
(2016) 01 RAJ CK 0053
In the Rajasthan High Court
Case No : Civil Writ Petition No. 10424/15

Shanker Ram and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Constitution of India, 1950 — Article 226, Article 226(3)

Citation : (2016) 01 RAJ CK 0053

Hon'ble Judges : Sangeet Lodha, J.

Bench : Single Bench

Advocate : Narendra Thanvi, for the Appellant;

Final Decision : Dismissed

Judgement

Sangeet Lodha, J.—1. By way of this writ petition, the petitioners are seeking directions to the respondents to decide their case strictly in accordance with law after giving them adequate opportunity of hearing and considering their long settled possession over the disputed land.

2. On 11.9.15, this court while issuing notices to the respondents passed an interim order in favour of the petitioners in the following terms:

"In the meanwhile and until next date of hearing, petitioners may not be dispossessed from the land in question."

3. After passing of the interim order as aforesaid, the matter was not listed before the court inasmuch as, the file went missing. However, on the application being preferred by the respondent No. 2, the file was ordered to be reconstituted.

4. The matter comes up on an application preferred on behalf of the respondent No. 2-Gram Panchayat, Chanwadiya Kallan (wrongly referred to in the reply filed as respondent No. 3) under Article 226(3) of the Constitution of India seeking vacation of the interim order dated 11.9.15 passed by this court as aforesaid. A

reply to the writ petition has already been filed on behalf of the contesting respondent and therefore, with the consent of the learned counsel for the parties, the matter is heard for admission as well.

5. The relevant facts are that the petitioners claim to be in possession of the land measuring 0.81 hectare i.e. 0.44 hectare comprising khasra No. 84/244 and 0.37 hectare comprising khasra No. 86/245 situated at village-Jodhras Kalan, Tehsil-Merta, District-Nagaur. According to the petitioners earlier khasra number of the land in question was 37, which has been later renumbered as 84/244 and 86/245. It is averred that the land comprising khasra No. 37 was entered in the revenue record in the name of the petitioners' father Bhagu, which was later recorded in the name of the petitioners. It is alleged that the present Sarpanch of the Gram Panchayat, with mala fide intention and ulterior motives is bent upon to dispossess the petitioners from the land in question in high handed manner. Hence, this petition.

6. Learned counsel for the petitioners contended that the petitioners are in possession of the land for last more than 60 years and have constructed houses thereon and therefore, they cannot be evicted from the land in perfunctory manner. It is submitted that the respondents have not even supplied the petitioners the copies of the proceedings taken by the Gram Panchayat. It is submitted that the suit preferred by the petitioners for declaration and permanent injunction against the respondent No. 2 & 3 is pending before the Civil Court at Merta City and therefore, the respondents deserve to be restrained from dispossessing the petitioners during the pendency of the suit.

7. On the other hand, learned counsel appearing for the Gram Panchayat, submitted that the petitioners have obtained interim order from this court concealing the material facts. It is submitted that the land in question is recorded in the revenue record as abadi land of Gram Panchayat, Chawandiya Kallan. It is submitted that aggrieved by the proceedings initiated for eviction and removal of illegal construction, the petitioners have preferred a suit for declaration and injunction before the civil court of competent jurisdiction at Merta, wherein, an application preferred by the petitioners under Order XXXIX Rule 1 & 2 CPC seeking temporary injunction stands dismissed by the court vide order dated 10.9.15, however, the factum of dismissal of the application seeking temporary injunction was not brought to the notice of this court by the petitioners. Learned counsel submitted that though the notices were ordered to be issued by this court in the matter, the notices were never served upon the respondents. It is submitted that it is only when the Panchayat attempted to execute the resolution adopted on 4.11.15, the copy of the interim order dated 11.9.15 was produced by the petitioner. It is submitted that when the respondents inquired about the passing of the interim order by this court, it was revealed that the official file of the petition is missing and therefore, an application was preferred on behalf of the respondent No. 2 for reconstitution of the file and thereafter, the application has been filed for vacating the interim order. Learned counsel submitted that the

