

(2013) 03 RAJ CK 0073

In the Rajasthan High Court

Case No : Civil Special Appeal No. 134/2013

Pratap Singh and Others

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 21-03-2013

Acts Referred:

Citation : (2013) 03 RAJ CK 0073

Hon'ble Judges : Amitava Roy, C.J.;V.K. Mathur, J

Bench : Division Bench

Judgement

Amitava Roy, C.J.—The judgment and order dated 25.2.2013 rendered in S.B. Civil Writ Petition No. 4829/2010 is being called in question in the intra-court appeal. We have heard Mr. Rajesh Joshi, learned counsel for the appellants and Mr. V.K. Mathur and Mr. Vinay Jain, learned counsel for the respondents.

2. The facts leading to the filing of present appeal, in short, are that the respondents-herein alongwith others instituted several Revenue Suits in the Court of Assistant Collector-cum-Sub-Divisional Officer, Jodhpur against the appellants-herein and along therewith filed an application u/s 212 of the Rajasthan Tenancy Act, 1955 (for short, hereafter referred to as "the Act") seeking appointment of a Receiver in respect of land involved therein and covered by khasra no. 126, village Chopasni Tehsil Jodhpur. The respondents claimed themselves to be the owners of the suit land by dint of purchase by registered deed of sale. It was inter-alia alleged by the respondents that the petitioners were interfering with their possession of the land involved by digging earth therefrom and pleaded that to protect the same, it was essential to appoint a Receiver. A report dated 20.5.2008 of the jurisdictional Patwari was relied upon. The learned Assistant Collector-cum-Sub Divisional Officer, Jodhpur vide order dated 19.12.2008 while observing that the respondents were khatedars of the land involved and that the appellants-petitioners were in possession thereof, but had been indulging in digging earth therefrom, appointed a Receiver therefor as according to him, it was warranted in the attendant facts and circumstances.

A direction to this effect was thus issued by appointing Tehsildar, Jodhpur to be the Receiver of the suit land by evicting the appellants-petitioners therefrom.

3. Being aggrieved, the appellants-petitioners preferred appeal before the Revenue Appellate Authority, Jodhpur, which by order dated 16.1.2009 reversed the determination of the learned Assistant Collector-cum-Sub Divisional Officer, Jodhpur. The respondents took the challenge to the learned Board of Revenue, which reiterated that the respondents were recorded khatedars of the land involved and that the possession of the appellants-petitioners thereof was as trespassers thereon. Placing reliance on the report dated 20.5.2008 of the jurisdictional Patwari, it was held that the appellants-petitioners had been digging earth whereby the nature and character of the suit land was being altered. According to the learned Board of Revenue, the prevailing circumstances had the potential of creating friction between the parties and being of the view that it was necessary to secure the right and interest of the respondents in the suit land, interfered with the decision of the learned Revenue Appellate Authority and restored the order dated 19.12.2008 of the learned Assistant Collector-cum-Sub Divisional Officer, Jodhpur. Being dissatisfied with this verdict, the appellants-petitioners sought to invoke the writ jurisdiction of this Court. By the impugned judgment and order, the challenge having been negated, they are in appeal.

4. Mr. Joshi has emphatically urged that as none of the conditions enumerated in Section 212 of the Act being existent, there was no exigency for appointment of a Receiver vis-a-vis the suit land and thus, the learned Single Judge ought to have annulled the determination made by the learned Board of Revenue. In any view of the matter, the appellants having been admittedly found to be in possession of the suit land involved, the decision to appoint the Receiver by dispossessing them and that too only acting on the report of the Patwari concerned, was wholly illegal, he urged. According to the learned counsel, even assuming without admitting that necessary pre-conditions for exercise of power u/s 212 were available, in the facts and circumstances of the case, an order of temporary injunction as contemplated therein could have been passed to appropriately secure the property, if deemed fit and necessary. The learned Single Judge having failed to consider this vital legal aspect of the matter, the impugned judgment and order is not sustainable in law and on facts and is liable to be set aside, he insisted.

