
(1977) 09 RAJ CK 0014
In the Rajasthan High Court
Case No : Civil Revision No. 454 of 1974

Nemi Chand and Others

APPELLANT

Vs

The Urban Improvement Trust, Bharatpur

RESPONDENT

Date of Decision : 23-09-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1
Evidence Act, 1872 — Section 114
Rajasthan Land Revenue Act, 1956 — Section 140

Citation : AIR 1978 Raj 45 : (1978) RLW 30 : (1977) WLN 634

Hon'ble Judges : P.D. Kudal, J

Bench : Single Bench

Advocate : D.K. Soral, for the Appellant; R.M. Lodha, for the Respondent

Final Decision : Allowed

Judgement

P.D. Kudal, J.—This revision petition u/s 115, C.P.C. is directed against the order of the learned District Judge, Bharatpur dated 12th August, 1974, whereby the order issuing injunction of the learned Munsiff, Bharatpur dated 1st June, 1976 was reversed.

2. The brief facts which are relevant for the disposal of this revision petition are that the plaintiffs Nemi Chand and others filed a suit for permanent injunction against the Urban Improvement Trust, Bharatpur. An application under Order 39, Rules 1 and 2, C.P.C. was also filed praying that the defendant be restrained from auctioning the suit land. The learned Munsiff initially issued an injunction in favour of the plaintiffs against the defendant on 15th May, 1974. After hearing the parties the injunction was confirmed on 1-6-1974. The defendant feeling aggrieved filed an appeal before the learned District Judge, Bharatpur. The appeal was allowed by the learned District Judge on 12th August, 1974, and the order of the trial Court was set aside. The plaintiffs feeling aggrieved by the order of the learned District Judge have come up in revision before this Court.

3. On behalf of the plaintiff-petitioners, it was contended that the learned District

Judge has erred in law in vacating the injunction order issued by the trial Court, It was further contended that the learned lower appellate Court acted illegally and with material irregularity in exercise of its jurisdiction in holding that the plaintiffs had no prima facie case in their favour and the balance of convenience is also not on the side of the plaintiffs. It was further contended that there is nothing on the record on the basis of which it could be inferred that the land in question ever vested in the Urban Improvement Trust, Bharatpur, and that the learned District Judge seriously erred in law in holding that no irreparable loss would be caused to the plaintiffs if the land in question is allowed to be auctioned. It was further contended that there was enough material on the record on the basis of which only one inference could be drawn, and that was that the land in question belonged to the plaintiffs, and it never vested in the Urban Improvement Trust, Bharatpur. It was also contended that the learned lower appellate Court did not care to go through the documentary evidence on record and has based its judgment merely on conjectures and surmises rather than on actual appreciation of evidence on record. It was also contended that a failure of justice has occasioned by the learned lower appellate Court by exercising its jurisdiction illegally and with material irregularity inasmuch as the documents on record have not been considered and presumptions have been drawn regarding the existence of documents which have not been produced.

4. On behalf of the respondent, it was contended that the land in dispute has been shown to have vested in the defendant in view of the jamabandi of the S. Y. 2026. It was also contended that by virtue of Section 140 of the Rajasthan Land Revenue Act a presumption of correctness arises in favour of such entries, and that the plaintiffs have miserably failed to rebut the probative value of the entries which have been made in the jamabandi of S. Y. 2026. It was also contended that the lower appellate Court has taken into consideration the mutation orders and various entries in the Khasra Girdawaris and on the basis of the appraisal of the probative value of these entries, the learned lower appellate Court has come to the conclusion that the land in question has vested in the Urban Improvement Trust; and as such, the plaintiffs-petitioners have neither prima facie case in their favour nor balance of convenience and that if the injunction sought for is not granted no irreparable loss shall be caused to them. It was further contended that a Court of revision has extremely limited jurisdiction and, however profoundly this Court may differ with the findings arrived at by the learned lower appellate Court, there is no occasion for reappraisal or re-appreciation of the evidence and as such, the revision petition is without merit and deserves to be dismissed.

5. The respective contentions of the learned counsel for the parties have been considered and the record of the case carefully perused.

6. The contention of the learned counsel for the plaintiffs is that they are owners of the abadi land comprised in Khasra No. 341 situated in Nai Mandi, Bharatpur and that they are also in possession of the same. Khasra No. 341 was initially in

the Khatedari of Shri Narain, Raghuvar Dayal and Shambhu Dayal. Shri Narain got his 1/3rd share separated. 2/3rd share remained with Raghuvar Dayal and Shambhu Dayal. Raghuvar Dayal died at a later stage. He was survived by plaintiffs Nos. 1 to 8. 1/3rd share which has fallen to Shri Narain was sold to Laxman Prasad, who in turn sold it to the Urban Improvement Trust. The present dispute, therefore, relates only to 2/3rd share in Khasra No. 341. On 29th April, 1974, the Urban Improvement Trust issued a notification for the auction of the above 2/3rd share in Khasra No. 341. On 15th May, 1974, the plaintiffs represented to the Urban Improvement Trust, Bharatpur that the land belongs to them. But the Urban improvement Trust asserted that they are the owners of the land; and hence the present suit along with an application for injunction was filed.

