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Court : Rajasthan

Decided On : Jan-01-1985

Reported in : 1985WLN(UC)44

Judge : G.M. Lodha, J.

Appeal No. : S.B. Civil First Appeal No. 193 of 1972

Appellant : Hardayal

Respondent : Jaya Singh

Advocate for Pet/Ap. : Mr. Metha

Disposition : Appeal allowed

Judgement :

G.M. Lodha, J.

1. This is a defendants' appeal in a suit which has been decreed by the trial court.

2. The plaintiffs have instituted this suit on 29-3-67 with the allegations that the defendant No. 1 along with his brother Gurdayal defendant No 5 had 28 bighas 16 biswas land situated at Chak 28GB, Tehsil Annopgarh comprised in square No. 22 to 22 and 26 and 27 measuring 12 bighas 3 biswas, 1 bigha 9 biswas, 1 bigha, 9 bighas 6 biswas and 4 bighas and 18 biswas respectively and 8 bighas 13 biswas

situated at Chak 31GB comprised of square No. 60/29 and 61/30 measuring 5 bighas and 3 bighas and 3 bighas 13 biswas respectively. The defendant No. 1 was the Mukhtiyaraam of defendant No. 5 through a registered Mukhtyarnama dated 3-7-54 and under the said Mukhtyarnma the defendant No. 1 had rights of mortgage, sale and management of the land for cultivation. The defendant No. 1 had let out the aforesaid land to the plaintiff No. 1 in Smvt. 2012 and since then the plaintiffs are in possession of the said land. The defendant No. 1 represented to the plaintiffs that he intends to sell the land to which the plaintiffs agreed and on 23-6-64 the defendant No. 1 entered into an agreement with the plaintiffs to sell the said land for a sum of Rs, 23350/- at different rates mentioned in the agreement and at the time of execution of the agreement a sum of Rs 6000/- was paid by the plaintiff to defendant No. 1 by way of earnest money and it was agreed that the balance sale consideration of Rs 17,350/- will be paid at the time of registration on 10-11-64. On breach of contract by defendant No. 1, Rs. 6,000/- were agreed to be paid to the plaintiffs as damages. It was further pleaded that the dates of registration were extended on 1i -11-64 to 25-2-65 on 25-2-65 to 30-2-65, on 30-2 65 to 30-6-65, on 30-6 65 to 15-3-66, on 15-3-66 to 15-6-66. The plaintiffs paid a sum of Rs. 4300/- on 30-3-65, Rs. 2000/- on 30-6-65 and Rs. 5200/- on 15-3-66. It was alleged that endorsement of extension of dates of registration were made on the agreement and the dates were extended as the defendant No. 1 did not get the sale deed registered in favour of the plaintiff. The plaintiffs thus in all paid a sum of Rs. 17,500/- and the balance amount of Rs. 5850/- were to be paid which the plaintiffs were ready to pay but the defendant No. 1 due to dishonest intention did not execute the sale deed in favour of the plaintiffs and failed to get the sale deed in favour of the plaintiffs and failed to get the sale deed registered. The defendant No. 1 is a Patwari in Revenue Department and has knowledge of the land laws whereas the plaintiffs are illiterate and innocent villagers The plaintiffs came to know in June, 1966 that the defendant's rights have ceased in the laud in dispute since the commencement of the Rajasthan Zamindari and Biswedari Abolition Act and defendant No. 1 had no right to transfer the land as the same has been vested in the Government of Rajasthan. The defendant No. 1 by practising fraud and mis-representation taking under advantage of the plaintiffs' ignorance of law, obtained a sum of Rs. 17,500/- under the pretext of executing

the sale-deed, The plaintiffs averred that they had been in possession of the land as tenant since 1954-55 and on the date of the commencement of Rajasthan Zamindari and Biswedari Abolition Act they were in possession of the land in dispute as tenant and on that day the title of the defendant No. 1 had ceased and the plaintiffs became the Khatedar tenant of the Government of Rajasthan and as such the agreement dated 23-6-64 was illegal and void.

