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Court : Rajasthan

Decided On : Apr-16-1970

Reported in : 1970WLN233

Judge : C.M. Lodha, J.

Appeal No. : S.B. Civil Second Appeal No. 301 of 1963

Appellant : Malu Ram and ors.

Respondent : Sri Ram

Disposition : Appeal allowed

Judgement :

C.M. Lodha, J.

1. The facts giving rise to this second appeal by the defendants may be stated within a narrow compass.

2. There is a plot No 333 situated within the precincts of village Maniwal, Tehsil Hanumangarh, District Ganganagar. It appears that the plaintiff Sri Ram as well as the defendant Maluram and his sons Manphool and Raja Ram, who are the appellants were aspirants of purchasing the whole of this plot, and, therefore, both the plaintiff as well as the defendants applied to the Gram Panchayat, Maniwali for sale of the plot in their favour. The Gram Panchayat, Maniwali by its order dated

15-8-1958 directed that half of the plot be sold to the plaintiff-respondent Sri Ram and the other half may be sold to the appellants. It is, however, interesting to note that the portions of the plot sold half to half to the plaintiff and the defendants were not specified. The plaintiff Sri Ram was content with the sale of half the plot to him, but Maluram was not satisfied as he wanted the whole. Maluram, therefore, filed an appeal before the Tehsil Panchayat, Hanumangarh against that part of the order of the Gram Panchayat by which half the portion of the plot had been sold to Sriram with a prayer that the whole of the plot should be ordered to be sold to him. The Tehsil Panchayat allowed Mularam's appeal and by its order dated 30-8-1958 directed that the whole of the plot be sold to the appellants at the rate of -/1/- per Sq. Gaj. Aggrieved by the order of the Tehsil Panchayat Sri Ram sought relief by further appeal or revision on the administrative side but was unsuccessful. Consequently he filed the present suit in the Court of Munsiff, Hanumangarh on 4-9-1961 alleging that the order of the Tehsil Panchayat dated 30-8-1958 whereby the whole of the plot in dispute had been sold to the defendant-appellants was without jurisdiction null and void and he prayed that it may be declared that the plaintiff is owner of half the plot No. 333 measuring 2123 Sq. Gaj., and that possession of the same may be granted to him after getting it partitioned by metes and bounds. He also sought a mandatory injunction against the defendant-appellants for demolition of the construction raised by them in the plaintiff's share of the plot. The Gram Panchayat, Maniwali and the Tehsil Panchayat, Hanumangarh were also impleaded as defendants Nos. 3 and 4 but no written statement was filed on their behalf. The suit was, however, resisted by the defendant-appellants.

3. After recording the evidence produced by the parties, the learned Munsiff by his judgment dated 27-8-1962 held that the order of the Tehsil Panchayat was not without jurisdiction, and that the plaintiff was not entitled to get any of the reliefs claimed by him. Consequently he dismissed the plaintiff's suit. The plaintiff went in appeal and the same was dismissed by the learned Civil Judge, Ganganagar by his judgment and decree dated 13-7-1963. However, while dismissing appeal the learned Civil Judge, directed that the sale of half portion of the plot made by Tehsil Panchayat in favour of the defendants (which was originally sold to the plaintiff by the Gram Panchayat) be set aside, and a direction was further issued to the Gram

Panchayat, Maniwali that in the case the latter wanted to sell that half portion of the plot, the same shall be done in accordance with law.

4. Aggrieved by the aforesaid directions of the learned Civil Judge the defendants have come in second appeal to this Court.

5. Learned counsel for the appellants have urged that the learned Civil Judge had no jurisdiction to grant any such declaration or directions as stated above, after having dismissed the appeal filed by the plaintiff. In the second place it is contended that the finding of the learned Civil Judge that the Tehsil Panchayat had no jurisdiction to hear the appeal from the order of the Gram Panchayat dated 15-6-1958 is incorrect. It had also been contended that the plaintiff had no right of any sort to the land in question, and, therefore, was not entitled to seek any declaration with respect to it. It has also been argued that the direction to the Gram Panchayat that the sale of half the portion of the plot may be made in accordance with law was meaningless and in any case no such direction could have been given in absence of the Gram Panchayat who was originally impleaded as a party, but subsequently given up before the decision by the trial court,