7. In the Jamabandi of S. Y. 2010, in column No. 4 Shri Narain. Shankar Lal and Raghuvar Dayal have been shown to be the owners while in column No. 5 Jhumarlal has been shown to have been put into possession as a tenant for the last 8 years. Jamabandi for S. Y. 2026 shows that the Urban Improvement Trust, Bharatpur was the Khatedar tenant as recorded in Column No. 5. Column No. 4. however, has been left enfilled. The learned counsel for the plaintiff-petitioners has placed reliance on the report of the Inspector Land Records dated 10th October, 1964, wherein he has stated that Khasra No. 341 is in the ownership of the plaintiffs. Reliance was also placed on the report of the Tahsildar dated 28th October, 1964, whereby he has recommended that Khasra No. 341 may be declared as personal property of the plaintiffs. On the report of the Tahsildar, the Assis-tant Collector (Jagir, Zamindari & Biswedari). Bharatpur. on 11th February, 1965 declared Khasra No. 341 as the personal property of the plaintiffs. As against this, the learned counsel for the defendant-respondent has placed reliance on the mutation order dated 3rd January, 1957, wherein it has been indicated that 2/3rd share of Khasra No. 341 vests in the Urban Improvement Trust, Bharatpur as per the orders of the Collector (Jagir), Bharatpur. The learned counsel for the defendant contended that this order was passed by the learned Collector (Jagir) in appeal against the order dated 11th February, 1965 of the Assistant Collector (Jagir, Zarnindari & Biswedari). Bharatpur. It was further contended by Shri Lodha that it was not necessary to have produced the order of the Collector (Jagir) as there is no occasion for going beyond the recitals in the mutation order. It was also contended by Shri Lodha that the entries in the Jamabandi for S. Y. 2010 cannot be relied upon as they have been superseded by the entries in the Jamabandi of S. Y. 2026. Reliance has been placed on Shri Raja Durga Singh of Solan Vs. Tholu, wherein it has been held that where the entries in the record of rights are relied on and there is a conflict between them, it is the later entry which must prevail. Reliance was placed on Jatindra Nath Malik Vs. Sushilendra Nath Palit, , in which it was held that (at p. 331 of AIR) :

"A party relying on the presumption of correctness of the record of rights, validly prepared under the West Bengal Estates Acquisition Act, 1953 and the Rules made thereunder need not prove the foundation or basis of the correctness of the entries of the record of rights. But this presumption would relate only to the

entries recorded, as authorised by the said Act and the Rules framed thereunder and not otherwise."

8. Section 140 of the Rajasthan Land Revenue Act provides that all entries in the record of right shall be presumed to be true until contrary is proved.

9. After coming into force of the Rajasthan Zamindari and Biswedari Abolition Act, 1959, all rights and interests of the Zamindar and Biswedari were determined as laid down in Section 5 of the said Act. Section 6 is an exception to Section 5, whereby certain properties could be declared as the personal properties of the Zamindar or the Biswedari as the case may be. The right to declare any property to be the personal property of the Zamindar or the Biswedari vested in the Collector. The power vested in the Collector was delegated to the Assistant Collector also. Against the orders of the Collector, an appeal was provided u/s 24, by the aggrieved party before the Revenue Appellate Authority, and the second appeal is provided before the Board of Revenue.

10. The short question which is to be determined is whether the plaintiffs had a prima facie case in their favour or not, would depend on whether in the face of the order dated 11th February, 1965, the Collector (Jagir) could have passed an order reversing the same as indicated in the mutation proceedings dated 2nd January, 1967. In the jamabandi of S. Y. 2010, the entries are in favour of the plaintiffs. On 11th February, 1965, the Assistant Collector also declared the suit land to be the personal property of the plaintiffs. The mutation dated 2nd January, 1967 indicates that by an order of the Collector (Jagir) the land has vested in the Urban Improvement Trust, Bharatpur. This has further support from the entries in the Jamabandi of S. Y. 2026. The presumption of correctness u/s 140 of the Rajasthan Land Revenue Act is a rebuttable presumption. In Revenue Board, Rajasthan v. Baldev Singh AIR 1963 SC 898, wherein it was held that (at p. 902 of AIR) :--

".....an exclusive jurisdiction is conferred upon the Jagir Commissioner to decide the question as to whether any property of the Jagirdar is of the nature of Khudkasht and the decision of the Jagir Commissioner on this question is final and cannot be challenged collaterally in a civil or Revenue Court."

11. In the face of the order dated 11th February, 1965 the entries in the Jamabandi of S. Y. 2026 and the indications in the mutation proceedings dated 2nd January, 1967 deserve more scrutiny. The defendant has not produced the order of the Collector (Jagir), by which the land in question was held to have vested in the Urban Improvement Trust, Bharatpur. It, therefore, appears that a serious question of law is involved whether the land belongs to the plaintiffs or it vested in the U.I.T., Bharatpur. At present, as I am only disposing of the application for injunction it would be difficult to express any opinion regarding the title of any party. No clue should be taken regarding the title of any party. The learned District Judge did not take into consideration the jamabandi of S. Y.

2010 and the jamabandi of 2026. The learned District Judge has also not taken into consideration the impact of order dated 11/2/1965, and has assumed that the order of the Collector (Jagir) did exist which was not produced before him. The order of the Assistant Collector (Zamindari & Biswedari) could be set aside only by the Revenue Appellate Authority, and not by the Collector (Jagir).

12. For the reasons stated above, I have no hesitation in holding that the learned District Judge acted illegally and with material irregularity in exercise of his jurisdiction which has resulted in failure of justice. The revision filed by the plaintiffs is, therefore, allowed. The order of the learned District Judge, Bharatpur is hereby set aside, and that of the learned Munsiff is restored. Looking to the facts and circumstances of the case, there shall be no order as to costs.

13. As the matter is pending for a long time, the office is directed to send the record of the case immediately. The trial Court is directed to dispose of the case as expeditiously as possible.