

# RAJASTHAN HIGH COURT

Balu

Vs.

Birda

Second Appeal No. 88 of 1971

(Guman Mal Lodha, J.)

18.03.1982

## JUDGEMENT

### **Guman Mal Lodha, J.**

1. Can the protective umbrella of Section 42, Rajasthan Tenancy Act, aimed to implement the socio-economic uplift of Scheduled Castes, Scheduled Tribes, by prohibiting transfer of land by them, so that they retain land, be nullified and set at naught by ingenious legal trickery of affluent and resourceful segment of society by obtaining compromise decrees, surrendering the land to Non-Scheduled Caste? When a landless tiller Harijan or Girijan again becomes landless by compromise, would the law permit such economic suicide by Harijans, against legislative intent of Section 42, is the pivot of debate in this Harijan's litigations.

2. And now the traditional narration of facts.

3. This is plaintiffs' second appeal after making attempt to get a decree in two lower Courts.

4. The plaintiffs are Harijans and therefore, members of Scheduled Caste in Rajasthan. The plaintiffs are Khatedars of some agricultural land. There is a chequered history of the case in which in an earlier litigation a decree was passed by which the plaintiffs were deprived of some land in Khasra No. 69 on the basis of some compromise.

5. In order to understand the case in a little details, it would be better to mention the facts in details as mentioned by the first appellate Court, which are as under: -

The plaintiff's case is that there is a Kothi Bhan Singh in village Jalpali. There is a well on this land and its number is 70. The land is split in two parts and their numbers are 69 and 71 each measuring 7 bighas and one biswa. The land Khasra No. 69 is called 'Uguna Pana' and land No. 71 is called 'Athoona Pana'. Between the parties there were proceedings under Section 145, Criminal Procedure Code in the Court of S.D.M. Neem Ka Thana. On 11th July, 1956 the learned S.D.M. attached the land under Section 146, Cr.P.C., and directed the parties to get their rights decided by a competent Court. On 11th Aug. 1957 Birda defendant No. 1 filed a suit in the Court of Assistant Collector, Neem Ka Thana for declaration about Khasra No. 71. Another suit was brought by the plaintiff for declaration of Khasra No. 69 in the said Court. On the application of the parties both the suits were consolidated. The suit by the present plaintiff was against Birda, Sheobux and Nand Singh. Since Sukhsingh and Narainsingh were the Khatedar they were made pro forma defendants. The suit by Birda was against Sukhsingh etc. During the proceedings of these suits which were consolidated on 4th Aug. 1958 a compromise was arrived at between the plaintiff and defendants Nos. 1, 2 and 3 at Shrimadhapur. As per the compromise the plaintiff was given two bighas 7 biswas of land in both these Khasras and in these terms the compromise was filed in the court, In the suit filed by the plaintiff the compromise was filed but in the case filed by Birda the compromise was filed but Birda did not put his thumb impression on it. This fact was kept concealed from the plaintiff's Am Mukhtar and the Mukhatra was told that the compromise is in terms of the settlement arrived at between the parties and it is on behalf of Birda also. On 28th Aug., 1958 Birda filed another compromise according to which Birda was given two bighas and 7 biswas of land and the rest was given to Nand Singh.

The plaintiff came to know of this mischief by the defendant Birda when the Girdawar of Tehsil Shrimadhapur on 27th Sept., 1959 came there and handed over the possession of two bighas and 7 biswas of land in which the plaintiff's crop was standing to the defendant. Later on the plaintiff went to Tehsil inspected the file and came to know, about the fraud played by the defendant on him. He also averred that due to this handing over possession to the defendant of the land he sustained a loss of Rs. 200/-. He, therefore, prayed that both the decrees given on the basis of the compromise in the case filed by the plaintiff and defendant. Birda be set aside, as they were obtained by fraud. He also prayed that it be declared that the decrees are not

binding on him that he be declared the Khatedar Kashtkar of two bighas and 7 biswas of Khasra No.71 and that he be put in possession of it, that he be awarded damages at the rate of Rs. 138/- per annum for the loss of the crops. In the alternative, he pleaded that he be declared the full-fledged Khatedar Kashtkar of the whole of Khasra No. 69.

