(1994) 09 RAJ CK 0006

In the Rajasthan High Court

Case No : Reference in Civil Writ Petition No. 431 of 1994

Surja Ram APPELLANT

Vs

State of Rajasthan RESPONDENT

Date of Decision : 27-09-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 226, 375
Customs Act, 1962 — Section 129

Citation : (1995) 1 RLW 658 : (1994) 2 WLN 452

Hon'ble Judges : Gokal Chand Mital, C.J;V.S. Kokje, J;N.K. Jain, J

Bench : Full Bench

Judgement

N.K. Jain, J.—This Full Bench has been constituted pursuant to the order of Division Bench dated 12.7.1994 as there is a conflict between two Division Bench decisions of this Court rendered in Birji v. Board of Revenue (R.R.D. 1979-294) AND Guman Singh v. The Board of Revenue (RLW 1992 (1) SC 592 .

2. In Birji v. Board of Revenue (supra), the petitioner Birji approached this Court Under Article 226 against the order of the Assistant Collector, Rajgarh Dist. Alwar on the application u/s 212 of the Rajasthan Tenancy Act in a suit for possession of agricultural land filed by the paintiff-non-petitioner whereby he directed that Birji should deposit a sum of Rs. 2000/- per year in two Installments in Tehsil until the decision of the suit, which was confirmed by the Revenue Appellate Authority, Alwar so also by the Board of Revenue vide order dated 13.6.1977. It was argued before the learned Judges that the impugned order directing the petitioner to deposit a cash security year after year is the nature of an order u/s 212(2) of the Act and that order could only be passed after the Assistant Collector would have come to the conclusion that a receiver should be appointed or a temporary injuction should be granted in accordance with the provisions of Sub-section (1) of Section 212 of the Act. The learned Judges have observed that apart form Section 212 of the Rajasthan Tenancy Act, the revenue court had inherent powers u/s 151 of the CPC which has been made applicable to revenue

courts by the provisions of Section 208 of the Act, to impose such condition. After relying on the decision of the Apex Court rendered in Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal, held that in the present case although the provisions of Section 212 of the Act were not applicable, yet the Assistant Collector was Justified in passing an order directing the petitioner to deposit a cash security, in the inherent Jurisdiction of that court.

3. In Guman Singh and Ors. v. The Board of Revenue and Ors. (supra), Smt. Chandrakanta-respondent No. 5 through her General power of Attorney Holder filed a suit u/s 103 and 100 of the Act against Guman Singh and Ors. petitioners came with the allegations that in the boundary of village Gulab Ganj. Tehsil Revdar, she owns about 29 Kharas, the total area of which is 130 bighas and 15 biswas and that land stands in her khatedari. In the suit, she has prayed that a decree of ejectment as also a permanent injection be passed against the defendant petitioners. She has further prayed that till the possession is delivered to her, she may be awarded damages to the extent of 15 times of the land revenue from the defendant-petitioners. The learned Sub-divisional Magistrate, Sirohi held that the plaintiff-respondent No. 5 is a Parda Nashin lady and further she belongs to the weaker section of the society and, therefore, in order to safeguard her interest, a Receiver be appointed to look after the entire land in dispute. Tehsildar Reodar was appointed as Receiver of this property. However, no permanent injection was granted in favour of the plaintiff-respondent No. 5. The appeal filed against this order was dismissed on 24.6.1991.. Thereafter, the petitioners preferred a revision petition before the Board of Revenue, Rajasthan Ajmer. The learned Single Member of the Board of Revenue observed that it appears that the trial court has appointed the Receiver without a specific request being made by the plaintiff, who has simply made an application u/s 212 of the Act and has requested for grant of temporary injuction against the petitioners. The learned Single Member of the Board of Revenue has further observed that there was no dispute regarding old possession of the defendant-petitioners on the land in dispute. The learned Single Member of the Board of Revenue has further observed that even if the defendant petitioners were in possession without lawful authority, as trespasser, they were entitled to get protection of this court until ejected by a decree of competent court, but at the same time, in order to protect the interest of the plaintiff-respondent, who is ostensible owner of the property, the stay application filed alongwith the revision petition was accepted and the order regarding appointment of Receiver was stayed provided that cash security at the rate of Rs. 500/- per bigha pr year is deposited by the petitioners in the concerned Tehsil within 10 days from this order falling which this order will be deemed not to have been passed. St was further ordered that for subsequent years, the cash security will be deposited latest by 30.6.1992 and so on. Against the said order of the learned Single Member of the Board of Revenue, the petitioners preferred a writ petition before this Court, which was allowed. This Court observed that in cases of settled possession, the order of appointment of receiver is nothing short of miscarriage of Justice and even an

order permitting defendant to remain In possession on payment of cash security cannot be sustained. This Court has further observed that as the requirement of Section 212 of the Act do not exist, a Receiver cannot be appointed and interfered and set-aside the order demanding cash security from the defendant petitioners for remaining in possession of the land in dispute.

