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Court : Rajasthan

Decided On : Jul-02-1987

Reported in : 2(1989)WLN(Rev)314

Judge : Mohini Kapoor, J.

Appeal No. : S.B. Civil Misc. Appeal No. 268 of 1984

Appellant : Hardev by His Lrs

Respondent : Goru

Disposition : Appeal dismissed

Judgement :

Mohini Kapoor, J.

1. A suit was instituted by the appellant Hardev & others. Hardev is now dead and his legal representatives have been substituted in his place the appeal is against the order of learned Additional District Judge, Dausa, dated 11-10-1984 by which it was directed that the plaint be returned for presentation before the competent Court viz. the Revenue court. Feeling against this decision he has preferred this appeal

2. In order to understand as to which Court is empowered to try the suit, the plaint may be looked into. The plaintiffs and the defendants No. 1 to 10 and 15 to 31 arc

of the same family, the ancestor being Maya Ram. The fathers of the plaintiffs viz. Kushal and Shiv Bux were real brothers and were sons of Bheru. Bheru had two others sons viz. Shobha and Moti, who are dead. Their representatives are defendants. Defendant No. 1 is the elder brother of plaintiff Boru and with the permission of the plaintiff, he gave some land to defendant No, 4 for cultivation in the year 1978. Subsequently without informing the plaintiff, the defendant No. 1 sold his undivided 1/3rd share by virtue of different sale-deeds to defendant No. 7 and defendants Nos. 11 to 50. Now the defendant No. 7 asserts that he had purchased the agricultural land from the father of plaintiffs Nos. 2 and 3 and wanted to take possession over the land. Subsequently in the year 1982, the defendant No. 1 sold the remaining 2/3rd share in the agricultural land to some defendants and this the plaintiffs came to know only on 22-1-1983 when a revenue realization camp was held in Gram Panchayat, Bhiva and the defendants moved an application for transfer of the land in their names. The prayer in the plaint is that the defendants be restrained from taking possession over the land in pursuance of the sale deeds, and the plaintiffs should not be dispossessed and that the land should not be transferred to any-body else and the sale-deeds be declared uul and void. The prayer for the partition of the property has also been made and in the schedule, all the moveable and immovable property has been given in which the immovable property consists of agricultural land, while the moveable property consists of cattle, cart, pump-set and utensils along with Kacha houses.

3. The learned Addl. District Judge has on a consideration of various decisions of this Court held that when the main relief of the plaint is in respect of khatedari rights then the matter has to be heard and decided by revenue Courts and not by a Civil Court. The plea that the suit also relates to the partition of the properties was also considered and it was held that this was obviously included in order to make an attempt to confer jurisdiction upon Civil Court and it could not be said that the main relief in the suit is such which is triable by the Civil Courts.

4. I have heard the learned Counsel for the parties at length. The learned Counsel for the appellant has contended that the prayer in the suit is for the cancellation of the sale-deeds and for partition of moveable and immovable property and this falls within the jurisdiction of the Civil Court According to him, it is the main prayer or

relief claimed in the suit which is to be looked into in order to decide the jurisdiction of the Court. On the other hand the learned Counsel for the respondents have contended that Section 207 of the Rajasthan Tenancy Act bars the jurisdiction of Civil Courts on matters which have to be decided by the Revenue Court and the main relief as well as the cause of action in the plaint is to be looked into in order to decide as to which Courts has jurisdiction to try the same. According to him the main relief is that the plaintiffs are khatedars of the lands in dispute and the rest of the relief about cancellation of sale-deeds or of declaration trust they are void is consequential and cannot be taken into consideration for deciding the competency of a Civil Court or a Revenue Court, for deciding the cases. There have been certain decisions of our High Court in this respect. Before looking into them Section 207 of the Rajasthan Tenancy Act may be reproduced:

207. Suits & applications cognizable by revenue court only - (1) All suits and applications of the nature specified in the Third Schedule shall be heard and determined by a revenue court;

(2) No court other than revenue court shall take cognizance of any such suit or application or of any suit or application based on a cause of action in respect of which any relief could be obtained by means of any such suit or application.

Explanation - If (he cause of action is one in receipt of which relief might be granted by the revenue court, it is immaterial that the relief asked for from the civil court is greater than, or additional to, or is not identical with, that which the revenue court have granted.

5. In Mohar Singh v. Wazir Chand 1969 RLW 347, it has been held that the revenue court is competent to grant a declaration under Section 88(1) of the Tenancy Act that 'the plaintiff is the sole Khatedar tenant of the land in suit', and it can grant an injunction under Section 92A of the against the defendant in whose favour the sale-deed has been executed restraining him from interfering with the plaintiff's possession over the land. This was the substantial relief which the plaintiff wished to claim and the revenue court is the competent court to grant his relief.

