

**Bhanwaroo Khan Vs. Azim Khan**

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**Court :** Rajasthan

**Decided On :** Oct-14-1992

**Reported in :** 1993(1)WLC491; 1992(2)WLN146

**Judge :** B.R. Arora, J.

**Appeal No. :** S.B. Civil Second Appeal No. 199 of 1977

**Appellant :** Bhanwaroo Khan

**Respondent :** Azim Khan

**Disposition :** Appeal allowed

**Judgement :**

**B.R. Arora, J.**

1. This appeal is directed against the decree and judgment dated August 1, 1977, passed by the District Judge, Churu, by which the learned District Judge dismissed the appeal filed by the appellant and maintained the decree and judgment dated 9-9-69, passed by the learned Civil Judge, Ratangarh.

2. Plaintiff-appellant Bhanwaroo Khan, Sabdal Khan, Jassu Khan and Adam Khan (sons of Mishri Khan) filed a suit in the Court of the Civil Judge, Ratangarh, against Azim Khan and Mehboob Khan for declaration and perpetual injunction with respect to the land bearing Khasra No. 164 measuring 46 Bighas and 1

Biswa. It was averred in the plaint that Bhopal Khan the grand father of the plaintiffs and father of Mehboob Khan, was the Khatedar of the land measuring 46 Bighas 1 Biswa in Khasra No. 464 situated in the Rohi of town Sujangarh. After the death of Bhopal Khan, his two sons Mishri Khan (the father of the plaintiff) and Mehboob Khan, who is the other son of Bhopal Khan, were entered as the Khatedar tenants. On June 9, 1951, the ancestral property was partitioned between Mishri Khan and Mehboob Khan-the two sons of Bhopal Khan and this partition was entered into a Bahi. As per this partition, 41 Bighas 4 Biswas of land of Khasra No. 192 came to the share of Mehboob Khan while 46 Bighas 1 Biswa of the land of Khasra No. 464 came to the share of Mishri Khan and both remained in possession of their respective land since 9-6-1951. It was further averred in the plaint that though the partition of the land had taken place between Mehboob Khan and Mishri Khan, but Mehboob Khan, by a sale-deed dated June 22, 1967, which was registered on June 24, 1967, in the Office of the Sub-Registrar, Sujangarh, sold his share, i.e. half of the portion of this land, to Azim Khan. It was, also, averred in the plaint that the defendant No. 2 Mehboob Khan had no right to sell this land and, therefore, the sale made by Mehboob Khan in favour of Azim Khan is illegal, null and void and ineffective against the plaintiffs. It was further averred in the plaint that when the plaintiffs came to know regarding this sale, they approached the defendant No. 2 Mehboob Khan and the defendant No. 1, on 13-7-67, got an agreement executed in favour of the plaintiffs. By this agreement, he agreed that the sale made by him in favour of Azim Khan was without consideration, void and may be declared as nullity. The deed was, also, got registered before the Sub-Registrar, Sujangarh. It was, therefore, prayed that it may be declared that the registered sale-deed dated 24-6-67, executed by Mehboob Khan in favour of Azim Khan may be declared as unauthorised, illegal, void and ineffective against the plaintiffs and the defendants may be restrained from interfering in their possession. The defendant No. 2 Mehboob Khan the uncle of the plaintiffs filed the written statement admitting the claim of the plaintiffs. The suit was contested by Azim Khan, in whose favour the sale-deed was executed. The learned Civil Judge, by its decree and judgment dated 9-6-69, dismissed the suit filed by the plaintiffs by holding that the Civil Court has no jurisdiction to try the suit and the suit is exclusively triable by the Revenue Court. The learned Civil

