

Sardara Vs. Satyanarain

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Court : Rajasthan

Decided On : Aug-25-1989

Reported in : 2(1989)WLN(Rev)286

Judge : Rajendra Saxena, J.

Appeal No. : S.B. Revision Petition No. 118/89

Appellant : Sardara

Respondent : Satyanarain

Disposition : Petition dismissed

Judgement :

Rajendra Saxena, J.

1. This revision petition has been filed under Section 230 Tenancy Act, 1955 (here in after referred to as the Act) against the order dated 29-7-1989 passed by the Revenue Appellate Authority, Bikaner in Appeal No. 113/86 pending before him, where by he rejected petitioner's application dated 3-6-1987 and confirmed the temporary injunction dated 31-10 1986 restraining them from interfering in the cultivatory possession of the plaintiff-non-petitioner on the disputed land and from doing any other act which may adversely affect his rights thereon, till the disposal of the appeal.

2. Briefly stated the relevant facts are that the plaintiff-non petitioner Satyanarain filed a suit for partition case Agriculture holdings, declaration and perpetuals injunction under Sections 53, 88 and 188 of the Act against the petitioners and non-petitioners 2 to 13 and the State of Rajasthan in the court of the SDO, Bikaner (North), with the averments that the disputed land described in the plaint and situated in village Kilchu Devran is a joint holding wherein he has 1/4th share and that the non-petitioners No. 2 to 13 are also the co-tenants of the said holding. He alleged that on 15-8-1986 non-petitioners came to the land bearing Khasra Nos. 182 to 185, 64, 67 and 77/2, which also constitutes the part of the disputed holding and intended to sell those Khasra Numbers to them. He, therefore, prayed that the disputed joint holding be partitioned and possession of his 1/4 share therein be given to him. The plaintiff-non-petitioner also filed an application under Section 212 of the Act, wherein he alleged that non-petitioner Mohan had informed him that he had already sold the said Khasra numbers of joint holding to the petitioners and that in case be declined to part with the possession thereof, they will forcibly take possession of the said land. He, therefore, prayed that the petitioners as well as non-petitioners No. 2 to 13 be restrained through a temporary injunction from selling, mortgaging or alienating the disputed joint holding and from doing any act which may adversely affect his rights. The SDO by his order dated 29-10-1986 partly accepted the said application and restrained the petitioners and non-petitioners No. 2 to 13 through a temporary injunction from selling or alienating the disputed joint holding till the disposal of the suit. Dissatisfied with the SDO's order dated 20-10-1986, the plaintiff-non-petitioner filed Appeal No. 113/86 before the RAA along with an application under Section 212 of the Act. The RAA by his order dated 31-10-1986 issued an ex-parte injunction against the petitioners restraining them from interfering in his cultivatory possession of the land bearing Khasra Nos. 64, 67, 77/2 and 182 to 185 and from doing any act adversely his rights thereon. The RAA after bearing the parties by his order dated 29-7-1589 dismissed petitioners' objections and confirmed the ad-interim order dated 31-10 1986 till the disposal of the appeal pending before him Hence this revision petition

3. I have heard the learned Counsel for petitioners as well as the learned Counsel for the caveator on the point of admission and carefully perused the relevant record. Since the SDO had partly accepted plaintiff on petitioner's application

under Section 212 of the Act and had not restrained the petitioners from doing any act which may adversely affect the plaintiff's rights in respect of the disputed joint holding, he was an aggrieved person in respect of SDO's order. Therefore, his appeal before the RAA for the said relief, which was impliedly refused by the SDO, was legally maintainable. The disputed holding is still joint and has not been partitioned. Petitioners have purchased only 1/8th share of non-petitioner Mohan in the joint holding, through a registered sale deed. As per plaint allegations, the petitioners had threatened to forcibly dispossess the plaintiff non-petitioner from the land bearing Khasra Nos. 64, 67, 77/2 and 182 to 185, which is a part of the disputed joint holding, the RAA exercising his discretion has, passed the impugned order, which is fair, judicious and not without jurisdiction.

4. In *Ramu v. Hanuman* 1987 RRD 330 and *Lakha v. Mangu* 1988 RRD 17, it has been held that where a co-sharer transfers his share to a stranger, the other co-sharer can obtain an injunction against such a stranger-restraining him from taking possession of the joint holding. A purchaser of shares coparceners in a joint Hindu Family does not acquire any interest in the property sold and he cannot claim to be put in possession of any specific or definite piece of family property. The purchaser acquires only an equity to stand in the alienor's shoes and can work out his rights by means of partition. Therefore, the purchaser neither becomes the tenant with the other members of the joint family nor he is entitled to joint possession with co-sharers. Please see : [1966]1SCR628 .

5. The fact of *Pannl v. Ramsari* 1982 RRD 128 relied upon by Shri J.K. Pant does not render any assistance to the petitioners, because that was not a case for partition of holdings.

6. This revision petition is also incompetent because the petitioners have not impleaded the State of Rajasthan which is a necessary party.

7. Hence for the reasons mentioned above, in my considered opinion the impugned order of the RAA neither suffers from any error of jurisdiction nor from any material irregularity nor from any illegality.

8. In the result, I find this revision devoid of any force and substance and dismiss the same summarily.

Pronounced in the open court.

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