
(2019) 12 RAJ CK 0071

In the Rajasthan High Court

Case No : Civil Writ Petition No. 15664 Of 2019

Vardaram And Ors

APPELLANT

Vs

Mohan Lal And Ors

RESPONDENT

Date of Decision : 13-12-2019

Acts Referred:

Rajasthan Tenancy Act, 1955 — Section 212, 230, 251, 251A

Citation : (2019) 12 RAJ CK 0071

Hon'ble Judges : Dinesh Mehta, J

Bench : Single Bench

Advocate : S.M. Parihar, Pritam Solanki

Final Decision : Disposed Of

Judgement

1. The present writ petition is directed against the order 21.08.2019, passed by the Board of Revenue, Ajmer (hereinafter referred to as "the Board"), whereby it has allowed the revision filed by the respondents and has restored the order dated 09.05.2018, passed by the Sub-Divisional Officer, Sirohi.

2. The facts in brief appertain to the present case are that the petitioners filed a suit for injunction under Section 212 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to "the Act of 1955"), interalia seeking an injunction qua the respondents that they be restrained from demolishing boundary wall/Maarih existing in their agricultural land situated in Khasra No.574 of village Jawaal, District Sirohi. An application for temporary injunction under Section 212 of the Tenancy Act was also filed.

3. Petitioners' application for Temporary Injunction was rejected by the Sub-Divisional Officer, vide its order dated 09.05.2018; in an appeal filed thereagainst, the Revenue Appellate Authority allowed the same vide order dated 15.11.2018 and granted injunction, restraining the respondents from interfering in the possession of the petitioners while also directing them not to effect any change in the physical status of the land in question.

4. The respondents preferred a revision petition under Section 230 of the Act of 1955 before the Board of Revenue, Ajmer. Learned Member of the Board allowed the revision and set aside the order dated 15.11.2018, passed by the Revenue Appellate Authority and restored the order 09.05.2018, passed by the Sub-Divisional Officer - as a result whereof, injunction granted in favour of the plaintiffs/petitioners has been set aside.

5. Mr. S.M. Parihar, learned counsel for the petitioners, challenging the order impugned, contended that the respondents cannot be permitted to enter into the land belonging to the petitioners to have access to their holdings situated in various Khasras including Khasra No.601.

6. It was also asserted that there is no recorded way so far as revenue record is concerned and merely because the respondents were allegedly using petitioners' land for access to their agriculture field, they cannot be permitted to demolish the boundary wall 'Maarh', until and unless an order under Section 251 and 251A of the Rajasthan Tenancy Act, is passed by the competent authority in accordance with law.

7. Mr. Pritam Solanki, learned counsel appearing for the respondents No.1-16, inviting Court's attention towards various documentary evidence, including Google Map and photographs of the site contended that a way from petitioners' land i.e. Khasra No.574 is being used by all the respondents for decades and no injunction can be granted to the petitioners, who have stopped the respondents' right of way, which was existing for years. He added that the respondents have right of easement as a consequence of unabated use of the subject land.

8. Learned counsel for the respondents further informed that during the period interregnum, pursuant to direction of the trial Court, proceedings under Section 251 of the Act of 1955 have been initiated and the same are pending before the Tehsildar, Sirohi. It was also informed that an application under Section 251A of the Act of 1955 has been preferred before the Sub-Divisional Officer, Sirohi.

9. Having heard learned counsel for the parties and upon perusal of the material available on record, this Court is of the considered opinion that until and unless, an order pursuant to proceedings under Section 251 and/or 251A of the Rajasthan Tenancy Act is passed either on the basis of easementary right or on the basis of parameters prescribed under Section 251, a right of way, claimed and sought to be enforced by the respondents (neighbouring agriculturists) cannot, as a matter of right be granted through the land of a private agriculturist.

10. Without recording any finding, even if it is presumed that the respondents can legitimately claim a right of way, they are required to take appropriate proceedings under Sections 251 and 251A of the Act of 1955.

11. In view of the above, the present writ petition is disposed of with the direction to the respondents not to interfere in petitioners' possession and pass through their land.

12. Needless to observe that the present order shall not come in the way of the concerned authorities, before whom proceedings under Section 251/251 A of the Act of 1955 are pending. The concerned Tehsildar/Sub-Divisional Officer shall decide the same in accordance with law, without being influenced by the fact that this Court has granted an interim order.

13. The present interim order shall continue only till disposal of the proceedings initiated by the respondents under Section 251 A of the Rajasthan Tenancy Act. Needless to observe that thereafter the order passed by the Sub-Divisional Officer shall prevail. The concerned Sub-Divisional Officer is directed to decide the application under Section 251 A of the Tenancy Act filed by the respondents, as early as possible, preferably by 28.02.2020.

14. Stay petition also stands disposed of.