4. The question which arises for determination is as under.

Whether the Revenue Courts are competent to pass an order for case security in cases where neither receiver is appointed nor temporary injection is issued u/s 212 of the Rajasthan Tenancy Act, 1955.

5. Mr. J.L. Purohit, learned Counsel for the petitioner has urged that without satisfying the Ingredients of Section 212 of the Rajasthan Tenancy Act (hereinafter referred to as the `Act'') the Revenue Court cannot pass any order under this Section. He has also urged that inherent powers vested u/s 151 C.P.C. cannot be invoked when there is a specific provision. According to him the view taken by Division Bench in Guman Singh v. The Board of Revenue (supra) is the correct law.

6. On the other hand Mr. Sudesh Gupta, learned Counsel for the non-petitioner has submitted that the Revenue Courts have power to impose condition for cash security even without appointing Receiver or granting temporary injunction u/s 212 of the Act, and the view taken by earlier Division Bench in Birji v. Board of Revenus (supra) is the correct law.

7. Mr. S.D. Rajpurohit, Advocate has contended that there being special powers, the Court is competent to invoke its inherent powers to do justice between the parties and in performing this duty the Court even when ingredients of Section 212(a) of the Act are not satisfied can impose condition of cash security while exercising inherent powers. He has also submitted that in Guman Singh v. Board of Revenue has wrongly taken into consideration the provisions of Order 40 Rule 1 C.P.C. which are inconsistent as per Section 208 of the Act and further argued that the learned Judges have not considered the earlier view so also the provisions of Section 151 C.P.C.

8. We have heard Mr. J.L. Purohit, learned Counsel for the petitioner and Mr. Sudesh Gupta, so also Mr. S.D. Rajpurohit who appeared in pursuance of the general notice issued to the members of Bar. We have also perused the relevant provisions of law and the case law cited at Bar.

9. Before we proceed, it would be proper to read Section 212 of the Rajasthan Tenancy Act, 1955 which runs as under:

212 Provision for injunction and 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 such suit or proceeding relates is in danger of being wasted, damaed 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.....

10. A careful reading of the above section makes it clear that the Court may grant a temporary injunction and if necessary, appoint a Receiver in any suit or proceedings under the Rajasthan Tenancy Act if it is proved by affidavit or otherwise that the suit property is in danger of being wasted, damaged or alinenated by any party thereto, or 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.

11. Counsel for the petitioner on the basis of said section urges that unless conditions are satisfied no order u/s 212(2) of the Act can be passed. We do not agree with him. It is well settled law that de-facto possession is not to be disturbed by the grant of temporary injunction or by appointment of receiver u/s 212 until decree has been obtained in accordance with the due process of law against such party, since question of right or title is not to be decided u/s 212. This section merely provides for interim action pending the disposal of the suit and specifically enumerates the contingencies in which its provisions can be invoked. For deciding application u/s 212, the Court is not required to go into merits of the case. The Court is merely required to see the prima facie possession of plaintiff being interfered with by defendant. The law does not authorise dispossession of a person in possession through application u/s 212 of the Act. In other words the sole object of this section is to preserve the subject matter in controversy in its existing condition and without determining any question of right, merely to prevent the further preparation of wrong or the doing of any act whereby the right in controversy may be materially effected or endangered. But when the case is doubtful, it is duty cast on the court to examine assertions and to arrive at a reasoned and reasonable decision. In such a situation when the appointment of receiver is considered to be harsh remedy and that the possession of a party is not to be disturbed unless the Court is satisfied that there is prima ficie case in favour of the plaintiff and further that this section is not intended to be used to put the opposite party in possession even though he may have better prima facie title ''the property'' in the section means not only land but also ''standing Crop'', still the court is required to safeguard the interests of the party in possession and in discharge of its duty, the court may direct the defendants to furnish cash security. For the reason that the power of revenue courts are not restricted to the provisions of Section 212 of the Act alone. Section 212 of the Act is not exhaustive and cannot be supposed to cover all possible eventualities which a revenue court might confront. Keeping it in view, the legislature in its wisdom has enacted Section 208 of the Rajasthan Tenancy Act, which runs as under:

