
(1996) 07 RAJ CK 0030

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 315 of 1996

Narayan Lal and Others

APPELLANT

Vs

Kishani and Others

RESPONDENT

Date of Decision : 26-07-1996

Acts Referred:

Rajasthan Tenancy Act, 1955 — Section 207

Citation : AIR 1997 Raj 46 : (1996) 3 RLW 73 : (1996) WLC 218 : (1996) 2 WLN 218

Hon'ble Judges : P.C. Jain, J

Bench : Single Bench

Advocate : Dinesh Maheshwari, for the Appellant; R.S. Sharma, for the Respondent

Final Decision : Allowed

Judgement

P.C. Jain, J.—The plaintiff has filed this appeal under Order 43 Rule(a), C.P.C. against the order of Shri Radheshyam Gupta, District Judge, Sirohi dated 19-7-1995 in Civil Suit No. 20/94 whereby the application filed by the defendants respondents 5 to 11 under Order 7, Rule 11 (d), C.P.C. was allowed.

2. The material facts to be noticed for the disposal of this appeal may shortly be stated as follows. The plaintiffs appellants filed a suit against the defendants for seeking specific performance of the contract dated 25-7-1996 and also for permanent injunction with the following averments. The plaintiff took the land in dispute described in para 4 of the plaint on lease from defendants 1 to 4 on 1-11-1984 at a monthly rent of Rs. 100/-. Subsequently the above defendants at the request of the plaintiffs agree to sell the above land to the latter for a sum of Rs. 60,000/-. The defendants obtained a part of the consideration Rs. 5,000/- on 25-7-1986. Simultaneously with the execution of the agreement for sale, the plaintiffs were put into possession indifferent of the above land. The remaining consideration was to be paid at the time of the registration of the sale deed. The defendants further agreed to execute the document and get it registered upto

25-7-1994. The plaintiffs further averred that on account of some necessity a sum of Rs. 2,000/- was also taken by the defendants from the plaintiff on 11-8-1988. An entry of this transaction was recorded on the back of the document. The plaintiffs have been using the above land even before the document was executed and they are running a hotel. After the execution of the agreement some residential portion was also constructed. The plaintiffs averred that they were ready and willing to perform their part of the contract and offered Rs. 3,000/- to the defendants but the defendants, on account of escalation in the land price, showed unwillingness to perform their contractual obligations and did not do so upto 25-7-1994. The plaintiffs, therefore, served the registered notice to the defendants 1 to 4 asking the latter to perform their part of the contract. The notice reached the defendants on 19-7-1994 but the latter did not think it proper to reply to the same. The defendants on the contrary wrote to the plaintiffs to vacate the land before 21-7-1994 otherwise they will be vacated forcibly. The plaintiffs further alleged that on 22-7-1994 defendant No. 10 as representative of the other defendants approached the former and informed that Narayan Singh s/o Marrak Singh has purchased the land comprised in khasra No. 194 (new) from Panni w/o deceased Nopa. Narayan Singh has expired and defendants 5 to 9 are the legal representatives of the said Narayan Singh. The plaintiffs alleged that defendant No. 10, who was the Police" Inspector of Mt. Abut, being an influential person, can create problem for the plaintiffs: The plaintiffs, therefore, also prayed for permanent injunction restraining the defendants from creating any nuisance or obstruction in their peaceful possession of the above land. The plaintiffs in para 21?l? prayed for the following rules :-

(Matter in Vernacular Omitted. Ed.)

3. In paras ?v? and ?c? the plaintiffs also prayed for specific performance of the contract.

4. On 4-2-1995 defendants 5 to 11 filed an application under Order 7, Rule 11(d) alleging that since the land in question, is art agricultural land, the plaintiffs were not entitled to file the present suit as the exclusive jurisdiction for entertaining such suit lies in a Revenue Court. The plaintiffs could have filed a suit for permanent injunction under Sections 188 and 256 of the Rajasthan Tenancy Act in a Revenue Court of com-petent jurisdiction. Similarly the plaintiffs could only pray for the relief of injunction restraining the defendants from taking proceedings for conversion of the land u/s 41(b) of the Specific Relief Act, but the suit for that purpose will also lie in a Revenue Court. The defendants therefore, prayed that the suit of the plaintiff be returned under the above provisions of the Code of Civil Procedure.

