

(2020) 01 RAJ CK 0387

In the Rajasthan High Court

Case No : Special Appeal Writ No. 501 Of 2015 In Civil Writ Petition No. 362 Of 2001, Cross Objection Writ No. 1 Of 2019 In Civil Appeal (Writ) No. 501 Of 2015

Vidhyadhar Sunda And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 16-01-2020

Acts Referred:

Rajasthan Tenancy Act, 1955 — Section 42, 88, 188, 232

Rajasthan Land Revenue Act, 1956 — Section 82, 232

Citation : (2020) 01 RAJ CK 0387

Hon'ble Judges : Sangeet Lodha, J; Mahendar Kumar Goyal, J

Bench : Division Bench

Advocate : R.K. Agarwal, Adhiraj Modi, R.P. Singh, Nawal Singh Sikarwar, Bipin Gupta, Raj Kamal Gaur

Final Decision : Dismissed

Judgement

1. This intra Court appeal assails the order dated 13.05.2015 passed by the learned Single Judge whereby, the writ petition preferred by the appellant,

has been dismissed.

2. The facts, in short, as emerge from record are that the appellant filed a suit for declaration and permanent injunction under Sections 88 and 188 of

the Rajasthan Tenancy Act, 1955 (for short "the Act of 1955") as well as seeking correction of the entry in the revenue record in the Court of Sub-

Divisional Officer, Sikar. The appellant averred, as gathered from the judgment dated 19.10.1981, that 11 bighas of land comprising of khasra No.44/5

in village Samarathpura, District Sikar was allotted to the defendant No.1, Noparam. It was averred that half portion of this 11 bighas of land was

already under his possession, cultivation and khatedari much prior to allotment

and rest half was in possession of defendant No.1. It was submitted that the defendant No.2, Nolaram was never in possession of land, part of khasra No.44/5 nor the defendant No.1 ever sold the land in question to the defendant No.2; still, in the garb of the erroneous entry in the jamabandi during the settlement proceedings in the name of defendant No.1, of the half portion under his possession, the defendants were trying to dispossess him. Therefore, the decree as aforesaid was prayed for.

3. The defendants No.1 & 2 in their written statements admitted the averments made by the plaintiff and prayed for decreeing the suit. Ex-parte proceedings were carried out against the State Government. The suit was decreed by the Court of Sub- Divisional Officer, Sikar vide its judgment dated 19.10.1981. The appeal against the judgment dated 19.10.1981 was dismissed by the Revenue Appellate Authority, Sikar vide its judgment dated 10.12.1991, on the ground of delay only as it was preferred with inordinate delay of about 10 years and the second appeal preferred by the defendant No.1, Noparam came to be dismissed by the Board of Revenue, Ajmer vide its judgment dated 04.10.1993, having been withdrawn by the legal representatives of the appellant-Noparam. Thereafter, the District Collector, Sikar vide its judgment dated 20.09.2000 made the reference to the Board of Revenue on the application filed by the Tehsildar, Sikar under Section 82 of the Rajasthan Land Revenue Act, 1956 (for short "the Act of 1956") against the judgment dated 19.10.1981. Vide order dated even, the District Collector, Sikar also allowed the application preferred by Toda, legal heirs of Gora as well as Goru under Section 232 of the Act of 1955 seeking reference. The Board of Revenue has, vide its order dated 05.01.2001, accepted and allowed the reference and set aside the judgment dated 19.10.1981, the consequential mutation in favour of the appellant- Vidhyadhar Sunda and directed the Revenue Authorities to enter the land in question in the khatedari of defendants Noparam and Nolaram. The appellant unsuccessfully challenged the aforesaid judgment dated 05.01.2001 by way of writ petition, as stated hereinabove.

4. Assailing the order passed by the learned Single Judge dated 13.05.2015 as well as the order of Board of Revenue dated 05.01.2001, Shri R.K.