208 Application of Civil Procedure Code- The provisions of the CPC 1908 (Central Act v. of 1908) except:

12. From a bare reading of aforesaid section it is clear that the whole of the CPC has been made applicable to revenue courts, the exceptions being stated in Sub-section (a), (b) and subject to the modifications contained in lists II. u/s 208 of the Act, the C.P.C. has been made applicable subject to certain exceptions. One of the important exception is that the provisions of C.P.C., which may be inconsistent with the provisions of the Tenancy Act, so far as the inconsistency extends, will not apply to matters dealt with in the Tenancy Act. Section 212 of the Act, which combines the provisions of Orders 39 and 40 of the CPC though in limited scope and the. same is akin to Orders 39 and 40 C.P.C. Order 39 Rule 1 and 2 are not in cosistent with the provisions of Section 212 as such it should be deemed to be applicable vide Section 208 but the provisions of Order 40 Rule 1 CPC. are not applicable to the extent of inconsistency according to Section 208(a) of the Act. According to Section 208 of the Act, the Provisions of Section 151 are also made applicable to the suits or proceedings pending under this Act. Section 151 of the C.P.C. vests inherent powers in the revenue courts also which means beyond powers specified and conferred by Section 212 but it can be invoked only in very exceptional circumstances. As stated above, Section 212 of the Act comes into play only when an injury to the property is alleged but there may be circumstances other than those mentioned in Section 212, in which the Court has to exercise its inherent powers is need be and in the exercise of its inherent powers the revenue court may direct to file cash security on an application u/s 212 of the Act even when the conditions enumerated in the said section are not satisfied otherwise the object of the Section 212 to prevent the other party to doing anything to defeat the ends or justice will be frustrated. Though there cannot be a straight jacket formula but we have to read the provisions of law in a sense as understood in common parlence. In our opinion when ultimately the court has power to pass appropriate order according to law then why not at the initial stage the court can impose any condition so that the right, interest or possession of the party is also safeguarded in order to prevent the other side from defeating the ends of justice till the suit or proceedings are finally decided. In our view, this is the reasonable interpretatin of law. In view of this, we are of the view that the earlier decision rendered in Birji v. Board Revenue (supra) lays down correct law.

13. Apart from what we have discussed above, we may refer to two decisions of the Apex Court: (i) Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal, (ii) Union of India and another Vs. Paras Laminates (P) Ltd., . The decision of their lordships of the Supreme Court rendered in Manoharlal v. Rai Bahadur (Supra) was also relied upon by the learned Judges in Birji''s case referred above.

14. In Manoharlal Chopra v. Rai Bahadur (supra), the brief facts of the case were that litigatin was going on between the parties in the lower courts. The learned Additional District Judge, Indore issued interim injunction under Order 39 C.P.C.

to the appellant restraining him from proceeding with his Asansol suit pending decision of the Indore suit, as the appellant was proceeding with the suit at Asansol inspite of the rejection of his application for the stay of the suit at Indore and as the appellant wanted to violate the provision in the deed of dis-solution about the Indore Court being the proper forum for deciding the disputes between the parties. Against this order, the appellant went in appeal to the High Court contending that the Additional District Judge erred in holding that he was competent to issue such an interim injunction to the appellant under Order 39 C.P.C. and that it was a fit case for the issue of such an injunction and that considering the provisions of Order 39, the order was without jurisdiction. The learned Judges of the High Court while agreeing with the contention that order 39 Rule 1 did not apply to the facts of the case held that the order of injunction could be issued in the exercise of the inherent powers of the Court u/s 151 C.P.C. and dismissed the appeal. Against which appeal by special leave was preferred. Two questions were raised before the court one that the court could not exercise its inherent power when there were specific provisions in the CPC for the issue of interim injuncitons, they being Section 94 and order XXXIX. The other question is whether the Court, in the exercise of its inherent jurisdiction, exercised its discretion properly, keeping in mind the facts of it. Their lordships observed that there is difference of opinion between the High Court on this point. One view is that a court cannot issue an order of temporary injunction if the circumstances do not fall within the provisions of order 39 of the Code. The other view is that a Court can issue an interim injunction under circumstances which are not covered by Order XXXIX of the Code, if the Court is of opinion that the interest of justice require the issue of such interim injunction. The Apex Court after considering Section 151 CPC held that the inherent power has not been conferred upon the Court it is a power inherent in the court by virtue of its duty to do justice between the parties before it. Further when the Code itself recognises the existence of the inherent power of the Court, there is no question of implying any powers outside the limits of the Code.

