo during pendency of the suit.

3. Since the Municipal Council, Kishangarh was not party to the suit and injunction was certainly operating against the Municipal Council, application was filed under Order 1 Rule 10 CPC for its impleadment on 20.12.1991 and it has been informed to this Court that the applicant Municipal Council, Kishangarh was impleaded as party defendant but the order of injunction passed by the SDO, Kishangarh dt. 03.05.1991 admittedly opportunity of hearing to the Municipal Council, Kishangarh was not afforded and their rights are adversely affected by the order of injunction dt. 03.05.1991. The added defendant Municipal Council, Kishangarh filed appeal before the revenue appellate authority which was rejected vide order dt. 05.07.2001 and further observed that if the added defendant Municipal Council, Kishangarh was dissatisfied, it had liberty to address in the pending suit but at the same time was not inclined to interfere in regard to order of status-quo passed by the revenue Court dt. 03.05.1991 and that came to be challenged by the added defendant Municipal Council, Kishangarh by filing a revision petition before the Board of Revenue u/s 230 of the Act and the Board of Revenue after hearing the parties observed that after the revenue Court recorded a finding that the petitioner plaintiff failed to satisfy regarding prima facie case & balance of convenience in his favour and the application was logically rejected, there was no justification for the learned revenue Court to further exceed and taking note of the principles of natural justice order of status-quo, was not in the interest of justice and against the settled principles of law and observed that if the party fails to prove prima facie case to go for trial, the further consideration regarding balance of convenience, irreparable loss & injury may not be relevant for grant of injunction, at the same time further observed that the fact which came on record that khasra No. 1450, 1451, & 1452/1 as per revenue records were classified as Charagah and khasra No. 1452/2 measuring 315.02 bighas was recorded as Abadi in the name of Municipal Council and these entries in the revenue records by order of the District Collector for setting apart 315.02 bighas of land situated in khasra No. 1452/2 in favour of Municipal Council, Kishangarh in the year 1976 was never assailed by the petitioner and apart from it Sec. 16 of the Act prohibits from conferring khatedari rights over pasture land and taking note thereof, while setting aside the orders dt. 03.05.1991 & 05.07.2001 observed that the opinions expressed, inferences reached & observations given by the Board of Revenue while exercising revisional jurisdiction may not influence in any manner the judgment of the trial Court or other Courts on merits in disposal of the suits/appeals filed by the parties pertaining to the land which is subject matter of

challenge in the instant writ petition.

4. The main thrust of submission of counsel for petitioner is that once the learned trial Court was of the view that where the suit has been filed for declaration of khatedari rights, along with application for injunction, principles of natural justice demand that the parties to maintain status-quo, at least the petitioner plaintiff could not be said to be aggrieved with the observations made, more so when the final order was sustainable in law and further submits that after the Municipal Council, Kishangarh was impleaded as party in the pending suit, if aggrieved, was at liberty to file appeal against the order of injunction dt. 03.05.1991 but that too was challenged after a gross delay and this fact was noticed by the revenue appellate authority in its order but even on merits the RAA observed that looking to the nature of dispute pending trial, it is all the more necessary that the party must maintain status-quo and once affirmed by the revenue appellate authority it could not be considered to be unjust or unsustainable in law and reversing the order of the Court below under its limited scope of revisional jurisdiction while passing order dt. 08.08.2013 requires interference and further submits that if there was no interim protection and Municipal Council during pendency of the suit if changed the nature of the subject land in question nothing will survive in the pending suit and the rights of the parties will be frustrated, if he finally succeeds and may not be able to get the final justice to which he would be otherwise entitled for under the law.

5. The respondent-2 filed reply to the writ petition and it has been averred that the subject land was entered as Charagah and khatedari rights was conferred in the year 1956 and suit was filed in the year 1991 by the petitioner plaintiff for conferring khatedari rights after 35 years more so when power to conversion from Charagah to khatedari finally vested in the State Government and according to Sec. 16 of Rajasthan Tenancy Act, no khatedari rights shall accrue over the pasture land even if pasture land is being cultivated for a number of years and it has been further averred that the State Government vide notification dt. 31.03.1976 permitted conversion of pasture land and in compliance thereof the SDO vide its order dt. 02.06.1976 converted from pasture land to Abadi and was allotted to the Municipal Council, Kishangarh on payment of necessary premium of Rs. 1860.60 vide challan No. 2606 dt. 20.07.1976, the name of Municipal Council was entered in the Jamabandi which was record of rights and on the date of filing the suit in the year 1991 there was no entry in the revenue records in favour of the petitioner and this was the fact which the SDO in its order dt. 03.05.1991 noticed & observed that the petitioner-plaintiff failed to prove a prima facie case & balance of convenience in his favour but still observed that looking to the nature of suit and taking note of the principles of natural justice party must maintain status-quo.