6. Before embarking upon the consideration of various points raised by the learned counsel for the appellants I would like to mention that even though the order of the Tehsil Panchayat has been assailed by the plaintiff no copy of the same has been produced by either of the parties. A copy of the order of the Gram Panchayat has also not been produced. The learned Civil Judge has held that no appeal lay to the Tehsil Panchayat from the order of the Gram Panchayat selling half the plot of the land to the plaintiff in exercise of its powers under Rule 37-A of the Rajasthan Panchayat (General) Rules, 1954. In this connection attention may be invited to a Bench decision of this Court: *Devi Lal v. Tehsil Panchayat, Padampur* ILR 8 Raj. 1119, wherein it was held that the Tehsil Panchayat had jurisdiction to hear appeals from the orders of a Gram Panchayat in administrative matters under Section 58(6) of the Rajasthan Panchayat Act, No. XXI of 1953. This ruling does not seem to have been brought to the notice of the learned Civil Judge, but in my opinion it concludes the point, and there is no room for argument that the Tehsil Panchayat had no jurisdiction to hear appeal from the order of the Gram

Panchayat dated 15-6-1958. Learned counsel for the respondent also conceded that the finding of the learned Civil Judge on this point could not be supported in view of the clear pronouncement by this Court in the case referred to above.

7. The learned Civil Judge, however, nonsuited the plaintiff on the ground that the sale of half the plot in question to the plaintiff by the Gram Panchayat, Maniwali was also null and void inasmuch as the procedure laid down in Rule 37-A of the Rajasthan Panchayat (General) Rules, 1954 (which will for shortness be called 'the Rules' hereafter) was not followed. He found that the plaintiff's possession over half the plot in question for 40 years at the time of the order of sale in his favour was not proved, and further that the market value of half the portion of the land was Rs. 700/-, and consequently the sale would be effected in favour of the plaintiff by the Gram Panchayat without the approval of the State Government. Having recorded this finding against the plaintiff he proceeded to observe that the plaintiff was not entitled to get any relief and in the result he upheld the order of dismissal of the suit by the trial court, and dismissed the appeal. But as already stated above indirectly he did grant relief to the plaintiff by holding that the sale of the land in question in favour of the appellants by the Tehsil Panchayat, Hanumangarh was also bad and liable to be set aside. It may be pertinent to point out here that the question of validity of sale of half the portion of the plot No. 333 to the plaintiff by the Gram Panchayat, Maniwali was not at all in issue. The plaintiff had neither pleaded in the plaint nor had set up this plea at any stage that even the sale of the disputed portion of the land in his favour by the Gram Panchayat was void being in derogation of the rules on the subject. Admittedly there was no issue on this point. In these circumstances the learned Civil Judge, in my opinion, was not justified in giving a finding on this point especially when there was neither any pleading in respect to it nor any issue nor the parties had led any evidence on it. Learned counsel for the respondent has rested his case and has supported the directions given by the learned Civil Judge in the operative part of his judgment on the assumption that initially the sale of half the portion of plot No. 333 made in favour of his client by the Panchayat, Maniwali was not valid being not in accordance with the procedure laid down in Rule 37-A of the Rules, and therefore, the order passed by the Tehsil Panchayat on appeal by the defendants was also void. At one stage he was also heard faintly to argue that the power to sell the land

vested only in the Gram Panchayat. and not in the Tehsil Panchayat. He submitted that even though his right as a purchaser of the land in dispute from the Gram Panchayat was not recognised yet the plaintiff had some sort of interest in the land in dispute in as much as it would be open to him to give bid at the time the land is auctioned in accordance with the directions given by the learned Civil Judge. In short his contention is that the plaintiff may not have proprietary interest as such in the land in question still he has some interest in it on account of which he could maintain the present suit. In support of his contention he had placed reliance on *Jaikishan v. State of Rajasthan* ILR 8 Raj. 72, *Ajudhiya Nath v. Amar Nath* and *P.V. Rao v. Khushaldas* AIR 1949 Bom. 277,

8. A reference to Rs. 37-A of the Rules makes it amply clear that no transfer of ownership in Abadi land belonging to the panchayat shall be valid unless it is in accordance with this rule. But it is important to bear in mind that the validity of sale of land under this rule is not a pure question of law but is dependant on certain facts. The rule provides sale of the land by public auction as well as by private negotiations. As laid down in Sub-rule 17 the Panchayat may sell Abadi land by private sale under certain circumstances. As already stated above there has been no trial on the question whether those circumstances exist or not, and, therefore, it cannot be held that the sale of the land in question was void ab initio, and that it could be held only by auction and not by private negotiations. The plaintiff has not placed on record the copy of the order of the Gram Panchayat by which the sale of half the portion of plot was made in his favour to show that he had a better right to purchase it in preference to the defendant-appellants. Even the copy of the order Tehsil Panchayat has not been produced without which the Court is not in a position to judge whether the order has been passed by the Tehsil Panchayat in disregard of the rules on the subject. The limited question which has been made the sole basis of the plaintiff's suit is that the Tehsil Panchayat had no jurisdiction to hear appeal from the order of the Gram Panchayat selling half the portion of the plot to the plaintiff. This question has already been answered in favour of the defendants and I have held that the Tehsil Panchayat had jurisdiction to entertain appeal from the order of the Gram Panchayat. In view of this finding the edifice of the plaintiff's case falls and the contention of the learned counsel for the appellants that the plaintiff had no legal right to seek any relief in respect of the land in