15. In Union of India v. Paras Laminates (supra) in a case where two members of the Customs, Excise and Gold (Control) Appellate Tribunal stated that they have doubt about the correctness of earlier decision of a Bench of three members and directed that the case be referred to the President of the Tribunal for referring it to a larger Bench. The President referred the case to the Larger Bench of five members. The High Court struck down the two members view stating that the two members ought to have followed the earlier decision of three members and reference is contrary to the judicial precedent and judicial discipline. The Apex Court while considering Sub-section (5) & (6) of Section 129 of the Customs Act, repelled the argument of the counsel that the two members should have followed the earlier decision even if members doubted about the correctness and should have left it to this Court to correct the error, if any and while allowing the appeal of the Union of India held that it has all the powers expressly conferred by the Statute and furthermore being a judicial body it has all those incidental and

ancilliary powers which are necessary make full effective the express grant of statute powers.

16. The Revenue Courts are also courts under Article 375. Entry 3 of the List 2 of VII Schedule provides for the power of the State to make laws. Entry 65 empowers State Government to fix the jurisdiction and power of the Court mentioned in the list. Section 23(i) vests Board with the control and superintendence of the Revenue Courts with Board. Thus, the Revenue Courts being a judicial body has all those incidental and ancillary powers which in the circumstances are necessary to safeguard rights of the parties. The courts as per facts of given case while dealing with the matter is the best judge to arrive at its conclusion on the facts of case that which order would be justified in the interest of justice and in order to safeguarding the rights of the parties till final adjudication of the matter. The inherent powers u/s 151 C.P.C. are complementary to those powers which are specifically conferred on the Court by the Code and the Courts in exercise of its inherent discretionary power have all ancillary powers to pass the order safeguarding the rights if the litigating parties. Though the inherent power is not to be exercised in a manner which will be contrary or different from the procedure expressly implied in the Code. In view of this, as stated above, there is no bar for the revenue courts to order for asking cash security in proper cases even when it does not order for appointment of receiver nor grant temporary injunction if the Court finds prima facie case. Nevertheless, the fulfilling of conditions mentioned in Section 212(2) of the Act will come into play in the cases where once the Court has granted temporary injunction or appointed receiver and later on come to conclusion that cash security will serve the purpose of appointment of receiver/granting of temporary injunction.

17. So far as the late decision rendered in Guman Singh v. Board of Revenue (supra) is concerned in our considered opinion, the same cannot be held to be a good law. In Guman Singh v. Board of Revenue, it has been held that in cases of settled possession, the appointment of receiver is nothing short of miscarriage of justice and an order permitting to remain in possession on payment of cash security cannot be sustained. The learned Judges have relied on a decision of the Madras High Court rendered in T. Krishnaswamy Chetty Vs. C. Thangavelu Chetty and Others, wherein the scope of 0.40 Rule 1 CPC was considered. Whereas as already stated order 40 Rule 1 CPC is not fully applicable and it is inconsistent with the Section 212 of the Act in view of Section 208 of the Act. Therefore, the provisions of Order 40 CPC cannot be pressed into service. That apart, in the said decision, the learned Judges neither considered the earlier view of this Court rendered in Birji''s case (supra) which was based on Supreme Court decision of Manohar lal''s case (supra) nor considered Section 151 C.P.C. in this view of matter, in our opinion, the said Division Bench decision does not lay down a good law and is hereby overruled.

18. Counsel for the parties referred to some of decisions of the Board of Revenue

wherein the Board of Revenue observed that since the order was passed under inherent powers of the Court, there was no necessity to first appoint a receiver u/s 212 and then ask defendant to deposit cash security. The other view has also been expressed in some cases. But in view of what we have already discussed, it is not necessary to discuss them.

19. As discussed above, the Court has inherent power to demand cash security apart from Section 212 of the Act. Even u/s 212 of the Act, the Court can demned cash security if conditions of Sub-section (1) are satisfied i.e. if there is a case for grant of injunction or appointment of receiver as the Court can always make a conditional order directing that if a cash security is offered the injunction or appointment of Receiver shall not operate.

20. The question is answered in affirmative that the Board of Revenue is competent to pass order for cash security in cases where neither receiver is appointed nor temporary injunction is granted. Now., the matter be placed before the regular Division Bench.

