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SooperKanoon Citation : sooperkanoon.com/751972

Court : Rajasthan

Decided On : Sep-14-1971

Reported in : AIR1972Raj116; 1971(4)WLN465

Judge : Kan Singh, J.

Acts : Tenancy Law; Rajasthan Tenancy Act, 1955 - Sections 37, 41, 42 and 43;
[Code of Civil Procedure \(CPC\) , 1908](#) - Sections 101

Appeal No. : Second Appeal No. 340 of 1964

Appellant : Bogaram

Respondent : Mohanaram and ors.

Advocate for Def. : H.C. Jain, Adv.

Advocate for Pet/Ap. : S.L. Thanvi, Adv.

Disposition : Appeal dismissed

Judgement :

Kan Singh, J.

1. This is a defen-dant's second appeal arising out of a declaratory suit under Order 21, Rules 63, Civil Procedure Code, The facts are not in dispute and lie within a narrow compass.

2. Bogaram, defendant No. 1 (now appellant) was the decree-holder and defendant No. 2 Isar was the judgment debtor. Bogaram had filed the suit against Isar sometime in the year 1956 and obtained an order of attachment before judgment against his agricultural land on 19-10-1956. After the suit was decreed in favour of Bogaram on 23-2-1957, he put the decree in execution regarding 64 bighas of the agricultural land under attachment. Mohanaram, respondent, filed an objection, under Order 21, Rule 58, Civil Procedure Code making grievance of the attachment. He stated that this land had been sold to him by Isar by a registered sale deed on 9-6-1956 prior to the attachment before judgment in question. He further asserted that he was in possession of the land. The execution court, however, dismissed the objection on 11-4-1959. Mohanaram then filed the declaratory suit under Order 21, Rule 63, Civil Procedure Code. The learned Civil Judge, Ganganagar, before whom the suit was filed, held that the sale of the land in question in favour of Mohanaram was void as it was made without obtaining the prior permission of the Revenue Commissioner as contemplated by a notification No. 108 dated 11th October, 1943, of the former Bikaner State as amended by a notification of the Rajasthan Government dated 15-9-1953. Accordingly he dismissed the suit.

3. Aggrieved by the judgment and decree of the trial court, the plaintiff went up in appeal to the court of the District Judge, Ganganagar. The learned District Judge considered the question whether the notification was law and whether it precludes a Civil Court from giving effect to the sale of land evidenced by a duly registered sale deed. On consideration of the notification the learned District Judge came to the conclusion that the clear intention of the notification seemed to be that the revenue authorities and the registering authorities were not to recognise a sale of land, if the sanction of the commissioner was not given thereto, nevertheless the other remedies open to the purchaser had not been taken away. The learned Judge further pointed out that even if the revenue authorities could not give effect to the sale, a Civil Court can give appropriate relief to the purchaser and the sale cannot be declared void for want of sanction from the Commissioner, in the result, he held that the view taken by the first court was erroneous. Consequently the learned District Judge accepted the appeal, set aside the decree of the first court and declared that 61 bighas of land mentioned in paragraph 1 of the plaint was the

property of the plaintiff Mohanaram and the same was not liable to be attached or sold in the execution of the decree obtained by Bogaram against Isar.

4. Defendant Bogaram is now challenging the correctness of this view in this second appeal.

5. It is doubtful if the notification of the former Bikaner Government dated 11-10-1943 was law. However, I am relieved from entering into this question on account of the legislative changes that have taken place after the formation of Rajasthan. The Rajasthan Legislature had passed the Rajasthan Tenancy Act, 1955 (Act No. 3 of 1955), hereinafter to be referred as the 'Act,' which came into force from 15-10-1955. Section 3 of this Act provided that on and from the coming into force of this Act (a) the enactments mentioned in column 2 of the First Schedule to the extent specified in column 3 thereof shall stand repealed and further, (b) any corresponding laws other than the enactments referred to in clause (a) hitherto in force in any of the covenanting States in so far as such laws are covered by or are inconsistent with the provisions of this Act; and (c) any laws amending the enactments or laws referred to in the preceding clauses of this sub-section, shall stand repealed. At Item No. 2 of the First Schedule the Bikaner Tenancy Act, 1945, is mentioned and the whole of the Act has been repealed.

6. The notification of 11-10-1943, even if it is assumed to be law shall be deemed to have been repealed by Section 3 (b) of the Rajasthan Tenancy Act. That notification deals with certain classes of tenants known as Maurusi or proprietary tenants. Sec. 15 of the Act provides that whoever was a tenant on the date of the coming into force of the Act is a Khatedar tenant and he is entitled to all the rights conferred on and be subject to all the liabilities imposed on Khatedar tenants by this Act (Rajasthan Tenancy Act). Thus the classes of tenants as obtained in the former Bikaner State came to be abolished and were substituted by the new class of tenants namely, Khatedar tenants. Section 41 of the Act provides that the interest of a Khatedar tenant shall be transferable otherwise than by way of sub-lease subject to the conditions specified in Sections 42 and 43. There are certain restrictions regarding sale, gift or bequest by members of a scheduled caste.

7. However the restrictions Imposed by the notification dated 11th October, 1943 for the obtaining of permission from the Revenue Commissioner before the sale have been done away with. The notification would be clearly inconsistent with the provisions of Section 41 of the Act. In these circumstances the notification of 11-10-1943 could not be pressed into service for invalidating the sale by Isar in favour of Mohanaram.

8. Learned counsel for the appellant sought to argue on the basis of Section 42 of the Act that as Isar was a member of the schedule caste and Mohanaram was not a member of the scheduled caste, the sale would still be void. This ground had not been taken in the two courts below, nor even in the memo of appeal lodged in this¹ Court. I am, therefore, not inclined to permit the learned counsel to take up¹ this as a ground only at the time of the arguments.

9. Apart from everything I am beholden to learned counsel for the appellant for his pointing out another provision in the Act namely. Section 37 which lays down that the rights of a tenant in a holding shall not be liable to seizure, attachment or sale by process of any Civil Court This, therefore, clinches the whole issue and the agricultural land which was in the occupation of a tenant was not liable to attachment in the execution of a decree obtained by the appellant.

10. The appeal has thus no force and I hereby dismiss it. The parties are, however, left to bear their own costs in this Court.