

Ram Kumar Vs. State and Ors

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Court : Rajasthan Jodhpur

Decided On : Aug-18-2015

Appellant : Ram Kumar

Respondent : State and Ors

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR1
D.B.Civil Special Appeal No.375/2002 Ram Kumar V/s State of Rajasthan & ors.

2. D.B.Civil Special Appeal No.35/2002 Ram Kumar V/s Het Ram Date of Judgment::- 18th.8.2015 PRESENT HONBLE CHIEF JUSTICE MR.SUNIL AMBWANI HONBLE MR.JUSTICE AJIT SINGH Mr.J.L.Purohit, Senior Advocate) with Mr.Rajeev Purohit)-for the appellant. Mr.S.L.Jain) Mr.K.L.Bishnoi)-for the respondents.

JUDGMENT

(Reportable) BY THE COURT (Per Hon'ble Sunil Ambwani, Chief Justice) Special Appeal No.375/2002 1. This Special Appeal is directed against the judgment of learned Single Judge dated 20.5.2002, by which he partly allowed the writ petition with direction that Shri Het Ram will execute the sale deed in pursuance of the agreement of sale dated 3.4.1984 to the extent of his transferable share of 2.4 bighas. It was found that the land was agreed to be purchased at the rate of Rs.11,000/- per bigha, for which Rs.80,000/- was paid and thus, Shri Het Ram will refund the excess amount to the appellant-Ram Kumar. Shri Het Ram was

directed to execute the sale deed to the extent of his share and not of any specific part of the land. After the sale 2 deed is executed and registered, the appellant-Ram Kumar may file a suit for division of the holding under section 53 of the Rajasthan Tenancy Act, 1955 to get the land partitioned.

2. Brief facts giving rise to this Special Appeal, which was held to be maintainable vide order dated 5.5.2015 as it was filed prior to the amendment of Civil Procedure Code providing non-maintainability of Letters Patent in civil matters, are as follows:

3. Shri Het Ram entered into an agreement of sale dated 3.4.1984 for sale of 16 bighas 10 biswas land situate in Chak No.3MSD, at the rate of Rs.11,000/- per bigha with Shri Ram Kumar-the appellant. Rs.80,000/- was paid in advance to Het Ram in cash at the time of execution of the agreement. The possession was also alleged to have been given to Shri Ram Kumar. The remaining amount was to be paid on 2.8.1984 when the sale deed was to be executed and registered. The date for execution of the sale deed was extended upto one month from getting the permission of sale from the revenue authorities.

4. Rajendra and Satpal, sons of Het Ram filed a suit in the revenue court under sections 88 and 188 of the Rajasthan Tenancy Act, 1955, for declaration and partition against their father Het Ram, uncle Hanuman and grand-mother Mst.Dhapi and remaining three brothers, with the averments that the land was ancestral and had been inherited by Het Ram and his 3 brother Hanuman after the death of Lalu Ram, who was recorded as khatedar vide mutation no.20 entered on 2.5.1957. Het Ram was not entitled to sell 16.5 bighas of land as it was more than his share. Mst.Dhapi, widow of late Lalu Ram, was not given her share after the death of her husband and thus, she also filed a suit under section 88 of the Rajasthan Tenancy Act, 1955 against Het Ram and Hanuman, which was decreed on 25.10.1985 and the name of Mst.Dhapi was also added alongwith Het Ram and Hanuman.

5. It was stated in the plaint that 15 bighas of land of Chak Nos.5 and 6 LC situated in village 3 MSD in the joint name of Het Ram and Hanuman, has already been sold by them jointly. The remaining 33 bighas of land situated in Chak No.3 MSD was in the joint name of Het Ram, Hanuman and Mst.Dhapi, in which 11

bighas fell in the notional share of Het Ram. Five sons of Het Ram, namely, Rajendra, Satpal (plaintiffs), Krishna, Hansraj and Banshi Lal (defendants no.6 to 8) and his wife Mst.Phula Devi (defendant no.9) had equal shares in the notional share of Het Ram and therefore, in 11 bighas, Het Ram had 1/7th share, which comes to 1.3 bighas and thus, he could not have executed agreement of sale beyond his share.