3. It was also alleged that the defendant No. 1 had already entered into an agreement on 10 6 65 with his nephews Madanlal and Krishankumar to settle eight bighas thirteen biswas land out of the aforesaid 37 bighas 5 biswas land. Madanlal and Krishankumar filed a suit in the court of Civil Judge, Suratgarh for the enforcement of that agreement. The said suit was decreed by the trial court & affirmed by the first appellate court and the defendant No. 1 went in appeal before the Hon'ble High Court which was decided on 11-4-66. During the pendency of that appeal the defendant No. 1 entered into an agreement on 23-6-64 even with regard to the land which was the subject matter of the appeal before the Hon'ble High Court. On this ground as well the agreement with the plaintiffs was illegal and without authority and void. The Hon'ble High Court dismissed the suit for specific performance of the agreement dated 10-6-66 on the ground that the land vested in the Government of Rajasthan on the commencement of the Rajasthan Zamindari and Biswedari Abolition Act and so it was alleged that agreement with the plaintiffs dated 23-6-64 is ineffective against them and the defendant No. 1 is liable to return the sum of Rs. 17,500/-.

4. The plaintiffs also claimed that under the terms of the agreement a sum of Rs. 6000/- by way of damages as the defendant No 1 has failed to perform the contract. In case a sum of Rs. 6000/- is not allowed to the plaintiffs by way of damages under the void agreement, the plaintiffs may be allowed a sum of Rs. 6000/- on account of interest by way of damages on the rate of Rs. 1.9 annas per month.

5. It was further averred that on 13-12-66 the defendant No. 1 sold 28 bighas 11 biswas land of square No. 20 to 22 and 26 and 47 of chack 28 GB for a sum of Rs. 13,500/- to defendant No 2 by means of a registered sale deed and on 2-3 67 the

defendant No. 1 sold the entire 37 bighas 9 biswas land to defendants No. 2 to 4 by means of a registered sale deed for the consideration of Rs. 23,400/-. These sale deeds are sought to be declared illegal, without authority, collusive, without consideration, null and void and ineffective or the plaintiff's right on the ground that the defendant No. 1 had no right to sell the land under the Rajasthan Zamindari and Biswedari Abolition Act, 1959 and under the Rajasthan Tenancy Act, 1955 as the land has vested in the Rajasthan Government, that defendants 2 to 4 were having 175 bighas ancestral land more than ceiling limit and that the plaintiffs were already in possession of the land with whom defendant No 1 had already entered into an agreement to sell of which the defendant's father and grand father had knowledge. It was further alleged that the plaintiffs served a notice dated 20-2-67 on defendant No. 1 for refund of Rs. 23,500/- but the defendant No 1 failed to make payment and ha did not give any reply to the said notice. The plaintiffs prayed that the agreement dated 30-6-64 be declared null and void ab initio and without authority & he prayed for a decree of Rs. 23,000/- together with the interest on the principal amount of Rs. 17,500/-during the pendency of the suit till realisation and they also prayed that the sale deeds dated 13-12-66, 2-3-67 are illegal and without authority and ineffective on the plaintiffs' right. In the alternative the plaintiffs also prayed that in case it is found that defendant No. 1 is still the malik of the land in dispute having transferable rights, then a decree of specific performance of agreement be passed on payment of Rs. 5850/- by the plaintiff.

6. The defendant No. 1 filed the written statement and defendants 2 to 4 filed their joint written statements.

7. The defendant No. 1 admitted that the land belongs to him and his brother Gurdayal defendant No. 5 and that he was the Mukhtar aam of his brother. It was further stated by him that the land in dispute fell in the share of defendant No. 1 and defendant No. 5 in a suit for division of joint holding of 65 bighas 2 biswas to their share was mutated in the name on 2-9-61. It was admitted that from the date mutation upto the date of agreement to sell the land was let out to the plaintiffs. Execution of the agreement dated 23-6 64 was admitted. The receipt consideration of Rs. 17.500/- was also admitted on the different dates as alleged by the plaintiffs and it was also admitted that the dates for registration were