question must also be accepted It was held in *Gurdayal Singh v. Gram Panchayt* ILR 8 Raj. 1161 that the various provisions of Rule 37-A of the Rajasthan Panchayat (General) Rules are meant for the guidance of the Panchayat and do not purport to create any right in any individual that a particular rule should be followed, and that if it has not followed, the High Court should interfere and set aside the sale. It was also observed that if any sale is invalid, it is the lookout of the purchaser whether he should take the risk or not, and if there is any defect in the procedure laid down in the rules, it does not create any right in any other villager who had not acquired any interest in the land otherwise to claim that the land be resold or auctioned.

9. The facts of *Jaikishan's case* ILR 8 Raj. 72 relied upon by the learned counsel for the respondent are quite different. On an objection by the petitioner in that case, no objection certificate under the Marwar Patta Act was not granted to one Jhumarmal, who filed an appeal before the Government which was dismissed, but on a review application having been filed by Jhumarmal the order of the Municipal Board was set aside and no objection certificate was ordered to be issued to Jhumar Mal. Thereupon Jaikishan filed a writ application before this Court challenging the validity of the order of the Government passed on review application on the ground that the Government had no power of review. After making reference to the various provisions of the Marwar Patta Act under which the proceedings had taken place in that case it was observed that those proceedings were of a quasi-judicial nature, and the Government had no power to review its order in absence of there being an express provision for the same. It was also held that in the peculiar circumstances of the law a right had been granted to the petitioner to raise objection to the grant of no objection certificate to Jhumar Mal in as much as the land was just near to the petitioner's house and he was interested in its disposal, and further that Section 14 of the Marwar Patta Act read with the rules framed thereunder gave statutory right to the petitioner Jaikishan to object to the grant of a no objection certificate. The principle of law laid down in *Jaikishan's case* in my opinion, has no application to the facts and circumstances of the present case, and I am clearly of the view that the sale in favour of the plaintiff Sri Ram having not been recognised, Sri Ram had no right left in the land in question.

10. There is another aspect of the case to which I must advert. The plaintiff has nowhere asked for declaring the order of the Tehsil Panchayat as void or without jurisdiction even though in the body of the plaint he has made an allegation to that effect. Virtually the result of the direction contained in the operative part of the judgment of the Civil Judge is that a decree has been passed against the Tehsil Panchayat as well as the Gram Panchayat declaring that the orders passed by them are null and void, even though the plaintiff had given up both of them, and their names had been struck off from the array of the defendants. It is not a case where the vendor has passed title to the property to the vendee and the vendee claims ownership to the property by virtue of sale in his favour. There is some difference of judicial opinion on the point whether in such circumstances the vendor would be a necessary party, but so far as the present case is concerned no such declaration or direction as granted by the learned Civil Judge in my opinion, could be granted in the absence of the Tehsil Panchayat, Hanumangarh or the Gram Panchayat, Maniwali, and, therefore, the directions contained in the judgment under appeal are bad. There is also something to be said against the judgment under appeal on the ground that the appeal, and consequently the suit having been dismissed by the learned Civil Judge he was left with no authority to give any further directions in the matter.

11. Looked at from any angle and having examined the case from all facts, I have come to the conclusion that this appeal must be allowed, and the the order of the learned Civil Judge setting aside the sale of half the plot of land in question in favour of the defendant-appellants by the Tehsil Panchayat must be quashed.

12. In the result I allow this appeal, and set aside that part of the judgment and decree of the learned Civil Judge whereby the learned Civil Judge has set aside the sale of Kita No. 333 in fovour of the defendant-appellants by the Tehsil Panchayat, Hanumangarh, and has further desired the Panchayat, Maniwali to sell the same in accordance with the Rules, if it so desired. The judgement and decree by the learned Civil Judge, by which the plaintiff-respondent's appeal was dismissed is, however, maintained. In the circumstances of the case the partis are left to bear their own costs.

