

Chatra and Ors Vs. Mahadev Ji and Ors

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Court : Rajasthan Jodhpur

Decided On : Apr-17-2015

Appellant : Chatra and Ors

Respondent : Mahadev Ji and Ors

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR :

ORDER

: S.B.CIVIL WRIT PETITION NO.1604/1996 Chatra & ORS.versus Mahadevji Neel Kanth, Godunda & ORS.Date of Order :: 17th April, 2015 PRESENT HON'BLE Mr.JUSTICE ARUN BHANSALI Mr.Deelip Kawadia, for the petitioneRs.Mr.Sajjan Singh, for the respondents.

---- BY THE COURT: This writ petition is directed against judgment dated 25.08.1995 passed by the Board of Revenue, Ajmer ('Board').whereby, the appeal filed by the petitioners against judgment dated 10.07.1990 passed by the Revenue Appellate Authority, Udaipur ('RAA') and judgment dated 27.12.1988 passed by the Assistant Collector, Head QuarteRs.Udaipur ('the Collector') has been rejected.

The respondent filed a suit for declaration of Khudkasht under Section 90 of the Rajasthan Tenancy Act, 1955 ('the Act').eviction of the defendants under Section 183 of the Act from land admeasuring 22 Bighas 14 Biswas situated at Dadiya,

Tehsil Gogunda, for injunction under Section 92 and for appointment of Receiver under Section 212 of the Act on 19.10.1970; it was, inter alia, claimed in the suit that the land in question was recorded in the name of Shri Mahadev J. Neelkanth Murti Virajman Mandir Gogunda; Sr. Gangagir was its Shebait or 2 Manager; initially the land was Maufi and after resumption of Maufi the plaintiff became its Khatedat tenant; the plaintiff has been undertaking the cultivation of the land over itself or through sijara and has been doing the same with different persons from time to time; about eight years back, the land was given to defendants, wherein, for three years they gave 50% of the produce and for last five years the same has been stopped, therefore, oral notice was given, however, the same was not adverted to; it was further averred that despite the land being on sijara with the defendants, they have been acting against the interest of the plaintiff and had filed proceedings under Section 19 of the Act for getting the tenancy in their name, which was rejected on 12.07.1968 and appeal filed by them was dismissed by the Additional Collector, Udaipur on 12.08.1969 and the order of Tehsildar, Gogunda was maintained; another proceedings initiated by the defendants for correction of record was also rejected in the year 1953; it was claimed that the defendants were neither sharing the produce nor they were permitting the plaintiff from taking the produce from the portion of land cultivated by the plaintiff and were bent upon creating disturbance; the cause of action arose when the defendants refused to share the produce of sijara and created dispute when plaintiff wanted to remove the produce and, ultimately, prayed that the land be declared to be Khudkasht of the plaintiff, the defendants be evicted as trespassers and the land be ordered to be handed over to plaintiff; further, the damages were also sought from the defendants.

The suit was contested by the petitioners-defendants 3 claiming themselves to be tenants of the land in question and disputed that the plaintiff was Khatedar of the land in question; it was claimed that the defendants were Sikmi Kastkars of the land in question and, therefore, have become Khatedars of the land in question; they were not trespassers and were not in possession as Sijari and, therefore, the suit was not maintainable.

The SDO framed fourteen issues; on behalf of both the sides several witnesses were examined and documents were produced; after arguments, the SDO held that the Jamabandi Mahakma Bandobast for Samvat 2007 (Exhibit-4) indicates the land as that of the plaintiff as Khudkasht and Pujari Gangagir as Sikmi and the said fact was proved by witnesses also; the plaintiff was entitled to file the suit, the extent of damages could not be ascertained, as the defendants were interfering, the plaintiff was entitled to permanent injunction, admission regarding question of law does not operate as res judicata and the plaintiff was entitled to order under Section 183 of the Act and, consequently, declared the land in question as Khudkasht of the plaintiff and ordered for eviction of the defendants.

Feeling aggrieved, the petitioners-defendants and respondent-plaintiff filed appeals before the RAA.

The RAA by its order dated 10.07.1990 came to the conclusion that the suit was maintainable before the Revenue Court; the plea raised by the defendants that defendants cannot be termed as trespassers and, therefore, the suit under Section 183 of the Act was not maintainable was not accepted as the RAA came to the conclusion that the land was given for 4 cultivation to the defendants and the plaintiff wanted its possession back and notices were issued and despite that the possession was not delivered and, therefore, the defendants were trespassers and as under Section 46 of the Act the idol is minor and the rights of minor have been protected under the provisions of the Act, no person could have any Khatedari rights of the land of minor and, therefore, there was no substance in the appeal and rejected the same; further, the appeal filed by the plaintiff for grant of damages was also rejected.

