

(2016) 04 RAJ CK 0005

In the Rajasthan High Court

Case No : Civil Writ Petition No. 286 of 2016.

Taj Mohammed and Others

APPELLANT

Vs

Board of Revenue, Ajmer and Others

RESPONDENT

Date of Decision : 27-04-2016

Acts Referred:

Rajasthan Tenancy Act, 1955 — Section 183-B

Citation : (2016) 2 DNJ 734 : (2016) RRD 402

Hon'ble Judges : Arun Bhansali, J.

Bench : Single Bench

Advocate : R.K. Thanvi, Senior Advocate with Ashok Thanvi, Advocate, for the Appellant; Bharat Shrimali, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Arun Bhansali, J. - This writ petition has been filed by the petitioners aggrieved against the order dated 20.11.2014 (Annex.3) passed by the Additional Collector (Administration), Chittorgarh and judgment dated 6.10.2015 passed by the Board of Revenue, Rajasthan, Ajmer ("BOR"), whereby the revision filed by the petitioners against the order dated 20.11.2014 has been rejected.

2. The respondent-Ambalal instituted proceedings under Section 183-B of the Rajasthan Tenancy Act, 1955 ("the Act") before the Tehsildar Kapasan, District Chittorgarh seeking ejectment of the petitioners alleging them to be trespassers on the land and as Ambalal being a person belonging to Scheduled Caste category.

3. When the matter came up before the Tehsildar, Kapasan, the Tehsildar on noticing that the proceedings being Case No.241/2008 between the parties were pending before the SDO, Kapasan and on a prayer made by the petitioners for staying the proceedings on account of pendency of the proceedings before the SDO, by order dated 27.8.2013, stayed further proceedings in the application under Section 183-B of the Act.

4. Feeling aggrieved, the respondent-Ambalal filed appeal before the Additional District Collector. The Additional District Collector after hearing the parties by his order dated 20.11.2014 on coming to the conclusion that the proceedings under Section 183-B of the Act being summary in nature, the proceedings cannot be stayed under Section 10 CPC on account of pendency of another proceedings and consequently, allowed the appeal.

5. Feeling aggrieved, the petitioners filed revision petition before the BOR. The BOR by its judgment dated 6.10.2015, upheld the order passed by the Additional District Collector for similar reasons and dismissed the revision petition.

6. It is submitted by learned counsel for the petitioners that the Additional District Collector and the BOR committed error in setting aside the order passed by the Tehsildar, Kapasan, whereby the proceedings on application filed by the respondent under Section 183-B of the Act were stayed. It was submitted that regular proceedings initiated by the respondent are pending consideration before the Court of competent jurisdiction and to initiate the proceedings for the similar relief cannot be permitted to be continued. It was submitted that merely because the procedure provided for proceedings under Section 183-B of the Act is summary cannot effect the applicability of provisions of Section 10 CPC and the proceedings are liable to be stayed.

7. It was emphasis that if during the pendency of the earlier regular suit, the petitioners are evicted by way of summary procedure, the pending proceedings would be rendered meaningless and therefore, on that account also, the orders impugned deserve to be set-aside.

8. Vehemently opposing the submissions made by learned counsel for the petitioners, learned counsel for the respondents submitted that the provisions of Section 10 CPC are essentially not applicable to the case in hand, inasmuch as, the said provision is applicable in case of trial of suits whereas the present proceedings are not only summary but by their very nature are applications only and therefore, the provisions of Section 10 CPC cannot be applied.

9. It was submitted that the Tehsildar without there being any application under Section 10 CPC on his own merely on noticing the pendency of proceedings has stayed the present proceedings which is against the purport and the intention of the summary procedure prescribed in the Act; the petitioners have not instituted any proceedings and the proceedings has been instituted by the respondent only and therefore also, the petitioners cannot claim the stay of proceedings.

10. Reliance was placed on Indian bank v. Maharashtra State Cooperative Marketing Federation Ltd. , (1998) 5 SCC 69.

11. I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

12. It is not in dispute that pertaining to the land in dispute comprised in Khasra No.6992/5747, the respondent-Ambalal's father Hazari Lal filed a suit No.66/97

before the SDO, Kapasan, the suit was decreed on 4.2.1997 and Hazari Lal was declared khatedar; petitioners were not party to the said suit, who filed Appeal No.4231/2005, which was allowed by the BOR and the matter was remanded back.

13. Another suit was filed by said Hazari Lal being Suit No.172/97 before the SDO, Kapasan under Section 183 of the Act, which suit was decreed on 6.3.2003; against which, the appeal was filed before the Revenue Appellate Authority ("RAA"), which set-aside the decree dated 6.3.2003 on 3.9.2003; the BOR by its judgment dated 9.4.2008 remanded back the matter to the RAA, which in turn allowed an application under Order 41, Rule 27 CPC and remanded back the matter to the SDO.

14. Where after, the SDO after consolidating the suit No.66/97 and 172/97, registered the same as Suit No.241/2008, which is still pending before the said SDO.

15. In the meanwhile, the respondent looking to the inordinate delay being caused in getting relief, filed proceedings under Section 183-B of the Act seeking possession, as noticed hereinbefore wherein the orders were passed by the Tehsildar, Kapasan staying the proceedings and the appellate and revisional authority set-aside the said order and maintained the appellate order respectively.

16. The provisions of Section 183-B of the Act reads as under:-

"Section 183-B. Summary ejectment of trespasser of the land held by a member of a scheduled caste or a scheduled tribe - (1) Notwithstanding to the contrary contained in any provision of this Act, a trespasser who has taken or retained possession, without lawful authority of land held by a tenant belonging to scheduled caste or scheduled tribe shall be liable to ejectment on an application of the person or persons entitled to evict him or on the application, in the prescribed manner; of a further liable to pay as penalty for each agricultural year during the whole or any part whereof he has been in such possession, a sum which may extend to fifty times the annual rent.