6. Defendants Nos. 1, 2 and 3 put in their written statements. It was admitted that there were proceedings under Section 145 pertaining to these lands and that the lands were attached and the parties were directed to get their right decided by the competent Civil Court. They also averred that the suits were consolidated on the application of Sheo Buxa, that a legal compromise was arrived at between the plaintiff and Sheo Buxa and the suit against Birda was withdrawn. No Compromise was arrived at Shrimadhapur. Whatever compromise was entered into between the parties it was produced in the Court. No facts were withheld from the plaintiff or his Am Mukhtar. At the time of the compromise the lands were in possession of the Receiver and no possession was given to the plaintiff and as such the plaintiff is not entitled to any damages. The plaintiff has not put in proper court-fees; Government of Rajasthan is a necessary party; the suit is time-barred.

7. Rest of the defendants did not contest the suit. Following issues were framed :-

1. Whether on the request of the parties on 10th March, 1958 both the suits pending in the Court of Asstt. Collector. Neem Ka Thana were consolidated? (Plff.)
2. Whether in both the suits, the dispute was between Murli, Birda, Sheo Bux, Nandsingh and that Sukh Singh and Narain Singh were made pro forma defendants being the owners of the land and what is its effect on the suit? (B.O. Plff.)
3. Whether previously Murli plaintiff was cultivating whole of Khasra No. 69 and was entitled to it? (B.O. plff.)
4. Whether during the proceedings of these suits on 4-8-1958 there was a compromise between Murli and defendants Nos. 1, 2, 3 at Shrimadhapur and that according to it the plaintiff was given two bighas and 7 biswas of land in both Khasra Nos. 69 and 71 and that it was agreed that the compromise would be produced in the Court to this effect? (B.O. plff.)
5. Whether as per terms of the compromise the plaintiff filed his compromise in the suit titled *Murlih v. Birda'* and that in the suit titled *Birda v. Sukhsingh etc.*" the compromise was filed which did not bear Birda's thumb impression which

fact was withheld from the plaintiff's Am Mukhtar Balu?

6. Whether in suit *Birda v. Sukhsingh*, defendant birda put in a compromise on 28th Aug. 1958 and played fraud with the plaintiff as detailed in para No.10 of the plaint and did not allow the plaintiff to have knowledge about it? (B.O. plff)

7. Whether the decrees dated 19th Aug. 1958 and 28th Aug. 1958 were obtained from the Court of Asstt. Collector. Neem Ka Thana by fraud and, therefore, illegal, void and inoperative and that the plaintiff is not bound by them? (B.O. plff.)

8. Whether the plaintiff is entitled to possession of Khasra No. 71 and entitled in mesne profits of Rs. 200/- per Sialu harvest right from Samvat 2016 till the day of possession and damages at the rate of Rs. 138/- per harvest? (B.O. plff.)

9. Whether the Govt. of Rajasthan is necessary party?

10. Whether the court-fee filed by the plaintiff is deficit? (B.O. plff.)

11. Whether the suit is within limitation? (Plff.)

12. Whether the suit is bad for mis joinder of parties? (B.O. Defts.)

13. Relief ?

8. Issue No. 10 was decided on 24th May, 1965 and the plaintiff was ordered to pay Rs. 72.75 as deficit court-fees and the plaintiff complied with it. After recording the evidence of the parties the plaintiff's suit was dismissed against which the appeal was preferred.

9. The appeal was also dismissed.

10. In appeal, an amendment was sought on the ground that the compromises were entered into between Scheduled Caste and Non-Scheduled Caste persons and therefore, they are violative of Section 42 of the Rajasthan Tenancy Act.

11. Section 42 of the Rajasthan Tenancy Act reads as under:-

"42. General restrictions on sale gift and bequest - The sale, gift or bequest by a Khatedar tenant of his interest in the whole or part of his holding shall be void, if:

(a) it is not of a survey number except when the area of the survey number so sold, gifted or bequeathed is in excess of the minimum area prescribed for the

purpose of sub-section (1) of Section 53 in which case also the area not transferred shall not be fragment.

Provided that this restriction shall not apply if the area so transferred becomes merged into a contiguous survey number.

Provided further that this restriction shall not apply if the sale, gift or bequest is of the entire interest of a tenant in the survey number.

Provided also that the State Government or any authority or officer empowered by the State Government in this behalf, may exempt by general or special order and subject to such conditions as may be specified, the sale, gift or bequest for industrial residential or commercial purposes, from these restrictions.

(b) such sale, gift or bequest is by a member of a Scheduled Caste in favor of a person who is not a member of the Scheduled Caste, or by a member of a Scheduled Tribe in favor of a person who is not a member of the Scheduled Tribe."

12. The first appellate Court was of the view that the application for amendment cannot be allowed because plaintiffs surrendered their right in Khasra No. 69, which cannot be treated as sale or bequest and therefore, such a plea cannot be taken.