conduct of the petitioners is not above the board and therefore, they are not entitled to invoke extra ordinary jurisdiction of this court under Article 226 of the Constitution of India. Learned counsel would submit that the petitioners having availed the remedy of suit seeking declaration of title and permanent injunction before the Civil Court of competent jurisdiction, cannot be permitted to simultaneously invoke extra ordinary jurisdiction of this court and therefore, the writ petition deserves to be dismissed for this reason also. Learned counsel submitted that the disputed land was never recorded in the revenue record in the name of the petitioners rather, they have encroached upon the public land, which is recorded in the revenue record as abadi land of Gram Panchayat. Learned counsel submitted that the allegations levelled by the petitioners against the Sarpanch of the Gram Panchayat are absolutely vague and baseless. Learned counsel submitted that the allegations are levelled against the person who is presently holding the post of Sarpanch but she has not been impleaded as party respondent in the matter and therefore, the allegations of mala fides levelled, are even otherwise cannot be gone into by this court. Learned counsel submitted that as a matter of fact, the land in question was earlier recorded as pasture land, which was later converted into abadi and thus, the petitioners, an unauthorised occupants of the land, are not entitled for any protection from this court in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution of India.

8. Replying the preliminary objections raised, learned counsel appearing for the petitioners contended that the relief claimed by the petitioners in the suit filed is entirely different inasmuch as, in the writ petition filed, the petitioners have only sought directions that the respondents may be directed to decide the case of the petitioners strictly in accordance with law, after giving them an opportunity of hearing and therefore, nothing turns on the question that the factum of dismissal of the application seeking temporary injunction by the Civil Court is not brought to the notice of court by the petitioners.

9. I have considered the rival submissions and perused the material on record.

10. Precisely, the case of the petitioners is that the land in question comprising khasra No. 37 was the khatedari land of the petitioners' father Bhagu, which was later recorded in the names of the petitioners. A perusal of the documents placed on record reveal that the land measuring 1 bigha of the category barani was recorded in the revenue record in the name of Bhagu s/o Ruga in samvat 2025 to 28 and land measuring 4 biswas was recorded in the name of Naina s/o Ruga. Later, as per the Girdawari of samvat 2037 placed on record by the petitioners, 4 biswas land comprising khasra No. 37 min, was recorded in the name of the petitioners and 1 bigha land was recorded in the name of Naina-Tiloka s/o Ruga. Be that as it may, there is nothing on record to show that the land alleged to have been recorded in the name of the petitioners is the same land, which is shown in the revenue record as abadi land belonging to Gram Panchayat. Moreover, the land alleged to be in possession of the petitioners is 0.81 hectare,

which was earlier recorded as pasture land and later, converted into abadi land whereas, the land alleged to be khatedari land of the petitioners comprising khasra No. 37 min, is of the category barani. In this view of the matter, even otherwise, the stand sought to be taken by the petitioners, is not substantiated on the basis of material on record and appears to be incorrect.

11. There is yet another aspect of the matter. In the plaint presented before the Civil Court seeking declaration of title over the land in question, it is nowhere stated by the petitioners that the land alleged to have been encroached upon by them is their khatedari land rather, the declaration is sought on the ground that they are in possession of the land for more than 60 years. If according to the petitioners, the land alleged to be in their unauthorised occupation, is their khatedari land and the same has wrongly been allotted to the Gram Panchayat then, nothing prevented them from availing the appropriate remedy available under the law, questioning the said allotment and seeking correction of the entries in the revenue record.

12. It is true that the petitioners have sought different relief in the writ petition filed but then, the fact remains that the declaration of the title over the land in question and the injunction has been sought by the petitioners before the Civil Court, on the basis of identical set of the facts and it was the duty of the petitioners to bring all the relevant facts to the notice of this court including the factum of rejection of the application seeking temporary injunction by the civil court of competent jurisdiction. Thus, the petitioners are guilty of concealing material facts from this court. Moreover, a bare perusal of the plaint reveals that injunction has been sought by the petitioners keeping in view the proceedings taken by the Gram Panchayat for their eviction from the land in question. In this view of the matter, the petitioners having availed the remedy of the suit in respect of the grievances raised, cannot be simultaneously permitted to invoke extra ordinary jurisdiction of this court under Article 226 of the Constitution of India.

13. Further, a perusal of the writ petition reveals that the allegations of mala fides are levelled by the petitioners against the person presently holding the post of Sarpanch, however, they have not cared to implead her as party respondent in the matter and therefore, the allegations of mala fides levelled cannot be gone into by this court.

14. For the aforementioned reasons, the writ petition lacks merits, it is hereby dismissed. No order as to costs.