Agarwal learned Senior Counsel for the appellant contended that the reference under Section 82 or under Section 232 of the Act of 1956 was not

maintainable in absence of any public element involved therein as the dispute was private in nature. He submitted that since it was alleged that the judgment dated 19.10.1981 was obtained by fraud and collusion, the aggrieved party could either have filed suit seeking its cancellation or preferred statutory appeal against it and the judgment could not have been set at naught taking resort of reference. Assailing the order of reference, it was asserted by the learned Senior Counsel that there was inordinate delay of about 19 years in making the reference which was fatal and hence, the consequential orders passed therein, cannot be sustained in the eye of law.

5. Shri Agarwal submitted that since there was no transfer of the land in question, as stipulated under the Transfer of Property Act, 1882 (for short the Act of 1882"), by a member of Scheduled Castes/Scheduled Tribes in favour of a non-member, the judgment dated 19.10.1981 could not have been set aside resorting to the provisions of Section 42 of the Act of 1955.

6. He contended that as the judgment dated 19.10.1981 passed by the Court of Sub-Divisional Officer, Sikar merged in the judgment dated 10.12.1991 passed by the Revenue Appellate Authority as well as in the judgment dated 04.10.1993 passed by the Board of Revenue in the first appeal and second appeal respectively, reference seeking cancellation of the judgment dated 19.10.1981 only, was not maintainable.

7. Learned Senior Counsel asserted that while passing the order impugned dated 13.05.2015, learned Single Judge did not appreciate that the land measuring 11 bighas comprising of khasra No.44/5 exists in two parts at two different places, northern half portion of which was sold by Noparam to Nolaram vide registered sale deed dated 07.02.1978 whereas, the remaining half continues to be in possession of the appellant. It was contended that Noparam is in possession of the land contiguous to the land under possession of the appellant which bears new khasra No.175 and Noparam has no concern with 5 bigha 10 biswas of land on southern side of land comprised of khasra No.44/5, under possession of the appellant.

8. Shri Agarwal canvassed that S/Shri Toda, Mala and Goru were neither members of Scheduled community nor, were they in any way related with Noparam/Nolaram and hence, the application filed by them under Section 232 of the Act of 1955 was not maintainable and no reference could have been made by the District Collector on such application. Lastly and in the

alternate, Shri Agarwal submitted that since the dispute pertaining to khasra No.176, 177 and 178 (the new khasra numbers of old khasra No.44/5) between the parties is already sub-judice, at present, before the Board of Revenue in second appeal arising out of Suit No.316/1991 filed by the S/Shri Toda, Mala and Goru, the rights of the parties qua the land in dispute may be subjected to the ultimate decision of that dispute.

9. Per contra, Shri R.P. Singh learned Senior Counsel appearing for the legal representatives of deceased Noparam submitted that the pleadings of the appellant have been self contradictory. He submitted that although, the appellant has submitted that 11 bighas land of khasra No.44/5, exists in two parts at two different places; but, in the common written statement filed by the appellant alongwith legal representatives of Nolaram and Goruram in the Suit No.316/1991, he has categorically averred that the land allotted to Noparam was not in two parts but was adjunct. Shri Singh contended that the appellant in his suit filed under Sections 88 and 188 of the Act of 1955 has averred that Noparam was in possession of one half of the 11 bighas land of khasra No.44/5 whereas rest half was under his possession with further averment that the defendant No.2, Nolaram has never been in possession of the land in question nor the defendant No.1 has ever sold the said land to the defendant No.2; whereas, before this Court, the appellant has developed an entirely new case stating that it is Nolaram who is in possession of the half of the land of khasra No.44/5 under the registered sale deed executed by Noparam and Noparam is in possession of 5 bighas 10 biswas of land not out of khasra No.44/5; but, of new khasra No.175 situated contiguous to the land under possession of the appellant. He denied attraction of the doctrine of merger as the first appeal preferred against the judgment dated 19.10.1981 was dismissed being barred by limitation and the second appeal preferred was dismissed as withdrawn. The learned Senior Counsel submitted that from the material on record it is established beyond any iota of doubt that it was the appellant who has managed filing of the first appeal with inordinate delay of 10 years and was also instrumental in withdrawal of the second appeal through legal heirs of the appellant therein.