6. The appellant-Ram Kumar contested the suit. The Sub- Divisional Officer, Raisinghnagar by his order dated 7.2.1991 dismissed the suit, as the plaintiffs could not prove that the land was ancestral. Aggrieved, the plaintiffs filed appeal No.8/91 before the Revenue Appellate Authority, Sri 4 Ganganagar, which was also dismissed on 23.6.1993. The second appeal was allowed by the Board of Revenue vide order dated 16.10.1998, on which the writ petition was filed.

7. The appellant-Ram Kumar also filed a suit no.48/87 against Het Ram for specific performance of the agreement to sell in the Court of Additional District Judge, Raisinghnagar, which was decreed on 8.5.2000.

8. Learned Single Judge framed three points for determination, namely, (1) Whether the property in question was ancestral property in the hands of Het Ram and what was his notional share in the property; (2) Whether the judgment of the Board of Revenue dated 16.10.1988 was illegal and misconceived and could not be sustained in the eye of law; and (3) Whether Het Ram was competent to execute the agreement of sale for 16.5 bighas of land and the decree of specific performance passed by the Additional District Judge, Raisinghnagar was legal and proper and based on proper appreciation of law and evidence.

9. Learned Single Judge held that there was no evidence that Het Ram and Hanuman were separately in possession of their independent share. The partition between them was not proved. He observed that Lalu Ram was recorded khatedar of the land and on his death, his two sons and widow were entitled to inherit in equal share. In 1957, when Lalu Ram died, his interest in the co-parcenary property was 1/3rd alongwith his two sons-Het Ram and Hanuman, which had to be devolved on Class I heirs mentioned in Schedule-I of the Hindu Succession

Act, 1955 i.e. his sons and widow in equal share. In 33 bighas of land left by Lalu Ram, the interest of Lalu Ram was only 11 bighas and the remaining 11 bighas each fell in the share of his two sons Hem Ram and Hanuman. On the death of Lalu Ram, Hanuman got 1/3rd share, which increased his share to 14.66 bighas, whereas the widow of Lalu Ram, namely, Mst.Dhapi got 3.66 bighas. The interest of Het Ram was co-parcenary property in his hands and as soon as a son was born to him, the son was entitled to equal share. His five sons got equal shares alongwith him. Het Ram, therefore, could only dispose of 1/6th of 14.66 bighas held by him alongwith his sons which came to 2.44 bighas only.

10. Learned Single Judge further held that 15 bighas land of Indira Gandhi Canal area has been jointly sold by Het Ram alongwith his brother Hanuman prior to the execution of agreement, out of 33 bighas of land inherited by them from Lalu Ram, in which Het Ram's share was 11 bighas from birth and additional 3.6 bighas, which he inherited from Lalu Ram. Even if on the death of Lalu Ram, mutation of the land left by him entered in the joint names of Het Ram and Hanuman, that by itself will not deny the right of Mst.Dhapi. The name of Mst.Dhapi was also entered alongwith Het Ram and Hanuman by way of mutation and thus, the land was entered in their joint names. However, Mst.Dhapi had received only 1/3rd share from the interest of her husband and in this manner, learned 6 Single Judge held that the Board of Revenue though proceeded to record the findings in accordance with Sections 6 and 8 of the Hindu Succession Act, 1956, the share of Het Ram was not properly determined in the co-parcenary property.