On the second appeal filed by the petitioners-defendants, the only issue appears to have been raised was maintainability of proceedings under Section 183 of the Act and it was claimed that proceedings under Section 180 only were maintainable; however, the Board based on its Larger Bench decision came to the conclusion that Khudkasht land of temple, even if, it is cultivated by anyone would be treated as Khudkasht of the temple and the cultivator would not get any tenancy rights and the idol can remove such person from cultivation whenever it

wants and on refusal, the person would be trespasser, who can be evicted under Section 183 of the Act and, consequently, dismissed the second appeal.

It is submitted by learned counsel for the petitioners that the three authorities below were not justified in holding against the petitioners. It was submitted that while the SDO did not deal with the issues properly and has in a very cursory manner simply recorded the findings, the RAA and the Board have not properly considered the issue pertaining to the maintainability of the suit under Section 183 of the Act; it was submitted that even if the 5 plea raised by the plaintiff is accepted, the petitioners are 'tenant holding over' and they cannot be termed as trespassers and, therefore, the suit under Section 183 of the Act was not maintainable.

With reference to provisions of Sections 45, 46, 180 and 183 of the Act, it was submitted that the reliance placed by the plaintiff and accepted by the authorities below is wholly misplaced, inasmuch as, Section 45 of the Act is not applicable in the present circumstances in view of explanation provided under Section 46 of the Act, which provides that in case of a minor the provisions of Section 45 of the Act are not applicable; it was further submitted that the law laid down by this Court in *Balveer Singh & Ors. v. Board of Revenue & ORS.*: 1983 WLN (UC) 476 has not been properly applied; learned counsel also attempted to make submissions to claim Khatedari rights having accrued to the petitioners in view of provisions of Section 19(1A) of the Act and, therefore also, the orders passed by the three authorities below deserve to be set aside.

Learned counsel for the respondents submitted that all the three authorities below have concurrently found against the petitioners and they are not entitled to any relief from this Court; the proceedings are pending since 1970 and on account of various unsubstantiated pleas raised by the defendants, the plaintiffs are being deprived of the fruits of decree; it was submitted that the plea regarding accrual of Khatedari rights under Section 19(1A) of the Act is absolutely baseless, inasmuch as, the proceedings initiated by the petitioners were decided by the Addl.

Collector by his order dated 12.08.1969 and no order 6 contrary to the said order dated 12.08.1969 has been produced and, therefore, it is not open for the

petitioners to raise the said plea again.

Regarding the maintainability of the proceedings under Section 183 of the Act, it was submitted that from a plain reading of provisions of Section 180 of the Act especially the explanation to Section 180(1)(b) of the Act, it is apparent that for a person who claims himself as a tenant or sub-tenant holding over, he has to show that after determination of lease or sub-lease, the lessor or a legal representative has accepted rent from the tenant or sub-tenant or has otherwise assented to his continuing in possession, which is not the case here and, therefore, the petitioners cannot claim themselves to be tenant holding over.

It was submitted that reliance placed on the judgment in the case of Balveer Singh (supra) is wholly misplaced and has no application to the facts of present case and, therefore, there is no substance in the writ petition filed by the petitioners. I have considered the rival submissions made by learned counsel for the parties and have perused the material placed on record and the judgments cited by learned counsel for the parties.

From bare perusal of three concurrent orders passed by the authorities below, it is apparent that so far as the plea raised by the petitioners regarding accrual of Khatedari rights under Section 19(1A) of the Act is concerned, though the said plea was initially raised, appears to have been abandoned at the appellate stage as there is no reference of any such plea before the RAA and the Board.

Even otherwise, the plaintiffs in their plaint (Annexure-1) specifically made averments that the plea raised by the petitioners in this regard stood rejected by Tehsildar, Gogunda by its order dated 12.07.1968 and appeal against the said order was rejected by the Addl.

Collector on 12.08.1969.

In the written statement it was claimed that proceedings against order dated 12.08.1969 were pending, however, no order contrary to order dated 12.08.1969 was either produced before the Board till the year 1996 nor the same has been produced before this Court and in view of passage of over 46 years from the date

the order was passed by the Collector in the year 1969, it cannot be said that the proceedings are still pending and, therefore, the plea regarding accrual of Khatedari rights to the petitioners under Section 19(1A) of the Act which has already been concluded against the petitioners has no basis.

The plea raised by the petitioners regarding non-maintainability of the proceedings under Section 183 of the Act and claiming themselves to entitle to status of tenant holding over necessarily means that the petitioners have accepted the plea raised by the plaintiffs regarding their cultivating the land as sijaris.

The provisions of Section 180 of the Act in so far as the same are relevant in the present case read as under:- 180.