(2) The inquiry on an application under sub-section (1) shall be made in a summary manner and shall be concluded, as far as practicable, within the prescribed period and after affording a reasonable opportunity of being heard to the person alleged to be a trespasser."

17. A bare perusal of the above provision reveals that the same provides for summary ejectment of trespasser of the land held by a member of a Scheduled Caste or a Scheduled Tribe. The provision starts with non-obstantive clause providing that notwithstanding to the contrary contained in any provision of the Act, a relief can be granted and sub-section (2) of Section 183-B of the Act provides that inquiry shall be made in a summary manner.

18. The 3rd schedule attached to the Act, which provides for suits and applications cognisable by the revenue court, while indicates a proceedings under

Section 183 of the Act within the category of the suit for ejectment of trespasser under Entry No.23, the proceedings under Section 183-B of the Act have been indicated in the part of the schedule which deals with the "applications" at Entry No.68-C, in view thereof, it is apparent that while the proceedings initiated by the respondent under Section 183 of the Act is a suit, the present proceedings under Section 183-B of the Act is merely an application. 18. The provisions of Section 10 CPC reads as under:-

"10. Stay of suit.- No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

Explanation. - The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action."

19. A bare look at the said provision would reveal that the provision envisage stay of "trial of any suit" instituted subsequently to a pending suit. As noticed herein-before, the proceedings under Section 183-B of the Act are not a suit and is merely an application inquiry whereof is required to be made in a summary manner; besides the fact that the provision itself starts with a non-obstantive clause in relation to any provision of the Act and in those circumstances, the provisions of Section 10 CPC would not be attracted.

20. The Hon"ble Supreme Court in Indian Bank (supra) while dealing with the stay of a summary suit filed under Order 37 CPC, observed and held as under:-

"10. Considering the objects of both the provisions, i.e., Section 10 and Order 37 wider interpretation of the word "trial" is not called for. We are of the opinion that the word "trial" in Section 10, in the context of a summary suit, cannot be interpreted to mean the entire proceedings starting with institution of the suit by lodging a plaint. In a summary suit, the "trial" really begins after the court or the judge grants leave to the defendant to contest the suit. Therefore, the court or the judgment dealing with the summary suit can proceed up to the stage of hearing the summons for judgment and passing the judgment in favour of the plaintiff if (a) the defendant has not applied for leave to defend or if such application has been made and refused or if (b) the defendant who is permitted to defend fails to comply with the conditions on which leave to defend is granted."

21. The Hon"ble Supreme Court held that till such time that a trial begins in a summary suit under Order 37, the proceedings till that stage cannot be stayed under Section 10 CPC. The said principle was laid down for a summary suit under Order 37 where once a leave is granted, the suit is converted into a regularly instituted suit and loses its character as a summary suit i.e. it has got two stages. However, in the present case, the entire proceedings under Section 183-

B of the Act are summary in nature and therefore, in view of the ratio laid down by the Hon'ble Supreme Court in the case of Indian Bank (supra), the provisions of Section 10 CPC would have no application to a summary proceedings under Section 183-B of the Act.

22. So far as the submissions made by learned counsel for the petitioners are concerned, merely because a proceeding under Section 183-B of the Act has been instituted, does not necessarily leads to passing of an order of ejectment as the Tehsildar is required to first record a finding based on his enquiry in a summary manner as to whether the petitioners are trespassers or not, once a finding in this regard is recorded, the consequence would follow and in case, it is held that the petitioners are not trespassers, the application would naturally be dismissed.

23. The Additional District Collector in his order has categorically observed in a similar manner, which takes care of any apprehensions, which the petitioners may have qua the procedure adopted, which reads as under:-

"izLrqr izdj.k esa izkFkhZ vEckyky dk fookfnr Hkwfe ij [kkrsnkjh vf/kdkj gS ;k ughaA bl fcUnq dk fu.kZ; U;k;ky; mi[k.M vf/kdkjh diklu }kjk fopkjk/khu fu;fer okn dh dk;Zokgh esa fd;k tkuk gS fdUrq blds vk/kkj ij rglhynkj ds ;gka /kkjk 184 c ds rgr fopkjk/khu dk;Zokgh dks LFkfxr fd;s tkus dk vf/kdkj izkIr ugha gSA ;fn izkFkhZ vEckyky }kjk fookfnr Hkwfe esa izpfyr nLrkostksa ls Lo;a ds fVusUV gksus dh fLFkfr vkSj fookfnr Hkwfe ij oS/k izkf/kdkj ds fcuk jsLiksMsaV }kjk dCtk dj fy;s tkus dh fLFkfr iznf"kr dh tkrh gS rks rglhynkj }kjk /kkjk 183ch ds rgr csn[kyh dk fu.kZ; ikfjr fd;k tkuk pkfg;s vU;Fkk fLFkfr esa /kkjk 183ch ds rgr izLrqr izkFkZuk i= vLohdkj Hkh fd;k tk ldrk gS] fdUrq yfEcr ugha j[kk tk ldrkA bl izdkj vihyk/khu fu.kZ; fnukad 27-08-2013 fujLr fd;k tkdj i=koyh izkFkZuk i= ds vfUre fu.kZ; gsrq izfrizsf"kr dh tkrh gSA"

24. In view of the above discussion, it is apparent that the Tehsildar, Kapasan was not justified in staying the proceedings on application under Section 183-B of the Act filed by the respondent and the Additional District Collector and the BOR were fully justified in setting aside the order passed by the Tehsildar, Kapasan and upholding the appellate order respectively. No interference is called for in the orders impugned. The writ petition has no substance, the same is therefore, dismissed.