5. Mr. Mathur and Mr. Jain in their emphatic reply contended that in view of the consistent finding of the previous forums that the respondents were the recorded khatedars of the land involved, the order of appointment of the Receiver in the face of the activities of the appellants-petitioners detrimental to their (respondents) interest, can by no means be faulted. According to them, there had never been any dispute about the identity of the suit land. Drawing the attention of this Court to a complaint filed by the appellants-petitioners before the District Consumer Forum, Jodhpur, the learned counsel urged that it would appear therefrom that the appellants-petitioners did not claim any interest in the

land covered by khasra no. 126 and thus, their challenge to the appointment of the Receiver is frivolous. In any view of the matter, the vacillating stand of the appellants-petitioners thus demonstrates the hollowness of their claim of interest in the land involved and thus, no interference with the impugned judgment and order is called for.

6. We have examined the pleaded facts and the documents on record. We have evaluated the rival arguments as well.

7. Admittedly, the suits are still pending for final adjudication. On being queried by us, the learned counsel for the appellants submitted that they (appellants) are still in possession of the land involved. The materials on record at this stage prima facie demonstrate that the respondents are the recorded khatedars thereof. It is the consistent finding of the learned Assistant Collector-cum-Sub Divisional Officer, Jodhpur and the learned Board of Revenue that the appellants-petitioners in course of their possession of the land involved had been digging up the same, as a result whereof the nature and character thereof is altered. That continuance of such activities has the potential of creating tension and conflict between the parties has also been categorically recorded by the learned Board of Revenue. The report of the jurisdictional Patwari also endorses the aforementioned activities of the appellants qua the land.

8. Section 212 of the Act, which provides for appointment of a Receiver in course of any suit or proceeding thereunder, is in the following terms:-

212. Provision for injunction and appointment of a receiver.-(1) If in the course of any suit or proceeding under this Act, it is proved by affidavit or otherwise-

(a) that any property to which suit or proceeding relates is in danger of being wasted, damaged or alienated by any party thereto, or

(b) that any party to such suit or proceeding threatens or intends to remove or dispose of the said property in order to defeat the ends of justice.

the court may grant a temporary injunction and, if necessary, appoint a Receiver.

(2) Any person against whom an injunction has been granted or in respect of whose property a receiver has been appointed under sub-section (1) may offer cash security in such amount as the court may determine to compensate the opposite party in case the suit or proceeding is decided against such persons, and on depositing the amount of such security, the court may withdraw the injunction or the order appointing a receiver, as the case may be.

9. As would be apparent from the above, if a suit or proceeding, as contemplated by the above provision, is pending and if it is proved by affidavit or otherwise that any property to which suit or proceeding relates is in danger of being wasted, damaged or alienated by any party thereto, the Court may grant a temporary injunction and if necessary, appoint a Receiver. In the attendant facts and circumstances and on an overall consideration thereof, in our view, the order

of appointment of Receiver made by the learned Assistant Collector-cum-Sub Divisional Officer, Jodhpur cannot be repudiated to be wholly unwarranted. The reasons cited by the learned Board of Revenue in endorsement of this decision also appear to be cogent and logical. As the recorded khatedars of the land involved, the respondents' right, title and interest therein is legally inferable and consequently, the appellants do not have any right in law to intermeddle therewith or resort to the activities prejudicial thereto. The learned Single Judge, as the impugned judgment and order reveals, has in details dealt with all legal and factual aspects bearing on the issues raised and we find ourselves in complete agreement with the conclusions recorded therein. Having regard to the constricted scope of scrutiny in the exercise of writ jurisdiction as well as in the present intra-court appeal, we are of the unhesitant opinion that no interference is warranted. The appeal, therefore, lacks in merit and is dismissed. No costs.