
(1974) 01 RAJ CK 0036
In the Rajasthan High Court
Case No : Civil First Appeal No. 4 of 1972

The State of Rajasthan

APPELLANT

Vs

Nanu Lal and Another

RESPONDENT

Date of Decision : 24-01-1974

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1974) WLN 209

Hon'ble Judges : S.N. Modi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.N. Modi, J.—This is an appeal by the State of Rajasthan against the judgment and decree of the District Judge, Jaipur, dated 22-3-71 in a suit for damages.

2. Briefly stated, the relevant facts of the case are that the plaintiff, respondents Nanulal and Mst. Surajbai were the jagirdars of village Ladpura in Tehsil Lalsot. Their jagirs were resumed under the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952, hereinafter to be referred as the Act. At the time of the resumption of the jagir, they did not possess khudkasht land and as such they applied to the Deputy Collector, Jagir, u/s 14 of the Act for the allotment of khudkasht land. After considering their claim, the Collector, Jaipur, vide his order dated 12-10-61 allotted land measuring 120 bighas situate in (sic) Ghatelav, tehsil Dausa, district Jaipur, to the plaintiffs and one Kapoorchand as khudkasht land. This allotment order was received by the plaintiffs on 14-11-61 from the Deputy Collector, Jagir. On 18-11-61 the plaintiffs applied to the Tehsildar, Dausa that they might be given possession of the khudkasht land allotted to them. The Tehsildar sought some clarification from the Collector, Jagir. The plaintiffs sent reminders to the Deputy Collector, Jaipur, but no reply was received from them. Ultimately, the State Government vide its letter dated 12-10-65 informed the Collector, Jaipur, that the land in question was meant for Harijans and therefore cannot be allotted to the plaintiffs. The plaintiffs along with Kapoorchand filed a

writ petition before this Court under Article 226 of the Constitution of India for quashing the Government order dated 12-10-65. this Court vide its judgment dated 13-3-68 allowed the writ petition and quashed the order dated 12-10-65 passed by the State Government. It further appears that thereafter the State Government handed over possession of the allotted land measuring 120 bighas to the plaintiffs and Kapoorchand sometime in the month of July 1968. The plaintiff thereafter brought the present suit out of which this appeal has arisen for the recovery of Rs. 14700/-, as the damages for withholding the possession of the allotted land. The details of the plaintiffs' claim are as follows:

1. Rs. 3700/- realised by the defendant from sale of grass from 1961 to 1968.
2. Rs. 11000/- as damages on account of loss of income which the plaintiffs would have derived by cultivation of the land had its possession been handed over to them in time. _____ Rs. 14,700/- _____

3. The suit was resisted by the defendant State of Rajasthan on various grounds. It denied that the plaintiffs were entitled to damages or the price of grass. It was also pleaded that no suit was maintainable for damages relating to the period from 12-10-61 to July 1968. Further it was pleaded that the suit was barred by time. It was then pleaded that Kapoorchand was a necessary party. On the pleadings of the parties, the following issues were struck by the trial court:

1. Whether the defendant realised Rs. 3700/- from the sale of grass during the period from 12-10-61 to July 1968 and the plaintiffs are entitled to receive this amount from the defendant?
2. Whether the plaintiffs are entitled to realise Rs. 11,000/- from the defendant as damages for loss of income?
3. Whether the claim for the period 12-10-61 to July 1965 is not maintainable and is also barred by limitation?
4. Whether Kapoorchand is a necessary party to the suit?
5. Relief.

The learned District Judge after evidence came to the conclusion that during period from 1961 to 1968 the State had realised income of Rs. 10948/- by auction of grass pertaining to 270 bighas out of which the plaintiffs and Kapoorchand were allotted 120 bighas. The learned District Judge further held that the suit was governed by Article 113 of the Limitation Act, 1963 and the plaintiffs were entitled to damages for preceding three years from the date of the suit that is, from 1-6-66. He assessed the damages at Rs. 2750/-. The other issues were all decided against the defendant and the decree was passed in favour of the plaintiffs for a sum of Rs. 2750/-, with proportionate costs. Dissatisfied with the said judgment and decree, the defendant State of Rajasthan has filed this appeal and the plaintiffs has preferred cross-objection.

4. I first take up the appeal filed by the State of Rajasthan. In the first place, it is contended that Kapoorchand was a necessary party in as much as the land

measuring 120 bighas was allotted by the State of Rajasthan jointly to the plaintiffs and Kapoorchand. In my opinion, there is no substance in the above contention. The two plaintiffs and Kapoorchand were jagirdars of village Ladpura, each having one third share in the village. The allotment was no doubt made jointly to the two plaintiffs and Kapoorchand but since each of them had a defined share, each was entitled to 40 bighas out of the allotted land. This position has not been specifically denied by the defendant in its written statement. Again, the plaintiff Nanulal in his statement has clearly deposed as PW 1 that in the jagir village Ladpura there were three co-sharers each having one-third share. He has also stated that he is one of the co-sharers and the other two co-sharers were Kapoorchand & Mst. Suraj Bai Since Kapoor Chand had a defined share in the land allotted by the State Government, he was not a necessary party to the present suit.