5. The plaintiffs filed reply contesting the above application by stating that the main relief prayed for by the plaintiff is the specific performance of the contract dated 25-7-1986 and the second relief in respect of permanent injunction is a consequential relief. The Civil Court is, therefore, competent to try the above suit.

6. The learned District Judge by the impugned order allowed the application filed by the defendants. The learned District Judge discussed the case law cited by the parties and observed that the question of jurisdiction has to be determined on the basis of the averments and allegations made in the plaint. In para 23 of the order, the learned District Judge observed that the averments made in paras 2 & 3 of the plaint cannot be treated to be proved and they are not beyond dispute. He was of the opinion that unless it is judicially adjudicated that the land in question was of defendants 1 to 4, the suit cannot be proceeded. The reliefs sought by the plaintiffs did not seek the relief of declaration of the sale made by Panni to Narayan Singh as null and void. The fact according to the learned District Judge, casts shadow over the ownership right of the defendants 1 to 4. The relief to restrain the defendants from taking proceedings for converting the land into abadi land can also not be entertained by a Civil Court. In para 28 of the impugned order, the learned District Judge examined the conditions of the agreement in question and opined that from a perusal of the above conditions it appears that the agreement did not inspire confidence. According to him the rent paid by the plaintiffs was too inadequate and that the period allowed to the defendants to get the sale deed executed and registered is quite unreasonable. In short, the learned District Judge prima facie found the above agreement unreasonable and this also persuaded him to doubt the genuineness of the agreement. He, therefore, passed an order to return the plaint under Order 7, Rule 10 for presentation to a Court of competent jurisdiction.

7. I have heard learned counsel for the appellants and respondents.

8. Learned counsel for the appellants has made a very scathing attack on the order passed by the learned District Judge. He has contended that the learned District Judge while passing the above order lost sight of the fundamental principles of law as regards the determination of the question of jurisdiction. He had absolutely no business to make an adverse comment on the terms and conditions of the agreement in question particularly when the defendants have not even filed the written statement. He has not given any specific opinion whether the plaintiffs can maintain their suit for specific performance of the above agreement though it is related to the agricultural land. The fundamental principle that has crystallised by legal precedent is that the ouster of jurisdiction is to be inferred strictly. In this connection he relied on *Durgadan v. Devidan* 1974 WLN 314 and *Badrilal and Another Vs. Moda and Others*,

9. Learned counsel for the appellants has contended that the learned District Judge passed the impugned order as if he was deciding the original suit on merits. What is the case of the defendants or what are the differences they are setting up will be known only when the written statement is filed by the defendants. According to him the plaintiffs by making necessary averments in the plaint alleged that the defendants 1 to 4 executed the agreement to sell the suit land to the plaintiffs on 25/7/1986. Since the defendants failed to perform their part of contract, the cause of action accrued to the plaintiff to seek the

relief of specific performance by alleging that the plaintiffs were always ready and willing to perform their part of contract. The second relief was only consequential. The other relief with regard to injunction was only ancillary or consequential to the main relief of specific performance of the contract.

10. Learned counsel for the respondents has supported the order of the learned District Judge and submitted that the plaintiffs conveniently omitted to seek the relief of declaration of the sale deed executed by Panni in favour of Narayan Singh. The learned District Judge was right in remarking that the specific performance of the contract can only be performed if defendants 1 to 4 had right or interest in the land regarding which relief of specific performance was sought. The relief of injunction in respect of agricultural land can only be granted by a Revenue Court of competent jurisdiction. The learned District Judge has, therefore, correctly allowed the application filed by the defendants. He placed reliance on Legal Representatives of Hardev v. Goru 1988 RRD 391. The Court, while deciding such question of jurisdiction, has to scrutinise the substance of the relief claimed by the plaintiffs. In the instant case the learned District Judge has adopted the same line of appreciating the question involved regarding possession.