11. Learned Single Judge further held that though Het Ram had denied his signatures on the agreement, on the ground of fraud practiced upon him, the Additional District Judge recorded findings of fact that on the agreement of sale was executed by Het Ram voluntarily without any coercion or deceit. The suit for specific performance was decreed. He further held that the petition writer, who had prepared the documents and attesting witnesses in whose presence the documents were executed and signed by Het Ram, were examined on behalf of the plaintiff and all of them had stated that Het Ram got these documents prepared in their presence and had also signed it, and that he received Rs.80,000/- as part of the sale price. Het Ram alone had contradicted this

evidence stating that his signatures were obtained fraudulently on the pretext of execution of some other documents, but his plea was not accepted by the trial court. The findings of trial court did not suffer from any error of law. The agreement of sale, however, could only entitle Het Ram to execute sale deed to the extent of his share. He could not execute the agreement of sale for specific land unless and until the division of holding was made in accordance with Section 53 of the Rajasthan 7 Tenancy Act, 1955.

12. Learned Single Judge recorded the findings that Het Ram had inherited 14.6 bighas as ancestral land. It was a co- parcenary property in the hands of Het Ram and that his five sons got share in the property as soon as they were born. Consequently, Het Ram could only execute sale deed of 1/6th of 14.6 bighas of land and thus, he could pass title only to the extent of 2.4 bighas of land, which was his notional share in the ancestral property. The writ petition was allowed by learned Single Judge with directions that Het Ram will execute the agreement of sale only to the extent of 2.4 bighas of land, which was his transferable interest. As Rs.80,000/- was already paid and found proved, the land was agreed to be purchased at Rs.11000/- per bigha. The excess amount was directed to be refunded to the appellant-Ram Kumar.

13. Learned Senior Counsel appearing for the appellant submits that learned Single Judge has erred in law and has failed to appreciate that on the enforcement of the Hindu Succession Act, 1956, the provisions of Sections 6 and 8 will apply to devolve interest in the property. The provisions of Section 40 of the Rajasthan Tenancy act, 1955 will not be applicable to succession. In the year 1957, when Lalu Ram died, the Hindu Succession Act, 1956 had come into force and thus, the devolution of the land held by Lalu Ram would be in accordance with the Hindu Succession Act, 1956, according to which, Het Ram, his brother Hanuman and mother Mst.Dhapi 8 acquired 16 bighas each by succession. Het Ram and Hanuman sold 15 bighas of land prior to the execution of the agreement to sell and thus, they were left with 9.5 bighas each. On the death of their mother, both acquired interest in equal share and since she had received 16 bighas from her late husband Lalu Ram, their share increased from 9.5 to 17.5 bighas.

14. It is submitted that Lalu Ram had entire land in his khatedari and thus, there was no basis to hold that Lalu Ram was holding the joint family property, in which his two sons got share by birth prior to death. Het Ram did not get interest as the land was held in terms of Khatedari under the Rajasthan Tenancy Act, 1955 and it thus could not be treated as co-parcenary for giving interest to five sons of Het Ram on their birth and further, it was nowhere established that all the five sons were born to Het Ram when he executed the agreement of sale dated 3.4.1984.

15. It was submitted that the judgment of learned Single Judge is self-contradictory. Whereas learned Single Judge has observed that the property devolved under the Hindu Succession Act, 1955 would not be HUF in his hand, he thereafter calculated the share of sons of Het Ram and held that he had only 2.4 bighas of land.

16. It is submitted that the suit No.172/87 was filed on 11.11.1987 by Rajendra and Satpal, both sons of Het Ram against Het Ram, Hanuman, Mst.Dhapi impleading three sons of Het Ram, for declaring the share of Het Ram as 11 bighas in the disputed land and declaring that they are entitled to 1/5th share. The appellant-Ram Kumar was not impleaded in the said suit. It was a collusive suit to defeat the rights of the appellant-Ram Kumar in pursuance of the agreement of sale. Het Ram, his three sons and his wife filed a written statement admitting the plaintiffs claim. The appellant-Ram Kumar applied for impleadment. He was impleaded as defendant. The suit No.172/87 was dismissed by the Sub Divisional Officer on 7.2.1991 and the appeal before the Revenue Appellate Authority was dismissed on 30.6.1993. The Board of Revenue allowed the second appeal on 16.10.1998 holding that the property was ancestral in the hands of Het Ram and his five sons and his mother had share in the property.