5. The second contention on behalf of the State is that 120 bighas of land allotted to the plaintiffs and Kapoorchand was a gratuitous grant and therefore the plaintiffs were not entitled to claim possession as a matter of right and it was at the sweet will of the State of Rajasthan to hand over possession of the allotted land as and when it pleased to do so. In this connection, the learned Counsel for the State has laid stress on Sub-section (2) of Section 19 of the Act. Sub-section (2) provides that where no land of any of the categories specified in Sub-section (1) of Section 19 is available, the application for allotment of khudkasht land shall be rejected. I fail to understand how Sub-section (2) of Section 19 makes the grant a gratuitous one Sub-section (2) only lays down that if no land is available for allotment of khudkasht, the application for allotment of khudkasht land is liable to be rejected. But that does not mean that the State could reject the application even if the land was available. The ex-jagirdars were certainly entitled to Khudkasht land if the land of the type specified in Sub-section (1) of Section 19 of the Act was available. The statute has granted to the ex-Jagirdars a right to claim khudkasht land subject to the availability of the land & this right by no stretch of imagination can be said to be gratuitous, 6. It is also contended that the suit is governed by Article 72 of the Limitation Act, 1963 and the learned District Judge committed an error in applying Article 113 of the Limitation Act, 1963. It is desirable to read Article 72:

"72.--For compensation One When the act for doing or for or omission omitting to do an takes place. act alleged to be in pursuance of any enactment in force for the time being in the territories to which this Act extends. This article applies only when the act or omission has been done under colour of statutory duty. If a person acts with the full knowledge that he is not authorised to do so under a particular statue be cannot shelter himself by pretending that the act omitted to be done by him was done with the intention of carrying out the statute. In the present case, there was no justification what so ever under the Act to withhold possession of the land allotted to the plaintiffs for their khudkasht. The omission on the part of the State Government to put the plaintiffs in possession of the land allotted to them cannot be said to do or

omitting to do an act in pursuance of the provisions of any enactment. This Article, in my opinion, is therefore not applicable to the facts of the present case. It is conceded before me that in case Article 72 is not applicable, the only Article which applies is the residuary Article 113 of the Limitation Act, 1963. The learned District Judge, in the circumstances, rightly held that the case was governed by Article 113 of the Limitation Act.

7. Lastly, on the question of quantum of compensation awarded by the learned District Judge, the learned Counsel has not been able to satisfy me that the amount of Rs. 2750/- awarded as damages by the learned District Judge is, in any way, erroneous. The learned District Judge found that in case the plaintiffs had cultivated the land in 1966 and 1967 they would have earned a profit of Rs. 2750/-. This estimate does not appear to me to be unreasonable looking to the area of the land which is 80 bighas.

8. I now come to the cross objection filed by the plaintiffs. In the first place, plaintiffs have claimed Rs. 3700/- for the price of grass which the State of Raj. had realised during the period 1966 to 1968. This claim cannot be accepted for the simple reason that in case the plaintiffs had cultivated the land there would not have been any crop of grass. The plaintiffs can either claim price of grass or the profit which they would have reaped if they had cultivated the land. The learned District Judge, in the circumstances, was fully justified in not allowing the price of grass realised by the State Government during the period 1966 to 1968. The plaintiffs have next claimed a sum of Rs. 785/- as damages from January 1968 to June 1968. The learned Counsel for the plaintiffs was not able to satisfy me as to what crop could have been raised during this period of six months. It is clear from the record that the land allotted to the plaintiffs was beed land on which no crop was ever raised and the only yield was of grass. The period of cutting grass ends by the month of December and there after the land remains fallow till the rains. This claim of the plaintiffs is clearly untenable.

9. The plaintiffs have claimed Rs. 390/- over and above Rs. 2750/- on the ground that the learned District Judge committed error in dividing Rs. 11000/- by eight because the sum of Rs. 11000/- claimed by the plaintiffs represented the profit by cultivation for seven years and not eight years. Whatever may be the reason which induced the learned District Judge to arrive at the figure of Rs. 2750/-, I do not think the plaintiffs could derive profit by cultivation more than Rs. 2750/- in two years. Having regard to the circumstances of the case, the amount of damages awarded by the learned District Judge is just and adequate and does not warrant any interference.

10. The result is that the appeal fails and it is dismissed, so also the cross-objection. Since both the parties have lost, I leave them to bear their own costs in the appeal as well as in the cross-objection.