11. I have considered the rival contentions and perused the case law cited before me. In Durgadan v. Devidan 1974 WLN 314 this Court held that a suit for specific performance in respect of an agreement to sale is maintainable where the sale deed has been executed but not proceeded even without asking for the relief of possession. Regarding jurisdiction u/s 207 of the Rajasthan Tenancy Act a reference was made to Chandanmal v. Dawar 1954 RLW 184; Asala v. Narayan 1963 R LW 323 and Shankar Lal v. Dhulilal 1963 RLW 310.

12. It is, therefore, clear that the ouster of jurisdiction of the Civil Court is to be strictly construed and it should not be readily inferred unless the jurisdiction of the Civil Court is barred or such an inference can be raised by an express provision of law or by necessary implication. The second principle is that the question of jurisdiction has to be determined by the allegations or averments made in the plaint. In Association of Radha Swami, Dera Baba v. Pratap Singh 1984 WLN 284, this Court with reference to the provisions of Order 7, Rule 11, C.P.C. observed that Order 7, Rule 11(d) authorises the rejection of the plaint where the suit appears from the statements made in the plaint to be barred by any law. For this purpose only the allegations and averments made in the plaint would be looked into. The Court cannot travel beyond what has been averred and alleged in the plaint. It is, thus, clear that the learned District Judge in the instant case ought to have confined himself to the averments made in the plaint for resolving the question of jurisdiction.

13. The learned District Judge has travelled beyond the scope warranted by law for deciding the question in controversy. The learned District Judge had no authority to make adverse comments regarding the terms and conditions of the agreement in question. He conveniently lost sight of the important fact that by making the above observations of the case of the plaintiffs would be highly

prejudiced and subsequently relying on those observations the above agreement can be held against the defendant. It is unfortunate that even without filing the written statements the learned District Judge readily conceded to the objection raised by the defendants regarding the unreasonableness of the terms and conditions embodied in the above agreement. He was not justified in seeking an explanation from the learned counsel for the appellants-plaintiffs to explain the justification of the terms and conditions comprised in the agreement. The matter must be left exclusively for the trial Court to determine the same not at a preliminary stage but after the parties have led evidence and the Court is in position to evaluate the same on the basis of the evidence. The observations made by the learned District Judge regarding the terms and conditions of the agreement are, therefore, wholly unwarranted and against the law and must be ignored in totality. I may observe that the trial of the suit will not be prejudiced by the observations made by the learned District Judge. A perusal of the averments made in the plaint it is clear that the plaintiffs have asked for the relief of specific performance of the contract dated 25-7-1986. The suit for specific performance of the contract even relating to agricultural land is maintainable in Civil Court. This view has been upheld in *Durgadan v. Devidan* (1974 WLN 314) Thus, I have got absolutely no doubt that the main relief claimed by the plaintiffs in the above suit was with regard to the specific performance. The other relief regarding permanent injunction is a consequential relief.

14. I may refer to a Full Bench Decision of this Court rendered in *Badrilal and Another Vs. Moda and Others*, in which it was held that the claim in respect of one relief can be tried by Civil Court and the other by Revenue Court, the Civil Court would be justified in taking cognizance and can then refer the other issue triable by the Revenue Court u/s 242 of the Rajasthan Tenancy Act. The learned District Judge after framing the issues on the pleadings of the parties can act in accordance with the ratio laid down in *Badri Lal's* case if such a situation arises.

15. For the above reasons I allow the appeal, set aside the order of the learned District Judge and dismiss the application filed by the defendants to 4.