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Court : Rajasthan

Decided On : Dec-02-1952

Reported in : AIR1953Raj155

Judge : Wanchoo, C.J. and; Dave, J.

Acts : Tenancy Law; Rajasthan (Protection of Tenants) Ordinance, 1949 - Sections 7; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115 - Order 41 Rule 1; [Constitution of India](#) - Article 226(1)

Appeal No. : Civil Writ Petn. No. 26 of 1952

Appellant : Rodu

Respondent : Board of Revenue and ors.

Advocate for Def. : R.K. Rastogi and; P.N. Datta, Advs. for Opposite Party No. 2

Advocate for Pet/Ap. : M.M. Tiwari, Adv.

Disposition : Application dismissed

Judgement :

Dave, J.

1. This is an application by one Rodu under Art, 226 of the [Constitution of India](#) and arises in the following circumstances.

2. On 10-10-1950, the opposite party 2 Chotu filed an application before the Sub-Divisional Officer, Amber, under Section 7, Rajasthan (Protection of Tenants) Ordinance, 1949. It was stated by him that Rodu who is the petitioner in this Court was a 'Khatedar' tenant of sixteen bigha of land situated at the well Sejawali in village Bansa, Kushalpura, that he has sub-let it for cultivation to him (Chotu) and his brother Chuna and that they were cultivating it from the 'Smt.* year 2003. It was alleged that Rodu along with others dispossessed him from that land and so he prayed for re-instatement. Rodu contested this application but on 24-7-1951 the Sub-Divisional Officer, Amber decided the case in Chotu's favour. Rodu filed a revision application against this order before the Board of Revenue for Rajagthan at Jaipur, but since it was dismissed, he has filed the present application in this Court.

3. The petitioner has stated in the application that he had given the disputed land for cultivation to Chothu in the 'Smt.' year 2006 and that Chothu surrendered the holding back to the petitioner in the month of 'Baisakh' after cultivating it for one year. It is further stated that the essentials for re-instatement under Section 7, Rajasthan (Protection of Tenants) Ordinance, 1949 were, that tenant should have been in occupation of the holding on 1-4-1948, that he should have been forcibly dispossessed of the land thereafter and that the application should have been made within three months from the date of such dispossession, but the Sub Divisional Officer ignored the fact that Chotu was neither in occupation of the holding on 1-4-1946 nor was he forcibly ejected.

It is further pointed out that under Section 7 of the said Ordinance, it was mandatory for the Revenue Courts to give notice to the land holder but no such notice was given. It is urged that the Sub Divisional Officer & the members of the Board of Revenue failed to exercise jurisdiction vested in them inasmuch as they did not take into consideration the essentials of law pointed out above, that they also exceeded their jurisdiction in accepting the time barred application and that they committed errors of law which are patent on the face of the record and therefore, that decision should be quashed.

4. It has been replied from the opposite side that the Sub Divisional Officer has given his decision on all the essential questions of fact and law that the Revenue Board also decided all the points that were raised before it, that neither of them exceeded their jurisdiction nor failed to exercise the jurisdiction vested in them, that the applicant in fact wants this Court to sit in appeal over the judgment of the Board of Revenue and the application should be dismissed.

5. From the perusal of the decision of the Sub Divisional Officer dated 24-7-1951, it is clear that after discussing the oral and documentary evidence produced by both the parties he recorded the following findings:

1. That from the oral and documentary evidence it was proved that Chotu and Chuna who were in the cultivatory possession of the disputed land were ejected.

2. That the fact of surrendering the land by Chotu was not proved.

3. That it was proved that Chotu was in the cultivatory possession of the 16 bighas of land on 1-4-1948.

6. Further it appears from the judgment of the Board of Revenue for Rajasthan that only four points were raised, before that Court in revision. The first two points only are material so far as this application is concerned and they are as follows:

1. That no notice by the applicant was given to the land holder.

2. That the exact date of dispossession as given in Court's application was proved to be wrong by the plaint and the application filed by him in a civil case in which he had stated on 7-10-1950 that the land was still in his possession whereas in the application filed before the Sub Divisional Officer, he had stated that he had been dispossessed on 22-7-1950. The first point was decided by the Board in the following language: 'It is not correct that no notice was given to the landlord. The applicant had stated in para No. 5 of his application that notice may be given to vakil Thikana Samoda and the vakil Thikana Samoda was present on 30-10-1950 in the court of the S.D.O. which clearly showed that notice had been given to the landlord and this plea of the counsel for Ruda was without any substance.'