extended but it is denied that defendant No. 1 failed to get the sale deed executed and registered. The extension of dates of registration was made as the plaintiffs were not having the necessary money with them. The defendant No. 1 further alleged that on 30th June, 1965 a fresh agreement was entered. The defendant No. 1 executed the agreement in favour of the plaintiffs and delivered the same to them and the plaintiffs executed a fresh agreement and delivered the same to defendant No. 1. This agreement is concealed by the plaintiffs. The earlier agreement dated 23-6-64 is thus merged into fresh agreement dated 23 6-65 and the plaintiff,, are not entitled to sue on the basis of the old agreement and so the suit is liable to the dismissed. Under this new agreement the date of registrations was stipulated as 15 3-66. The allegation that on commencement of the Rajasthan Zamindari and Biswadari Abolition Act the defendant No. 1 and his brother had ceased to have transferable rights in the land and that the land vested in the Government of Rajasthan were denied and it was stated that the plaintiffs have been continuously accepting defendants No. l and 5 as maliks of the land and on 23-6 64 the plaintiffs obtained possession of the land in part performance of the contract for sale and as the plaintiffs could not manage the balance sale consideration within the stipulated time, so the earnest money has been forfeited. It was averred that defendants No. 1 and 5 were the malika tenants of the land in dispute and the plaintiffs did not acquire any khatedari rights It was also alleged that the Collector, Ganganagar is only competent to decide the question whether the land in dispute has been vested in the Rajasthan Government and this court has no jurisdiction to decide such question and the plaintiffs' suit for declaration is not triable by the Civil Court. The defendant denied the claim of Rs. 6000/- on account of damage and it was stated that the plaintiffs had committed the breach of contract and not the defendants. The plaintiffs were served with letters and notices and they did not make payment and did not get the sale deed effected in their favour. The defendant No. 1 admitted the sale effected by him on 13-12-66 in favour of defendant No. 2 for Rs. 13,6000/- but only in respect of 13 bighas 12 biswas. Similarly he also admitted that he effected the sate in favour of defendants No 2 to 4 for a sum of Rs. 23,400/- on 2-3-67 but only in respect of 23 bighas and 13 biswars and it was alleged that these sale deeds are valid and with authority. The defendant further alleged that he made repeatedly requests for payment of

balance sale consideration to the plaintiffs and he sent notices on 14-6-66, 30-6-66 and 1-12-66 but the plaintiffs expressed their inability to make payment of the balance amount. The defendant No. 1 and defendant No 5 were in need of money so he went to Vijai Nagar on 1-12-66 and sent a notice from there to the plaintiffs and remained there upto 3-12-66 and he asked the plaintiffs at Mandi Vijainagar in presence of respectable persons to make payment of the balance amount and to get the sale deed executed. On the plaintiff's expression of inability, the defendant No. 1 on his behalf and on behalf of defendant No. 5 rescinded the agreement and it was told that if payment is not made within ten days, the sale deed would be executed & also the agreement will stand cancelled & the earnest money forfeited. The plaintiffs failed to make payment of the balance amount and so the defendant No 1 and defendant No. 5 sold the land to defendants No. 2 to 4. The defendant further pleaded plea of estoppel on the ground that the plaintiffs admitted that the defendants No. 1 to 5 to be malika of the land. An objection is also raised that the plaintiffs are in possession of the land since 23-6-64 and they have taken advantage of the produce of the land to the tune of Rs. 15.000/-annually and in case the agreement is declared to be void, the plaintiffs are liable to restore possession of the land to defendant No. 1 and they are further liable to pay Rs. 15,000/-annually after 23-6-64 and it was pleaded that the agreement being void, the plaintiffs are not entitled to claim the amount of the agreement.

8. It was also pleaded that the plaintiffs have claimed inconsistent reliefs. On one hand they have prayed for declaration that the agreement is void and on the other hand they have prayed for a decree of specific performance of agreement and so the plaintiffs cannot claim such relief and suit in the present form is not maintainable. The defendants after seeking amendment of the written statement added para 29(a) and took plea that the Rajasthan Zamindari & Biswedari Abolition Act, 1959 is unconstitutional and colourable piece of legislature and as such this enactment does not effect the proprietory of the defendants over the land. In the end it was prayed that the suit be dismissed with costs.

9. The defendants Nos. 2 to 4 in their written statement denied the allegations of the plaint and it was pleaded that the land in dispute is not affected by the Rajasthan Zamindari & Biswedari Abolition Act and no rights have accrued to the

plaintiffs in the land in dispute on the commencement of the said Act. It was further stated by them that the defendant No. 1 and his brother were malika of the land and they have disposed of some lands and not whole of the land as alleged by the plaintiffs at the market value on 13-12-66 and 2-3-67. They also raised an objection that the question of vesting of land in Rajasthan Government can only be decided by the Collector, Ganganagar under Section 9 of the said Act and Civil Court has no jurisdiction. It was further pleaded that defendant No. I and his brother had rights to sell and the answering defendants had no land in their name & so the ceiling limit is not applicable to them. The plaintiffs have no rights to challenge the sale in their favour. It was denied by them that they or their father or grand father had knowledge of any agreement between the plaintiffs and defendant No. 1 and defendant No. 5. An objection was raised that the plaintiffs have not given the details as to how and when their father and grand father came to know about the said agreement. With regard to possession it was pleaded that the plaintiffs have illegally occupied the land in dispute after the purchase of the land by them. It was also alleged that the suit for specific performance of contract is liable to be dismissed, if the agreement to sell is void under the Rajasthan Tenancy Act as alleged by the plaintiffs. These defendants raised objections with regard to court fees. The value of the sale deeds in their favour is Rs. 37000/- and the plaintiffs are liable to pay court fees on Rs. 37000/-. The plaintiffs have under valued the suit and court fees paid by them is insufficient. In additional pleas these defendants further raised an objection that the plaintiffs are not entitled to sue joining two causes of action in respect of sale deed. It was stated that defendants No. 3 and 4 are not concerned with the sale deed dt. 13-12-66, so it was pleaded that the suit is bad for misjoinder of causes of action. It was further pleaded by them that they are bonafide purchasers for value without notice of the alleged agreement to sell between the plaintiffs and defendant No. 1. It was also alleged that the plaintiffs are not entitled to the decree for specific performance as the plaintiffs have failed to purchase the land on payment of the balance sale consideration. For any reason, if the plaintiffs' suit for specific performance is decreed, they prayed that the price of the land be got paid to them from the plaintiffs and a decree regarding balance sale price be passed against Hardayal and Gurdayal.