10. Shri Singh further contended that from the material on record, it is apparent that the judgment dated 19.10.1981 was obtained by the appellant playing fraud and collusion, for which concurrent findings of facts have been

recorded by the Revenue Authorities as well as by the learned Single Judge. He contended that it is settled principle of law that fraud vitiates every solemn act and since the judgment dated 19.10.1981 was based on fraud, it could not have been sustained on any count. Lastly, the learned Senior Counsel contended that even assuming for the sake of argument that the reference was made without jurisdiction, setting aside the order dated 05.01.2001 would amount to restoring the order dated 19.10.1981 which, per-se, is illegal and this Court would not like to restore an illegal order. He, therefore, prayed that the special appeal be dismissed.

11. Shri Raj Kamal Gaur learned counsel appearing for the legal heirs of S/Shri Toda, Mala and Goru submitted that his clients were allotted two bighas of land each vide allotment letter dated 24.10.1977 out of khasra No.44/1 and its mutation was also attested in their favour; but, the appellant, in the garb of judgment dated 19.10.1981 having been obtained fraudulently, got the mutation No.258 sanctioned in his favour of the land which, as a matter of fact, comprises of khasra No.176 belonging to his clients. He submitted that although, the revenue Suit No.316/1991 filed by his clients, was decreed by the Court of Sub- Divisional Officer, Sikar vide judgment dated 10.08.2017; but, the same was set aside by the Revenue Appellate Authority, Sikar in the first appeal and the matter, at present, is sub-judice in second appeal before the Board of Revenue. He, therefore prayed for dismissal of the appeal.

12. Shri Bipin Gupta learned counsel appearing for the respondent No.34 supported the submissions made by the appellant and submitted that the respondent No.34 is in possession of half of the land sold by Noparam to Nolaram as he has purchased the same from legal heirs of Nolaram through registered sale deed.

13. Heard the learned counsel for the parties and perused the record.

14. A perusal of the record reveals that the appellant has consistently taken inconsistent pleas. In the revenue suit filed under Sections 88 and 188 of the Act of 1955 in the year 1981, the appellant has acknowledged possession of Noparam over half of the land i.e. 5 bighas 10 biswas of khasra No.44/5 and rest half was claimed under his possession denying either any sale in favour of the defendant No.2, Nolaram or his possession. A perusal of the registered sale deed dated 07.02.1978 executed by Noparam in favour of

Nolarama reveals that the appellant was signatory to the same and hence, it did not lie in his mouth to deny its execution. After the judgment dated 19.10.1981, the appellant has changed his stand altogether and came out with a plea that Nolaram was in possession of half of the land of khasra No.44/5 on the strength of the registered sale deed executed by the Noparam in his favour whereas it was Noparam who, instead of being in possession of remaining half of land khasra No.44/5, was in possession of the land of khasra No.175. A perusal of the sale deed witnessed by appellant himself clearly stipulates that the allottee Noparam was owner and in exclusive possession of entire land of 11 bighas comprising of khasra No.44/5 and he has handed over actual and physical possession of half of the land sold to the purchaser Nolaram. His further case has been that the land measuring 11 bighas of khasra No.44/5 was in two parts situated at two different places; whereas, in the common written statement filed in suit No.316/1991, he has averred that 11 bighas land comprising of khasra No.44/5 was not in two parts but was adjunct. In the aforesaid circumstances, it is apparent that the appellant has come with dishonest plea with regard to his possession over the disputed land and his contention with regard to possession over half of the land in question, does not merit acceptance. We have also noted that the facts and circumstances of the case smack of the judgment dated 19.10.1981 having been obtained fraudulently and in collusion. Defendants No.1 & 2, for no apparent reason, stated to have filed written statement admitting the averments made by the appellant in the plaint. The subsequent events fortify our belief. We need not delve more on this aspect as the learned counsel for the appellant could not point out any illegality or perversity in the concurrent findings recorded in this regard by the learned Single Judge as well as by the Board of Revenue and revenue authorities.