7. On the second point its decision was in the following language:

'It is true that Chotu had given 22-7-1950 as the date of dispossession in his application. It is contended by the counsel for Chotu that in the application filed in the Civil Court on 7-10-1950 they had stated the non-applicant would take possession of the land of his possession and not the land which was in his possession. The application was duly written and the words written were 'Zamin jo mere qabze ki hai' and not 'Zamin 30 mere qabze men hai'.' The word 'men' in the application on record had been changed to 'ki' but in the copy of the application given to Ruda's Vakil word 'men' had not been changed. The, question of exact date of dispossession could be material only if limitation had been pleaded by the non-applicants. As the exact date of dispossession was not material and even if there was any discrepancy it was not fatal to Chotu's case. The discrepancy was not put to Chotu when he was in the witness box and it cannot now be used against him.'

8. It is evident from the judgment of the Sub Divisional Officer that he did decide in favour of the opposite party, that Chotu was in possession of the disputed land on 1-4-1948, that Rodu's plea about his surrender of the land was wrong and that Chotu was in fact forcibly ejected from his possession. It is further evident from the judgment of the Board of Revenue that it did decide the question about giving the notice to the land holder and, therefore, the applicant's allegation regarding the failure of these Courts to decide the said points is definitely incorrect.

9. It is next contended by the applicant's learned advocate that neither the Sub Divisional Officer nor the Board of Revenue considered the question of limitation and that Chotu's assertion about his dispossession of the land on 22-7-1950 was incorrect because in another application filed by him in the civil Court he had given that date to be 7-10-1950. It is urged that it was incumbent on the part of the Revenue Courts to decide the question of limitation, that the Revenue Courts failed to exercise their jurisdiction and a writ of 'certiorari' did lie in such a case. In support of his argument, he has referred to the case of -- 'Nand Singh v. Rajasthan Revenue Board', 1951 R L W 363 (A) and drawn the attention of this Court to the following observations appearing therein:

'Two conditions have to be satisfied before an application of a tenant under Section 7 can succeed for reinstatement :--

- (1) that the tenant must have been in occupation of his holding on 1-4-1948 and
- (2) that thereafter he has been ejected, therefrom or dispossessed thereof or from or . any part thereof.

In case, the two conditions under Section 7 are satisfied and a tenant or sub-tenant applied] for re-instatement within three months from! the date of his ejectment or dispossession he is entitled to protection under the Tenants Protection Ordinance and it is the duty of the Sub Divisional Officer to reinstate such tenant or sub-tenant.'

10. It may be pointed out that these remarks were made in a case in which one Nand Singh had filed an application for restoration of possession under Section 7, Rajasthan (Protection of Tenants) Ordinance, 1949. His application was dismissed both by the Sub-Divisional Officer and the Board of Revenue, but since no definite findings on these points were given by these Courts that decision was set aside and they were directed to decide the case according to law. In the present case, it is clear that the Sub-Divisional Officer has given a clear finding on the first two points namely that Chotu was in occupation of his land on 1-4-1948 and that he did not surrender the land but was forcibly ejected thereafter.

11. As regards the question of limitation, it was alleged by the applicant that he was dispossessed from his holding on 22-7-1950 and since he had presented that application on 10-10-1950 it was well within three months. It does not appear from the judgment of the Sub Divisional Officer, if Rodu gave any evidence before him about Chotu's dispossession on a different date and, therefore, he relied on Chotu's version. It further appears from the judgment of the Revenue Board that the question of limitation was not pressed before it. All that was argued before the learned members of the Revenue Board was that the exact date of dispossession given by Chotu in his application was found to be wrong because in another civil case he had given that date as 7-10-1950.

This objection was brushed aside by saying that the question of exact date of dispossession could be material only if limitation had been pleaded by the non-applicants. It is evident that the discrepancy which was pointed out to the learned members of the Revenue Board was not fatal to Chotu's case because if he had given another date in the civil Court as 7-10-1950, it was more favourable to him than the first one. The petitioner did not point out to the learned members of the Revenue Board that Chothu was dispossessed of the land earlier than 22-7-1950. It was not enough for Rodu to point out a discrepancy in the statement of Chotu. He should have further alleged and proved that Chotu was in fact dispossessed three months before he filed his application.

