
(2012) 06 RAJ CK 0019
In the Rajasthan High Court
Case No : Civil Writ Petition No. 12967 of 2008

Preetam Singh

APPELLANT

Vs

Shiv Lal Rawat and Others

RESPONDENT

Date of Decision : 14-06-2012

Acts Referred:

Rajasthan Tenancy Act, 1955 — Section 188, 42(a)

Citation : (2012) 06 RAJ CK 0019

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : L.L. Gupta, for the Appellant; J.P. Goyal and Ms. Manisha Surana, for the Respondent

Final Decision : Dismissed

Judgement

Alok Sharma

1. A challenge has been made to the order dated 6-5-2008 passed by the Board of Revenue Rajasthan Ajmer (herein after `the Board") upholding the order dated 8-4-2008 passed by the Revenue Appellate Authority Alwar sustaining the order dated 16-12-2002 passed by the Sub Divisional Officer Laxmangarh, decreeing the suit filed by one Baldev Prasad for declaration and injunction against the defendants in the suit- the petitioner herein. The facts of the case are that in a suit laid by one Baldev Prasad, father and predecessor in interest of respondents No. 1 to 7 herein, the SDO Laxmangarh vide judgment dated 16-12-2002 found that the sale-deed dated 20-8-1979 registered on 3-9-1979 in favour of Baldev Prasad, at the instance of the vendors Laxmandas and Radhey Shyam was a valid sale-deed and that Baldev Prasad, and following his death during the proceedings before the SDO Laxmangarh his legal heirs, were entitled to a judgment and decree, to be declared Khatedar of land admeasuring 1 Bigha 10 Biswas out of 7 Bigha 2 Biswas land in Khasra No. 337 situated at Rambas Tehsil Laxmangarh. It was held that the subsequent sale-deed dated 9-6-1992 in favour of petitioner Preetam Singh and others, would null and void to the extent

of land 1 Bigha 10 Biswas in Khasra No. 337 situated at Rambas Tehsil Laxmangarh. The SDO also directed that the successors of Baldev Prasad-respondents No. 1 to 7 in this petition, were entitled to an injunction u/s 188 of the Rajasthan Tenancy Act, 1955 (herein after 'the 1955 Act') protecting their possession against Preetam Singh and others.

2. The Revenue Appellate Authority Alwar upheld the order dated 16-12-2002 under its order dated 8-4-2008. In further appeal, the Board found that the registered sale-deed dated 3-9-1979 for 1 Bigha 10 Biswas executed by erstwhile recorded khatedars being prior in point of time to the sale-deed dated 9-6-1992 subsequently executed in favour of Preetam Singh and others by the successors of the erstwhile khatedars was entitled to be upheld and the courts below had committed no error warranting interference. The Board however held that the sale-deed dated 9-6-1992 in favour of Preetam Singh and others was null and void only to the extent of land admeasuring 1 Bigha 10 Biswas in Khasra No. 337 situated at Rambas Tehsil Laxmangarh, but would be valid and confer legal rights on the remainder land 5.02 Bighas (out of 7 Bighas 2 Biswas) of Khasra No. 337 situated at Rambas Tehsil Laxmangarh.

3. Heard learned counsel for the parties, and perused the material available on record of writ petition, including the impugned orders of the courts below.

4. Learned counsel for the petitioner Mr. L.L. Gupta has not been able to make out any legal argument for this court to interfere with the orders of the SDO Laxmangarh, and the Revenue Appellate Authority Alwar as upheld by the Board under its order dated 6-5-2008. No perversity, misdirection in law or error of jurisdiction in the order of the courts below is made out.

5. From the facts on record, it appears that in spite of a registered sale deed executed by Radhey Shyam and Laxman Das in favour of Baldev Prasad for 1 Bigha 10 Biswas of land out of 7 Bighas 2 Biswas of land in Khasra No. 337 mutation was not made accordingly, owing to the extant provision of Section 42 (a) of the 1955 Act where under fragmentation of an agricultural holding and transfer thereof was prohibited. The agricultural land sold to Baldev Prasad continued to remain in the revenue records in the name of Radhey Shyam and Laxman Das. During this period it appears that Laxman Das expired and on the basis of inheritance, overlooking the earlier registered sale-deed dated 3-9-1979, in respect of 1 Bigha 10 Biswas out of 7 Bighas 2 Biswas in favour of Baldev Prasad, the legal heirs of Laxman Das Dharamveer, Dinesh Kumar and Naresh Kumar sold the entire parcel of land 7 Bighas 2 Biswas of Khasra No. 337 aforesaid to Preetam Singh and others by way of registered sale-deed dated 9-6-1992. It is however now not in dispute that provisions of Section 42 (a) of the 1955 Act have been deleted effective 11-11-1992, and the deletion has been held retrospective in nature, by this court in Lal Chand @ Lalaram Vs. Nathu [RLW 1998 (1) Raj. 516]. As such transfers of a fragment of agricultural holding made even prior to the deletion effective 11-11-1992 have been recognised in law. Consequently no illegality attached to the registered sale-deed dated

3-9-1979, executed by Radhey Shyam and Laxman Das in favour of Baldev Prasad subsequent to 11-11- 1992 when-the legal prohibition was deleted. In this view of the matter the subsequent sale-deed dated 9-6-1992 executed by the legal heirs of Laxman Das alienating land in favour of third party including land earlier sold under a registered sale-deed could not operate against the rights, title and interest of Baldev Prasad or his successors in respect of land 1 Bigha 10 Biswas out of 7 Bighas 2 Biswas of Khasra No. 337 aforesaid. The Board by the impugned order dated 6-5-2008 has saved the sale-deed dated 9- 6-1992 in favour of Preetam Singh and others except to the extent of land 1 Bigha 10 Biswas, in the ownership and possession of the LRs of Baldev Prasad. The upshot of aforesaid discussion is that the order dated 6-5-2008 passed by the Board is wholly legal and proper. I therefore find no force in the writ petition, and the same is dismissed.