6. In *Shyam Kumar v. Budh Singh* 1977 RLW 131, it was observed that the relief claimed was the cancellation of sale-deeds, unless these sale-deeds are cancelled to other relief could be granted by the court. The allegation was that the sale-deeds were executed by defendant No. 4 purporting to act as a special attorney of the plaintiffs, therefore, the cause of action was a person not authorised had acted a such and in such circumstances it was held that the relief for cancellation of sale-deeds was a relief, which could not be given by a Revenue Court.

7. In *Chandanmal v. Dawar* 1954 RLW 184, it has been observed by Justice Modi as under:

I am of opinion that in order to determine whether a suit is triable by a revenue court or by a civil court, certain basic principles must be borne in mind. One such principle is that it should not be readily inferred that the jurisdiction of the civil court is barred unless such an inference can be raised by on express provision of law or by necessary implication. Another thing which should be borne in mind is that the question of jurisdiction must be initially determined by the allegation made in the plaint. Thus, whether a suit for possession of land is cognizable by a civil court or not depends entirely upon the frame of the suit and the allegations contained in the plaint. A further principle which should be kept in view is what is the substance of the suit and what is its main object or, in other words, what is the real contest between the parties In order to determine this the principle is well settled that one must look to the substance of the plaint and not merely to its outward form. If this is not done, it is obvious that it may be open to a party to evade the entire law as to exclusiveness of jurisdiction. It is of course to be remembered that care should be taken not to introduce anything into the plaint which may not really be found there or which may be foreign to its main purpose.

8. In *Rooda Ram v. Rattu Ram* 1972 RLW 532 Justice Kan Singh based his decision on the above case in deciding the jurisdiction of the court and held as under:

A proper analysis of the averments in the plaint yield the following postulates:

(1) that the plaintiff is the Khatedar of the field in dispute;

(2) defendant Ghisa Ram had no right whatsoever over this field;

(3) Ghisa Ram could not have made any sale of the field;

(4) that sale made by Ghisa Ram in favour of the other defendants was in consequence null and void.

It will be thus evident that the real cause of action is to whom does the field in question belong. If it belonged to the plaintiff as he claimed, then the order relief is that he might be claiming would follow as a matter of course. Therefore, the crux of the matter is that the plaintiff is seeking vindication of his own Khatedar rights in the field by the present suit and the connected or collateral points that would arise for consideration would be about the validity of the sale made by Ghisaram. As observed by Modi, J. and as it appears to be the tenor of Section 207 one has to look to the substance of the matter. The reliefs that may be desired from a civil court need not be identical with the relief that could be granted or claimed from a revenue court, but that is not a point of substance for determining the question as to whether the suit is triable exclusively by a revenue court or not. The burden of the section is the nature of the cause of action. I am, therefore, satisfied that the suit is of the nature triable by a revenue court and is covered squarely by the provisions of Section 207 Tenancy Act.

9. Again in *Hardoyal and Anr. v. Jagdish and Ors.* AIR 1969 Raj. 89, referring to Section 242 of the Rajasthan Tenancy Act which provides for referring certain questions regarding tenancy rights for decision to the revenue court by the Civil Court. It was held that where the revenue court would not be competent to make any pronouncement about the validity of the agreement between the parties or to decree the refund of the amount said, to have been advanced by the plaintiff the suit will be triable by a Civil Court.

10. Before Division Bench of this Court in *Jaswant Singh etc. v. Board of Rev. and Ors.* 1984 RLR 791, this question again came up and it was held that on basis of the material on record that if the suit was filed by the plaintiff for possession, treating the sale-deeds as wholly void or a nullity, then a prayer for cancellation, of the deed was unnecessary and was not required to be made by the plaintiff. In

such a case there was no difficulty in the way of the plaintiff in seeking relief by way of declaration of tenancy rights and claiming possession before a revenue court. This decision Bench, which was taken into consideration, the previous decisions make it clear that the substance of the relief claimed by the plaintiff is to be looked into in deciding the competency of the Court to decide the matter. In the present case though the plaintiffs have alleged that the sale -deeds are void and inoperative against them, the real relief which they want is that they are the Khatedar tenants of the land in dispute and are entitled to get possession over the land and as such the nature of the suit as such, which is exclusively triable by a Revenue Court. The rest of the relief is consequential. Merely because the plaintiffs have included a relief for getting partition of moveable property which consists of some animals, it cannot be said that the real dispute between the parties becomes triable by the Civil Court. The decision of the lower court deserves to be upheld and this appeal is, therefore, dismissed. If the plaintiff have paid extra court-fees in the suit than it is directed that they may claim a refund of court-fee paid on the plaint as provided by Section 63(2) of the Rajasthan Court Fees and Suits Valuation Act, 1960.

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