
(2015) 05 RAJ CK 0151
In the Rajasthan High Court
Case No : Civil Writ Petition No. 6211 of 2008

Pratap and Others

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 22-05-2015

Acts Referred:

Rajasthan Tenancy Act, 1955 — Section 183
Registration Act, 1908 — Section 17

Citation : (2015) 05 RAJ CK 0151

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Lokesh Sharma, for the Appellant; V.B. Srivastava, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.

1. This writ petition has been filed by four defendant-petitioners, namely, Pratap S/o. Shri Hiralal, Chhitar Lal S/o. Shri Hiralal, Chouth Mal S/o. Shri Ram Chandra and Ganesh @ Ganeshram S/o. Shri Dhanna Lal, challenging judgment dated 21.06.2008 of the Board of Revenue in Reference No. Appeal/Decree/4183/2001/Baran, judgment dated 23.06.2001 of the Revenue Appellate Authority, Kota, in Appeal No. 216/2001 and judgment dated 19.02.2001 of the Sub Divisional Officer, Baran in Case No. 125/1989.

2. The Sub Divisional Officer, Baran, by aforesaid judgment and decree, allowed the suit filed by original plaintiff Dakhan Bai W/o Chatra, predecessor in title of Dev Lal, plaintiff-respondent No. 4 herein, under Section 183 of the Rajasthan Tenancy Act, 1955 (for short, "the Act of 1955") against defendant-petitioners.

3. The suit was filed on the premise that Dakhan Bai was khatedar tenant of lands measuring 17 bigha 14 biswa bearing khasra Nos. 42, 387, 452, 455, 459, 460, 464, 465 and 470 in village Dugari, Tehsil Mangrole, District Kota. She was

a poor lady and taking advantage of this situation, the defendant-petitioners made encroachment over said land in Samvat 2030. She made several requests to them but they did not remove the encroachment, therefore, lastly she filed the suit. The notices were issued. In the written statement, the defendant-petitioners pleaded that during pendency of the suit, Smt. Dakhan Bai died and respondent No. 4 Dev Lal was brought on record as her legal heir, who claimed to be her legal heir on the basis of a will, which is said to have been executed by Dakhan Bai. Defendant-petitioners filed amended written statement contending that since Jadav Bai, mother of original plaintiff Dakhan Bai, sold the aforesaid land to defendant-petitioners, Dakhan Bai got no right over the said land and therefore the will executed by her in favour of Dev Lal with regard to disputed land had no effect. They claimed that they were in possession over the disputed land for last more than 60 years, and they were paying the revenue. In Samvat 2023 Jadav Bai executed a sale deed in favour of defendant-petitioners for sale consideration of Rs. 13800/-. The alleged sale-deed was said to have been executed by Jadav Bai, mother of plaintiff Dakhan Bai, on Jestha Badhi 4 of Samvat 2013. They were in cultivatory possession of the land for long and thus they acquired title by virtue of adverse possession. The suit filed by Dakhan Bai was barred by limitation because it was not filed within 12 years from the date of adverse possession got by defendant-petitioners. It was alleged that aforesaid sale-deed was authored by Ram Narain and contained signatures of Jadav Bai, author Ram Narain, witness Prabhu and thumb impression of another witness Mangi Lal. While Ram Narain stated that the said document was prepared in the bungalow of Ram Pratap, whereas witness Mangi Lal (DW-1), in his cross-examination, admitted that Ram Narain prepared this document in his house. Their statements were thus found contradictory.

4. The alleged sale-deed was neither attested nor registered. It was admitted in the course of argument that author of the document Ram Narain was real brother of defendant No. 5 Bhairon Lal. The age of Jadav Bai was stated to be 75 years. Her thumb impressions were not clear. The other witness Prabhu was not even produced. Witness Mangi Lal stated that defendants were already in possession of the land much before the date of the execution of the aforesaid document and in cross-examination this witness admitted that Jadav Bai used to get the land cultivated from them on crop sharing basis.

5. On the basis of the above analysis, learned Sub Divisional Officer did not find alleged document to be proved, rather recorded that possession of the defendants is permissive. In view of the evidence available on record, learned Sub Divisional Officer recorded that possession of defendants cannot be taken as adverse possession. Besides, it was held that while on one hand the defendants claim to have purchased the land on the basis of alleged unregistered sale-deed (Exhibit-A1), on the other hand they claim title over the disputed land by virtue of adverse possession, and both of which are contradictory stands, and could not be accepted. Learned Revenue Appellate Authority has affirmed the judgment passed by learned Sub Divisional Officer. It held that the disputed lands were in

the khatedari possession of Jadav Bai W/o Ram Pratap and after her death, her daughter Dakhan Bai remained in its possession. Photo copy of unregistered document i.e. sale-deed (Exhibit-A1) has been produced on record asserting that the land in dispute was purchased for sale-consideration of Rs. 13,800/-. Since as per Section 17 of the Indian Registration Act, sale of any property of the value of one hundred rupees and upwards, was required to be compulsorily registered, any unregistered document cannot be said to have conveyed any title or possession lawfully. Its execution is also highly doubtful. The Board of Revenue also has concurred with the opinion of the Sub Divisional Officer and the Revenue Appellate Authority and held that the suit has rightly been decreed. It has recorded that Dakhan Bai is recorded khatedar tenant of the disputed land. No person can claim adverse possession on the basis of permissive possession or possession for a short period.

6. The finding of possession necessarily is a finding of fact. There was total lack of evidence showing continuous adverse possession of the defendant-petitioners for last more than 12 years. Witnesses of the plaintiff have admitted that the land was given by Jadav Bai to defendants for cultivation on crop sharing basis, thus implying that possession of defendants was permissive in nature, it cannot be said to be adverse possession. Besides, on the basis of sale-deed (Exhibit-A1) alone, which was neither registered nor stamped and when its execution was found to be highly doubtful, it cannot be accepted that the land in dispute was purchased by the defendants.

7. In view of foregoing discussion, impugned order dated 19.02.2001 of learned Sub Divisional Officer, Baran, in Civil Suit No. 125/89, order dated 23.06.2001 of learned Revenue Appellate Authority, Baran in Case No. 216/2001 and order dated 21.08.2008 of learned Board of Revenue in Reference No. Appeal/Decree/4183/2001/Baran, do not suffer from any error apparent on the face of record or any legal infirmity.

8. In the result, this court does not find any merit in this writ petition and the same is dismissed.