10. It may be mentioned that in the original plaint the plaintiffs did not implead Gurdayal and an objection with regard to his being a necessary party was raised by the defendant and thereafter the plaintiff got the suit amended and they impleaded Gurdayal defendant No. 5 in the amended plaint.

11. The plaintiffs submitted rejoinder to the plea of unconstitutionally of the Rajasthan Zamindari and Biswedari Abolition Act. It was stated that the said Act is not unconstitutional and it has not been stated as to how the said Act is a colourable piece of legislation. The plaintiffs stated that the said Act is protected under Article 31(b) of the Constitution and its constitutionality cannot be challenged. The High Court of Rajasthan has already held the Act to be constitutional. The objection taken by the defendant can only be decided by the High Court or the Supreme Court in exercise of the extra ordinary jurisdiction and this court has no jurisdiction to decide the question and can only refer the matter to the High Court under Section 113 CPC. Further the question of constitutionality cannot be determined without hearing the Advocate General and the State of Rajasthan.

12. The trial court recorded the evidence and then decreed the suit.

13. It would be obvious from the above that one of the important point of controversy between the parties related to the nature of the tenure of the agricultural land. Irrespective of the pleadings it is now clear that the plaintiffs assertion is that this was Biswedari Zamindari land in which the defendant was Biswedar and the plaintiff was tenant. Later on the plaintiff by virtue of the provisions of the Biswedari Act became khatedar tenant and the land vested in the State.

14. Contrary to it the defendants' case is that the defendant was a Khudkasht alias malik and, therefore, he became khatedar tenant by the coming into force of this Act.

15. During the course of arguments in this Court when this question assumed importance it was enquired from the parties whether the State was a party in the present suit. In reply both the learned counsel submitted that the State was not a

party. The contention of the appellants was that the State in view of the above was necessary party but the contention of the respondents' counsel is that there was no necessity of the State being made a party and it was not necessary because the plaintiff never came with the case where in relief was claimed against the State.

16. The relevant provisions of the Rajasthan Zamindari & Biswedari Abolition Act, 1959 in this connection may be perused for understanding the implications of the points referred to above. Sections 9 and 31 are relevant for the purpose and they read as under:

Section 9--Determination of Disputes--(1) If any dispute or question arises with respect to any matter specified in Section 5 or Section 6 or Section 7, such dispute or question shall be referred to the Collector of the district in which the estate vesting in the State Government by virtue of a notification under Section 4 is situate.

(2) The Collector shall after holding in the prescribed manner, such enquiry as he considers necessary, make such order in the matter as he deems fit.

31. State Government to be a party to proceedings under Act: The State Government shall be and be deemed to be a party in every proceeding under this Act before any Officer or Authority, and every notice to be served or intended to be served on the State Government may be served on the Collector.

17. It must be mentioned that the land vests in the State on abolition of Zamindari and Biswedari by virtue of Section 5 of the Act. Section 6 creates an exception. Section 5 Sub-clause (4) permits Zamindars and Biswedars to retain possession of their Khudkasht lands.

18. The question whether the suit could be decided in the absence of the State being a party in the present case, it has to be examined in view of the above facts and law.