6. Counsel for respondent-2 submits that if the petitioner was unable to satisfy regarding prima facie case in his favour & balance of convenience the learned SDO, Kishangarh has committed a basic error of law in passing the order of

injunction and which is not legally sustainable in the eye of law and this what the Board of Revenue considered in detail and it was a manifest apparent error committed by the learned SDO, Kishangarh and by the Revenue Appellate Authority and the Board of Revenue was competent while exercising its revisional jurisdiction in passing of the order dt. 08.08.2013 and that does not require any interference by this Court.

7. This Court has considered the submissions made & also perused the material on record.

8. For grant of injunction, three basic ingredients one has to satisfy (i) he has a prima facie in his favour to go for trial; (ii), balance of convenience and; (iii) he will suffer irreparable loss or injury if injunction is not granted but out of all the three basic features which one has to satisfy for the purpose of grant of injunction the utmost consideration one has to first satisfy that he has a prima facie case in his favour to go for trial and this what the Hon"ble Apex Court in the judgment in Kashi Math Samsthan and Another Vs. Srimad Sudhindra Thirtha Swamy and Another, considered the basic requirement/principles which one has to comply with while seeking grant of injunction under Order 39 Rule 1 & 2 CPC which is para-materia to Sec. 212 of the Act and the principles for grant of injunction are one and the same, observed as under:--

It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the Court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted.

9. In the instant case, apart from the fact which has come on record & noticed by the Board of Revenue in para-20 of the order impugned that khasra No. 1450, 1451, 1452/1 are classified as Charagah and khasra No. 1452/2 measuring 315.02 bighas is recorded as abadi in the name of Municipal Council and the plaintiff chosen not to assail the order passed by the District Collector for setting apart 315.02 bighas land situated in khasra No. 1452/2 in favour of Municipal Council, Kishangarh in 1976, and there is an absolute prohibition to confer khatedari rights of pasture land u/s 16 of the Act and a bare perusal of the order of the learned trial Court dt. 03.05.1991 shows that the finding was recorded that the petitioner was unable to make out a prima facie case to go for trial & balance of convenience and accordingly rejected the application filed by the petitioner seeking injunction u/s 212 of the Act but at the same breath further observed that the suit being filed under Secs. 88 & 188 of the Act, taking note of

the principles of natural justice it will be appropriate that the parties may be directed to maintain status-quo which in the considered opinion of this Court was wholly unwarranted and after the finding was recorded regarding his inability to make out a prima facie case & also the balance of convenience in favour of the petitioner, more so when the Municipal Council, Kishangarh who was holding the khatedari rights over the subject land in question was not a party to the suit and such order of injunction dt. 03.05.1991 could not be otherwise held to be valid in the eye of law and could not be operative over the authority who was not the party defendant in the pending suit and this fact remain unnoticed by the Ld. Trial Court and the principles of natural justice has no application in the facts of the instant case, at the same time the Board of Revenue in its order impugned has taken note of the factual matrix of the matter and so also the fact that the learned trial Court was not justified in granting the order of status-quo after recording the finding of fact that the petitioner failed to make out a prima facie case and also balance of convenience in his favour in order to pray for order of injunction and this Court taking note of the submissions made does not find any manifest error in the order of Board of Revenue which may call for interference u/ Art. 227 of the Constitution. Consequently, the writ petition is wholly devoid of merit and accordingly stands dismissed. However, it is made clear that the observations made & the findings recorded by this Court in the present order is only for the purpose of disposal of application filed by the petitioner u/s 212 of the Act and the Court below or other Courts may not inhibitate or influence by the observations made (supra) and may decide the pending revenue suit on merits in accordance with law. No cost.