17. It is submitted that a vendor cannot plead lack of title. When Het Ram executed the agreement of sale, he was owner of 15 bighas of land. A collusive suit filed to defeat the rights of purchaser, was not liable to be decreed. The property in the hands of Lalu Ram was not ancestral property. It was self acquire property of Lalu Ram, as admitted by Het Ram before the Additional District Judge, Raisinghnagar in suit No.48/1987. Even assuming that the property was

ancestral in the hands of Lalu Ram, he died in the year 1957 and hence, the status of co-parcenary property came to an end. The property inherited by Het Ram alongwith his brother and mother and that he had 1/3rd share (16.5 bighas) and that 10 even if the property is assumed to be ancestral, the transfer of land by Het Ram in favour of the appellants-Ram Kumar was not void, but voidable.

18. It is submitted that learned Single Judge has not decided the point No.2 framed by him. The suit filed by Het Ram's sons was collusive.

19. Relying on the judgment of the Supreme Court in Bhanwar Singh V/s Purnanand and ors. ((2008) 3 SCC87, it was argued that the provisions of Section 6 of the Hindu Succession Act, 1956 are not applicable when the surviving members of the co-parcenary had already partitioned their properties and become owners to the extent of their share. The property ceases to be a joint family property, on the discontinuance of co-parcenary.

20. In Sheela Devi V/s Lal Chand ((2006) 8 SCC581, the Supreme Court held that the Hindu Succession Act, 1956 would prevail over the old Hindu Law. It conferred rights upon the female heirs even in relation to the joint family property. Sub-section (1) of Section 6 governs the law relating to succession on the death of a co-parcener in the event the heirs are only male descendants. But, the proviso to sub-section (1) of Section 6 creates an exception.

21. Learned counsel appearing for the respondents has supported the judgment of learned Single Judge. He submits that Het Ram had succeeded to 16.5 bighas of land, but on the joint sale with his brother Hanuman, his share was reduced to 11 and as soon as five sons were born to him, they acquired interest in the co-parcenary property. Learned Single Judge has thus rightly held that Het Ram had only 2.4 bighas of land, which he could transfer and even if the agreement of sale was valid, he could only pass title in respect of 2.4 bighas of land.

22. We find that learned Single Judge has erred in law in recording the finding that Het Ram did not have interest more than 2.4 bighas of land. Learned Single Judge has not considered the effect of the entries made in the revenue records as well as the law of succession as applicable to khatedari land under the Rajasthan

Tenancy Act, 1955. On the enforcement of the Rajasthan Tenancy Act, 1955, all the land vested in the State and khatedars became tenants of the land. They will be governed by the law of succession in accordance with the Rajasthan Tenancy Act, 1955, which will override the provisions of succession under the Hindu Succession Act. Learned Single Judge has also not given any finding as to when five sons of Het Ram were born and whether all five sons of Het Ram were born prior to the date of agreement of sale.

23. In our view, the judgment of learned Single Judge cannot be sustained and that the findings recorded by him on the basis of assumptions and on incorrect appreciation of law of succession, are liable to be set aside and the matter is required to be remanded to learned Single Judge to consider the provisions of the Rajasthan Tenancy Act, 1955 for succession, and the entries made in the revenue records, as well as to record the findings as to whether the five sons were born to Het Ram prior to the date of agreement of sale, to dilute the interest of Het Ram.

24. The Special Appeal is accordingly allowed. The impugned judgment of learned Single Judge is set aside and the matter is remanded to learned Single Judge with the request to decide the same afresh on merits in accordance with law and in the light of the observations made by us in this judgment. Special Appeal No.35/2002

25. This Special Appeal raises the same questions of law and facts as involved in D.B.Civil Special Appeal No.375/2002 and thus, this Special Appeal is also allowed in terms of the judgment in D.B.Civil Special Appeal No.375/2002.

26. A copy of this judgment be placed in the connected Special Appeal No.35/2002. (AJIT SINGH),J.

(SUNIL AMBWANI),CJ.

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