13. Before this Court, several arguments were made, which centered around the question whether the plaint should have been allowed to be amended. Mr. Hanuman Choudhary, learned counsel for the appellant pointed out that so far as Khasra No. 69 is concerned, the plaintiff was the Khatedar and there was a specific prohibition for transfer of this land, according to earlier provisions of Rajasthan Tenancy Act (S.42 and its proviso). The proviso to Section 42 as it existed from 22nd Sept. 1956, reads as under: -

"Provided that no Khatedar tenant being a member of the Scheduled Caste or Scheduled Tribe, shall so transfer his interest in the whole or a part of his holding to any person who is not a member of the Scheduled Caste or Scheduled Tribe."

14. The question which comes for consideration is whether by virtue of compromise when a party concedes to a particular position the result of which is that the agricultural land, which is alleged to be in Khatedari of that party is given to the other party, who is Non-Scheduled Caste, it tantamounts to 'transfer' for the purposes of

Section 42 of the Rajasthan Tenancy Act.

15. Undoubtedly, there is no dispute that the plaintiffs belonged to Scheduled Caste and the defendant-respondent are of Non-Scheduled Caste. Obviously, therefore, if there had been a transfer, as contemplated by Section 42, it was void and cannot be made effective.

16. The question which still arises is whether such a transfer amounts to sell, bequest, gift or other conveyance of property as contemplated by the transfer of Property Act.

17. In my opinion, the provisions of Section 42 have been enacted for prohibiting transfer of agricultural land from Scheduled Caste to Non-Scheduled Caste, on the ground that scheduled Caste and Scheduled Tribe are the weaker sections of society and if protection is not given the other affluent members of society would exploit them. This is a socio-economic legislation to ameliorate the condition of downtrodden, depressed and suppressed segments of society, who are weaker financially, economically, socially and also in education.

18. It is, therefore, necessary that broad liberal interpretation should be given to the word, 'transfer' used in this proviso and all direct or indirect methods of transferring property should be considered to be hit by the prohibition, contained in Section 42. In that context and background, the sale or bequest would be void.

19. The parties manipulate compromise in civil suits and revenue suits and both the parties want to change the property from one person to other person. Can it not be said that it was a transfer for the purpose of Section 42, as surrender can only be made under section 55 of the Rajasthan Tenancy Act?

20. Broadly speaking, I am of the opinion that the word, 'transfer' used in the proviso to Section 42 should be treated as comprehensive and even if an agricultural land in Khatedari of Scheduled Caste and Scheduled Tribe is given to Non-Scheduled Caste, Non-Scheduled Tribe, by a compromise in a suit, then also it would come within the mischief of prohibited transfer under Section 42 of the Rajasthan Tenancy Act. Even a contested decree resulting in transfer would be covered by the protective umbrella of Section 42 of the Act.

21. What precisely happened in this case would still involve complicated questions of

fact requiring evidence as Mr. Tibrewal submits that the plaintiff was not Khatedar at all and the appellant's counsel Sri Hanuman Choudhary submits that Khatedari rights were with the plaintiff for Khasra No.69.

22. Sitting in second appeal, I cannot decide this controversy, more so because both the parties had no opportunity to lead evidence on this vital aspect of the case. It would, therefore, be in the interest of justice to accept the prayer for amendment in the first appellate Court and permit the plaintiff to amend the plaint as prayed, by taking the ground that the compromise was a transfer and this transfer was violative to Section 42 of the Rajasthan Tenancy Act.

23. The plaintiffs are permitted to take this ground in the plaint by amendment of the plaint and the defendants would be at liberty to file written statements. Both the parties then shall lead evidence after framing issues and then the case will be decided afresh by the trial Court.

24. In view of the above, findings of both lower Courts are set aside and the case is sent back to the trial Court with direction that he will allow the plaintiffs to amend the plaint as per their application before the first appellate Court to take the ground that the decrees passed on the basis of compromise were violative of Section 42 of the Rajasthan Tenancy Act.

25. After the plaint is amended the defendant should be allowed opportunity to file written statement and take all legal objections. Both parties will be further allowed to lead evidence on this issue as well as the other issues which were framed in the case, since the case is being remanded. After recording the evidence and hearing the parties the trial Court would decide the case afresh.

26. Since the appellants are members of Scheduled Caste and they are poor Harijans, no costs are allowed to the defendants for this amendment. The parties would bear their own costs of this appeal, as well as in the first appellate Court.

27. The appeal is, therefore, accepted as indicated above.

Appeal allowed.