Judges, therefore, directed to return the plaint to the plaintiffs for presentation in the proper Court. Dissatisfied with the decree and judgment dated 9-6-69, the plaintiffs preferred an appeal before the learned Additional District Judge, Churu. When the matter was being heard by the learned Additional District Judge, Churu, in the appeal, it was found by the learned Additional District Judge that the learned trial Court has decided the suit only on the question of jurisdiction and did not decide other two issues. He, therefore, directed the trial Court to give its findings on the remaining issues. The learned trial Court by its judgment dated 29-6-72, decided the other issues and remitted the case along with the findings to the learned District Judge, Churu: The learned District Judge, Chum, thereafter heard the matter and by its decree and judgment dated August 1, 1977, dismissed the appeal filled by the plaintiff-appellants on the ground that the suit is exclusively triable by the Revenue Court and the Civil Court has no jurisdiction to try the suit. So far as the findings on other two issues are concerned, the learned District Judge was of the Opinion that since the matter is to be tried by the Revenue Court and therefore, it is not necessary to consider the appeal on other points. It is against this decree and judgment dated 1-8-1977, that the plaintiff-appellants have preferred this second appeal.

3. The substantial question of law which requires consideration in the present case is: whether the present suit is triable by the Civil Court or it is triable by the Revenue Court? Generally, the Civil Court has jurisdiction to try the suits for vindication of the existing civil rights with respect to the property unless its jurisdiction is expressly or impliedly barred and the exclusion of the jurisdiction cannot be lightly inferred. The plaintiffs in the present suit have prayed for the following relief:

d % ?kksf'kr fd;k tk;s fd [kljk uEckj 464 rknknh 46-1 ch?kk okds lqtkux<+ ,d ek= oknhx.k ds [kkrsnkjh dCts ,oa dk'r dk gS rFkk izfroknh la0 2 }kjk izfroknh la0 1 ds lk{k es bl [ksr ds 1@2 Hkkx dk rkjh[k 24-6-67 dks fd;k x;k fodz; vukf/kdkj] voS/k 'kwU; ,oa fu'izyHk gS vkSj oknhx.k ds fo:) ,oa izHkkoghu gS A

[k % izfroknhx.k dks fpj &fu;'ks/kkKk }kjk oftZr fd;k tk;s fd os mijksDr [ksr es fdlh izdkj dk gLr{ksi u djs u oknhx.k ds dCts es fdlh izdkj dk n[ky nsos] u dksbZ ,slk

dk;Z djs ftlls oknhx.k mijksDr [ksr es mi;ksx es fdLh izdkj dh ck/kk ;k :dkoV vkos A

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?k % vU; dksbZ U;k;ksfpr lgk;rk tks oknhx.k ds fgrdj gks iznku dh tkos A

Para No. 8 of the plaint, which is, also, relevant to solve the present controversy, reads as under:

[ksr oknhx.k ds LoRokf./kdkj dh [kkrsnkjh vf/kdkj IEifRr ds vf/kdkj es gS A izfroknh la0 2 dks oknhx.k ds LoRokf/kdkj ds [ksr dks fodz; djus dk dksbZ vf/kdkj ugh Fkk A mlds }kjk izfroknh la01 ds lk{k es fd;s x;s fodz; lk= ds fLFkj jgus ls oknhx.k ;g ?kksf'kr djkus dk vf/kdkjh gS fd izfroknh la;k 2 }kjk rkjh[k 24-6-67 dsk mijksDr [ksr dk izfroknh la01 ds lk{k es fd;k x;k fodz; vukf/kdkj ] voS/k ] izfrdkj jfgr 'kwU; ,oa fu'izHk gS rFkk oknhx.k ds fo:) izHkkoghu gS A oknhx.k fpj fu'ks/kkKk Hkh bl vk'k; ls izklr djus dh ds vf/kdkjh gS fd izfroknx.k oknhx.k ds mijksDr [ksr es fdLh izdkj dk gLr{ksi u djs] u mles izos'k djs] u oknhx.kks ds dCts e n[ky nsos u dskbZ ,slh dk;Zokgh djs ftlls oknhx.k dsk viuk mijksDr [ksr dk'r djus es ck/kk ;k :dkoV vkos A