19. Yet another dimension was raised by the learned counsel for the parties by raising the controversy about the correctness of finding on Issue No. 11 decided

by the court on 13-1-1968. Issue No. 11 reads as under:

D;k teankjh ,DV eudk ds vUrZxr vkjkth jktLFkku ljdkj es fufgr gksus ds iz'u dks r; djus dk vf/kdkj vnkyr gktk dks ugh gS

20. It was contended by Mr. Balia that vesting of the land is only bedrock and foundation for adjudication after entering into controversy about the consequence to follow, so far as the rights of the plaintiffs and defendants are concerned. Developing this argument it was submitted that whether on account of vesting of the Zamindar and Biswedar land the Biswedars and Zamindars become Khudkasht, Khatedar or the tenant of the Biswedar becomes Khatedar. In the facts and circumstances of a particular case depending upon the nature of possession at relevant times this is a most important question, which can only be decided by the Collector and Collector alone under Section 9 of the Act. On the vesting of the land on the beginning of the application of this Act, what consequence follow for a Zamindar and Biswedar on the one side and a tenant claiming possession as a Khatedar on the other side is the real dispute to decide. It was with this intention that Section 9 conferred the rights to the Collector. In support of his contention reliance has been placed on the decision of to Revenue Board Rajasthan v. Baldev Singh : [1968]2SCR661 , para 8 of which reads as under:

It was objected on behalf of the respondents that, in any case, the question cannot be determined by the Jagir Commissioner after the resumption proceedings had come to an end. It was said that after the proceedings for resumption were completed under the Act and award of compensation has been made, there is no jurisdiction left in the Jagir Commissioner to proceed with an enquiry under Section 23(2) of the Act. For the purpose of this case it is not necessary for us to express any opinion as to whether the Jagir Commissioner has jurisdiction to make an enquiry under Section 23(2) of the Act after the proceedings for resumption have come to a close. It appears that in the present case the Director of Colonisation addressed a letter to the Divisional Commissioner, Bikaner on December 22, 1958 for review of his order dated Nov. 30, 1958 and that he also requested that the matter should be referred to the Jagir Commissioner as he was the only competent authority to determine the nature of the disputed property

under Section 23(2) of the Act. On receipt of this letter the Divisional Commissioner. Bikaner reviewed his previous order of November 30, 1958 and dismissed the objections of Director of Colonisation on March 5, 1959. We shall assume in favour of the respondents that the proceedings for resumption came to a close on Jan. 20, 1959. Even on that assumption the dispute was raised by the Director of Colonisation on December 22, 1958, long before the date of the final award on January 20, 1959 and the Jagir Commissioner had jurisdiction to proceed with the enquiry under Section 23(2) of the Act since the proceedings for resumption were still pending. We are accordingly of the opinion that counsel for the respondent is unable to made good his argument on this aspect of the case.

21. It was pointed out that the provisions are analogous and the same principle will apply to the present case.

22. Confronted with the above Mr. Metha, learned counsel for the plaintiff respondents submitted that it is true that the question whether the plaintiff became Khatedar tenant under this Act on abolition of Zamindari and Biswedari is a question of substance and importance in the present case and not of from only. That being so Section 9 squarely confers jurisdiction on the Collector and the Collector alone.

23. It thus becomes common ground that the adjudication of all other matters will depend on the question whether this particular land in dispute should be treated as a khatedari land of the plaintiff as par his allegation that he was in possession on the date it vested in the State or for any other reasons. Similarly the other corresponding rival contention would be whether the defendant being in alleged possession as Khudkasht on the date of vesting would become Khatedar.

24. If the first contention is accepted by the Collector on facts then naturally the defendant had no business and right to enter into an agreement to sell that property & the normal legal consequence would be the refund of the amount to the plaintiff. Conversely if the plaintiff cannot prove that he was in possession of Khudkasht, then the plaintiff can get a decree for specific performance on the basis of the agreement for possession. The above facets of the controversy cannot be undermined as done by the lower court Unfortunately it appears that

these dimensions were not brought in light and were not highlighted by the learned counsel before the trial court and the trial court was not conscious of the various implications and facts of the controversy in and about the land on account of coming into force Raj. Zamindari & Biswedari Abolition Act. Viewed thus as it now, the objection which was raised earlier about the State being the party becomes immaterial because once a reference is made to the Collector, then the Collector will examine the record, permitting evidence if necessary, would adjudicate all the above questions and further all relevant questions and then send an answer to the trial court. It will be the duty of the trial court to accept the finding of the Collector so far as the nature of tenure, possession of the parties in respect of this land is concerned, after it vests in the State on account of coming into force of the Rajasthan Zamindari & Biswedari Abolition Act.

25. Consequently this appeal is accepted to the above extent. The judgment of the trial court is set aside. The trial court is directed to make a reference to the Collector Shri Ganganagar regarding the above questions. After the reference is answered by the Collector, the trial court should decide the case afresh after hearing the parties according to law. The parties would bear their own costs so far.

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