12. It is also contented by the applicant's learned advocate that he had definitely taken a plea of limitation in his application for revision before the Revenue Board &, therefore, the Board should have decided that point. This contention is also incorrect because it is not enough for a party to raise objections in the memorandum of appeal or revision. The objections should also be pressed at the time of hearing arguments and if they are not pressed, the presumption is that they were abandoned by the party.

13. In the case of -- 'Krishan Promada Dasi v. Dhirendra Nath', AIR 1929 PC 50 (B), the question of estoppel was raised before their Lordships, but since it was not referred to in the judgment of the High Court, it was presumed that it was not pressed. Since the learned members of the Revenue Board have definitely mentioned in the judgment that the point of limitation was not raised before them, it should be taken that it was not pressed before them at the time of arguments. It is significant that even in the petition before us, the applicant has not given any definite date of his dispossessing Chotu and simply contented himself by saying that he had surrendered the land in the month of 'Baisakh' which is not found true by the Sub Divisional Officer. Under the circumstances, it cannot be said that the Revenue Board failed to exercise jurisdiction in not deciding the question of limitation or that it had exceeded its jurisdiction in restoring possession to Chotu on time barred application.

14. The applicant's learned advocate has also referred to the following cases -- 'Board of Education v. Rice', (1911) A.C. 179 (C); --'Moh-sinali Mohomedali v. The State of Bombay', AIR 1951 Bom 303 (D); --'Parry and Co., Ltd., Dare House, Madras v. Commercial Employees Association, Madras', AIR 1952 S. C. 179 (E).

15. In the first case, a local education authority had refused to pay salaries to teachers in a non-provided school at the same rate as it paid to teachers in provided schools. The managers of the non-provided school complained and the Board of Education directed an inquiry, but the Board later on, failed to determine the question which it was required to do by Section 7, Sub-section (3), Education Act, 1902. It was in those circumstances that it was held that

'inasmuch as the Board had not determined the questions, the decision must be quashed by certiorari, and a mandamus must be issued commanding the Board to determine the question.'

This case is of no application to the one before us because as discussed above, the Sub-Divisional Officer has decided all the essential questions required by law, and the Revenue Board has also decided those points which were raised before it.

16. In the next case it was held that

'the jurisdiction that the High Court exercises when it issues the high prerogative writ of certiorari is a limited jurisdiction. Thus, when any Court has been empowered to determine certain questions and jurisdiction has been conferred upon it to determine those questions then the determination by the Court of those questions however erroneous in fact or in law, cannot call into question the jurisdiction of the High Court under its high prerogative of issuing a writ of certiorari. To this principle there are two exceptions; the first is that the superior Court will interfere when an error of law is patent on the face of record and the second is that) the determination is arrived at mala fide in which case it will not be a determination at all and fraud or mala fides will vitiate any decision however arrived at.'

This case is also of no avail to the applicant, because it has not been found that the Revenue Courts have exceeded their jurisdiction or failed to exercise the jurisdiction vested in them or that they have committed any error of law patent on the face of the record.

17. In the last case, the learned Judges of the Madras High Court had quashed the order of the Labour Commissioner under Section 51, Madras Shops and Establishments Act. On appeal to the Supreme Court, the following observations were made by their Lordships.

'At the worst, he may have come to an erroneous conclusion, but the conclusion is in respect of a matter which lies entirely within the jurisdiction of the Labour Commissioner to decide and it does not relate to anything collateral, an erroneous decision upon which might affect his jurisdiction. The records of the case do not disclose any error apparent on the face of the proceeding or any irregularity in the procedure adopted by the Labour Commissioner which goes contrary to the principles of natural justice. Thus there was absolutely no ground here which would justify a superior Court in issuing a writ of 'certiorari' for removal of an order or proceeding of an inferior tribunal vested with powers to exercise judicial or quasi-judicial functions.

What the High Court has done really is to exercise the powers of an appellate Court and correct what it considered to be an error in the decision of the Labour Commissioner. This obviously it cannot do. The position might have been different if the Labour Commissioner had omitted to decide and in such cases a 'mandamus' might legitimately issue commanding the authority to determine questions which it left undecided; vide --'(1911) A.C. 179 (C)', but no 'certiorari' is available to quash a decision passed with, jurisdiction by an inferior tribunal on the mere ground that such decision is erroneous. The judgment of the High Court, therefore, in our opinion, is plainly unsustainable.'

18. The above observation of their Lordships lends no support to the applicant's case. On the other hand it strengthens the view which we have taken above. The application is, therefore, dismissed with costs.