Section 207 of the Rajasthan Tenancy Act (for short, 'the Act') provides that all suits and application of the nature specified in the III Schedule shall be heard and determined by the Revenue Court and no Court, other than the 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 such suit or application. The III Schedule appended to the Rajasthan Tenancy Act contains the list of the suits, applications and appeals provided under the Act, to be tried by the respective Revenue Court. Section 88 of the Act deals with the suit for declaration of the rights as a co-tenant or his share in the joint tenancy, a tenant of Khudkasht and a Sub-tenant in an agricultural land. Section 89 deals with the suit for declaration as to class of tenancy etc. and Section 90 of the Act deals with the suits for declaration of land as Khudkasht while Section 91 of the Act deals with suits for declaration of any other right. Section 92-A of the Act deals with the suits for injunction.

4. For determining whether the Civil Court has the jurisdiction of the Revenue Court has the jurisdiction to try the suit, the frame of the suit, the allegations contained in the plaint, the substance and the main object of the suit, the pith and substance of the relief and not merely its form, are required to be looked-into. Any infringement of a legal right with respect to the property or the office, is always actionable in a Civil Court unless its jurisdiction is expressly or impliedly barred. If we look-into the averments made by the plaintiffs in the plaint and relief prayed-for then it is clear that the plaintiffs seek to establish a title in themselves with respect to the land in question which was inherited by them from their grand-father Bhopal Khan and after whose death the land was mutated in the names of his two sons, vis., Mehboob Khan and Mishri Khan. The plaintiffs cannot claim their title for this land without removing this insuperable obstruction created by their uncle Mehboob Khan by executing sale-deed dated 24-6-67, in favour of Azim Khan till the sale-deed executed by Mehboob Khan in favour of Azim, Khan is cancelled. The cloud created by Mehboob, Khan over the rights of the plaintiffs cannot be removed and a potential danger against their rights will subsist till the sale-deed is cancelled. Though the plaintiffs were not party to the sale-deed, but they are seeking relief to establish their rights in the ancestral property in which they are threatened by the registered transaction, i.e., the sale-deed entered into by Mehboob Kha-their uncle-in favour of Azim Khan. It is therefore, a case of the nature where the action is really based on the need for cancellation of the sale-deed, without which the relief prayed in the present suit cannot be granted. The plaintiffs though are stranger to the instrument of the sale-deed, but they seek to adjudge the sale-deed void and to get it cancelled. The frame of the suit, the averments made in the plaint, the relief prayed for and the object for which the suit has been filed make it clear that it was mainly a suit for cancellation of the sale-deed and all the other reliefs are ancillary to that relief and as such the jurisdiction of the Civil Court is not barred.

5. The next question which requires consideration is: whether Section 207 of the Rajasthan Tenancy Act, which ousts the jurisdiction of all other Court except the Revenue Court to the try the suit contemplates types of declaratory suits relating to the agricultural land or the declaratory suits of the special type only. Sub-section (2) of Section 207 of the Act states that no Court other than the 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 a relief COURT BE obtained by means of such suit or petition. Section 207 of the Act, therefore, does contemplate all kinds of declaratory suits of specific, type mentioned in Sections 88 and 89 of the Act and included in the Schedule-III, appended to it. The view taken by me finds support from the view taken by the Hon'ble Supreme Court of India in *Bismillaha v. Janeshwar Prasad and Ors.* AIR 1990 SC 540. Thus, according Section 207 of the Act, Revenue Court has alone the exclusive jurisdiction to try the suit with respect to declaratory suits covered by Sections 88 to 91 of the Act and Schedule-III. The present suit does not fall within the purview of Sections 88 to 91 of the Act as the suit is necessarily for cancellation of the sale-deed. The suit is, therefore, triable by the Civil Court and the learned lower Court committed an error in holding that the suit is triable by the Revenue Court.

6. In the result, the appeal, filed by the appellants, is allowed. The decree and judgment dated August 1, 1977, passed by the District Judge, Churu, are set-aside and the case is remanded to the learned District Judge, Churu, to decide the appeal, filed by the plaintiff-appellants, on merit.