15. The contention of the appellant that the reference deserves to be rejected as it was made after inordinate delay of about 19 years, is liable to be rejected. Firstly, there is no limitation prescribed under Section 82 of the Act of 1956 to make reference although, absence of prescription of any period of limitation, does not give unbridled power on the authority to exercise it on its whims; but, it has to be exercised within a reasonable time. However, in cases of fraud, collusion, lack of jurisdiction and under the circumstances where the orders are void being against the public interest and

policy, power can be exercised at any time. Therefore, the delay in making reference under Section 82 of the Act of 1956 cannot be held to be fatal in

this case. Even otherwise also, it is trite that if setting aside an order, assuming it to have been passed without jurisdiction, would result into restoring

an illegal order, this Court will be loathe to interfere. Setting aside the judgment of the Board of Revenue dated 05.01.2001, would restore the

judgment dated 19.10.1981 which has been held to have been obtained by playing fraud and collusion; therefore, the judgment dated 05.01.2001 cannot

be set aside. We find no illegality in order dated 05.01.2001 passed by the Board of Revenue whereby, the reference was allowed setting aside the

judgment dated 19.10.1981 as well as the order passed by learned Single Judge. Since, we have held that the reference made under Section 82 of the

Act of 1956 was maintainable, no finding is required as to validity of reference on application under Section 232 of the Act of 1955.

16. There is no substance in the argument raised by the learned Senior Counsel for the appellant that since his rights qua the land in question were

declared vide judgment impugned in reference, the provisions of Section 42 of the Act of 1955 are not attracted which presupposes ""transfer"" of land

as envisaged under the Act of 1882. The word ""transfer"" under Section 42 of the Act of 1955 cannot be given such restricted meaning. In the case of

Pandey Orson versus Ram Chander Sahu & Ors., 1992 Supp. (2) SCC 77, Hon'ble Apex Court has held as under:-

6. In Section 71A in the absence of a definition of transfer and considering the situation in which exercise of jurisdiction is contemplated, it would not

be proper to confine the meaning of transfer to transfer under the Transfer of Property Act or a situation where transfer has a statutory definition.

What exactly is contemplated in the provision is where possession has passed from one to another and as a physical fact the member of the Scheduled

Tribe who is entitled to hold possession and a non-member has come into possession would be covered by transfer and a situation of that type would

be amenable to exercise of jurisdiction within the ambit of Section 71A of the Act.

6A. The provision is beneficial and the legislative intention is to extend protection to a class of citizens who are not in a position to keep their property

to themselves in the absence of protection. Therefore, when the legislature is extending special protection to the named category, the Court has to give

a liberal construction to the protective mechanism which would work out the protection and enable the sphere of protection to be effective than limit by the scope.

17. In view of the aforesaid dictum as well as the salutary object underlying Section 42 of the Act of 1955 i.e. to protect the rights and interest of the members of Scheduled Castes and Scheduled Tribes in the land under their khatedari/possession, we have no hesitation in holding that even possession of the appellant over the land belonging to the member of Scheduled Castes and Scheduled Tribes is hit by the provisions of Section 42 of the Act of 1955. In these circumstances, claim of the appellant over the land of the members of scheduled category, cannot be countenanced.

18. Resort to the theory of merger by the learned Senior Counsel for the appellant, is of no help to him for the reason that the first Appellate Court has dismissed the appeal being barred by limitation and the second appeal was dismissed on account of its withdrawal. There was no affirmation of the judgment dated 19.10.1981 on merits by any of the Appellate Authorities. Even otherwise also, once we have held that the judgment dated 19.10.1981 was obtained by playing fraud and in collusion, it cannot be saved applying the principle of merger.

19. It has been held by the Hon'ble Apex Court as well as by this Court in catena of cases that this Court, while entertaining an intra Court appeal, acts as a Court of correction in its own orders in exercise of the same jurisdiction vested in the Single Bench and does not sit in appeal as against an order of subordinate Court. A perusal of the order dated 13.05.2015 reveals that the learned Single Judge has scanned the entire material on record threadbare and we find no illegality and perversity in order impugned warranting interference by this Court in its intra Court appeal jurisdiction.