Additional provisions for ejectment or Khudkasht or Gair-Khatedar tenants or sub-tenants - (1) A tenant of Khudkasht or a Gair-Khatedar tenant or sub-tenant shall also be liable, on applications to ejectment on any of the following grounds, namely - (a) that the land held by such tenant or sub-tenant is in excess of the minimum area prescribed by the State Government for the district or part of the district in which such land is situated and ejectment from the excess area is sought by the landholder for the purpose of his personal cultivation : Provided that different limits may be prescribed for different districts or parts of a district, so however, as to ensure a net annual income of twelve hundred rupees for such tenant or sub-tenant exclusive of the cost of his labour and the labour of his family.

(b) that he is a tenant or sub-tenant holding from year to year : Provided that no tenant or sub-tenant holding land in the Abu area from year to year shall be liable to ejectment under this clause; Explanation - For the purpose of clause (b) a tenant or sub-tenant holding from year to year shall include a tenant or sub-tenant who remains in possession of the holding after the determination of the lease or sub-lease and the lessor or his legal representative accepts rent from the tenant or sub-tenant, or otherwise assents to his continuing in possession.

(c) that the lease or sub-lease granted after the commencement of this Act under section 45 has expired or will expire before the end of the current agricultural year and the landholder requires the land for his personal cultivation; (d).....

The provisions of Section 183 of the Act, which deal with the ejectment of certain trespassers read as under:- 183.

Ejectment of certain trespasser - (1) Notwithstanding anything to the contrary in any provision of this Act, a trespasser who has taken or retained possession of any land without lawful authority shall be liable to ejectment, subject to the provision contained in sub-section (2).on the suit of the person or persons entitled to eject him and shall be 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 fifteen times the annual rent.

(2) In case of land which is held directly from the State Government or to which the State Government, acting through the Tehsildar, is entitled to admit the trespasser as tenant, the Tehsildar shall proceed in accordance with the provisions of section 91 of the Rajasthan Land Revenue Act, 1956 (Rajasthan Act 15 of 1956).

From a bare perusal and plain reading of the explanation under Section 180(1)(b) of the Act, it is apparent that for a tenant/sub-tenant, who is in possession of the holding after the determination of the lease or sub-lease, it is sine qua non that after determination, the lessor or his legal representative accepts 9 rent from the tenant/sub-tenant or otherwise assents to his continuing in possession.

In the plaint (Annexure-1) the plaintiffs have made the following averments:- (4) - "# ,) , , - . 0) 1 2.

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0 2 " From the above status of pleadings, it is apparent that the pre condition for the petitioners or for any person to claim their status as tenant holding over i.e.acceptance of rent by the 10 tenant or sub-tenant or assenting to continuing in possession of the tenant after determination of the lease is absent from the present case and, therefore, the petitioners cannot claim themselves to be tenant holding over as the fundamental conditions as contained in the explanation are totally absent from the facts of the present case.

Heavy reliance has been placed by learned counsel for the petitioners on the Single Bench judgment of this Court in Balveer Singh (supra).wherein, it was, inter alia, held that a tenant or sub-tenant retaining possession of land after the expiry of period of lease cannot be said to retain possession without lawful authority and cannot be deemed to be a trespasser as there is no provision under Section 63 for termination of tenancy in respect of agricultural land by efflux of time and so the tenancy or sub-tenancy as the case may be would continue to subsist irrespective of the fact that the time agreed upon between the parties had come to an end.

The law laid down by this Court in the case of Balveer Singh (supra) is not of much assistance to the petitioners as in the case of Balveer Singh (supra).this Court was

dealing with a case of 'expiry of period of lease' and on account of the fact that there was no provision similar to provisions of Section 111(a) of the Transfer of Property Act, 1882 it was held that the tenant cannot be termed as trespasser.

The present case, from the averemnts made in para 4 of the plaint and notice Exhibits-A3 and A4 as noticed by RAA is a case of determination of tenancy and not expiry of tenancy due to efflux of time and the explanation of Section 180(1)(b) of the Act deals with 11 'determination of tenancy' and not expiry of tenancy by efflux of time.

In view thereof as noticed hereinbefore, the judgment in the case of Balveer Singh (supra) is of no assistance to the petitioners and it cannot be said that the petitioners would be tenants holding over despite determination of tenancy and non- acceptance of rent by plaintiff and in absence of any assent to continuation in possession of the defendants by the plaintiffs.

The provisions of Section 183 of the Act deal with a person who has taken or retained possession of any land without lawful authority.

The possession of the petitioners after determination of tenancy, as noticed hereinbefore, is definitely without lawful authority and, therefore, the Courts below were justified in decreeing the suit filed by the respondents under Section 183 of the Act treating the petitioners as trespassers. In view of the above discussion, there is no substance in the writ petition and, consequently, the same is dismissed.

No order as to costs.

(ARUN BHANSALI).J.

A.K.Chouhan/-

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