20. With regard to contention of the learned Senior Counsel, Shri Agarwal that rights of the parties may be subjected to the ultimate decision in the revenue suit No.316/1991 filed by S/Shri Toda, Mala and Goru, at present, sub-judice before the Board of Revenue, suffice is to say that law will take its own course and no direction in this regard is warranted from this Court. For the aforesaid reasons, the special appeal fails and is dismissed. In D.B.

Cross Objection Writ No. 1/2019:-

21. Shri Bipin Gupta, learned counsel appearing for the cross- objector/

respondent No.34 in Cross Objection in the DB Special Appeal (Writ)

No.501/2015, (Shri Chiranji Lal) filed against the order dated 13.05.2015, submitted that he has purchased half of 11 bighas of the land comprising of

khasra No.44/5 through registered sale deed dated 06.10.2000 executed by legal heirs of Nolaram. He contended that the allottee of 11 bighas of land

comprising of khasra No.44/5, Noparam has, vide registered sale deed dated 07.02.1978, sold one half of the land measuring 5 bighas 10 biswas to

Nolaram. Son of Nolaram, Goruram has sold half of the land of khasra No.44/5 to him on the strength of a will in his favour. It is contended that as

the appellant also belongs to the scheduled community, the transaction in his favour is not hit by the provisions of Section 42 of the Act of 1955. It is

contended that since the reference made by the District Collector was confined to the decree dated 19.10.1981 pertaining to half of the land

comprising of khasra No.44/5 remaining in the share of Noparam, the learned Single Judge erred in making observations, while dismissing the writ

petition filed by the appellant, with regard to sale in his favour. It was further submitted that challenge in the writ petition was made to the order dated

05.01.2001 and the learned Single Judge erred in passing the order beyond the scope of the order dated 05.01.2001. He, therefore, prayed that the

cross objection may be allowed and the order dated 13.05.2015 passed by the learned Single Judge, to the extent putting cloud on his title, be set aside

and it may be held that half share purchased by the applicant Chiranji Lal was never under challenge in the proceedings before the Board of Revenue.

22. Per contra, the learned counsel appearing for the other respondents opposed the prayer and submitted that a perusal of the order passed by the

Board of Revenue dated 05.01.2001 would reveal that while setting aside the judgment dated 19.10.1981, khatedari of the land of khasra No.44/5 has

been directed to be recorded in the name of Noparam as well as Nolaram and the learned Single has dismissed the writ petition filed against the order

of the Board of Revenue without disturbing the findings and conclusion vide order dated 05.01.2001. In these circumstances, there was no occasion

for the applicant to file the cross objection against the order of learned Single Judge dated 13.05.2015.

23. Heard the learned counsel for the parties and perused the record.

24. The applicant, Chiranji Lal has purchased half of the land of khasra No.44/5

through registered sale deed from Goruram legal heir of Nolaram on the strength of a will in his favour and thus, he steps in the shoes of Nolaram whose rights have been protected by the Board of Revenue vide its order dated 05.01.2001 while setting aside the judgment dated 19.10.1981. These findings have not been disturbed by learned Single Judge while dismissing the writ petition filed by the appellant. Therefore, neither the order dated 05.01.2001 nor the order dated 13.05.2015 prejudices the rights of the objector in the land in question; rather protects the same. So far as contention of learned counsel for the applicant with regard to observation made by the learned Single Judge qua his rights, is concerned, a perusal of the order impugned dated 13.05.2018 reveals that such observations are based on factual foundation and are integral part of the order which have been made by the learned Single Judge to arrive at conclusion of dismissal of the writ petition. Without compromising with the composure of the order dated 13.05.2015, the observations cannot be deleted from the body of it. As already observed, right of the appellant in the land purchased by him, has not been disturbed at all. Therefore, the prayer made by the applicant- Chiranji Lal cannot be entertained. In these circumstances, there is no merit in the cross objection filed by the applicant-Chiranji Lal and the same is dismissed accordingly.