

RAJASTHAN HIGH COURT

Paras Mal

Vs.

Sobhag Devi

Civil Writ Petn. No. 2844 of 1999

(Shiv Kumar Sharma, J.)

14.12.2006

ORDER

Shiv Kumar Sharma, J.

1. Challenge in this writ petition is to the judgment dated May 1, 1999 of the Board of Revenue whereby it was held that if during the pendency of revenue suit, sale deed of the land is executed it is hit by the doctrine of lis pendens and it is not necessary to get the sale deed set aside by Civil Court.

2. Contextual facts depict that Smt. Sobhag Devi (plaintiff) filed a suit for declaration, injunction and possession initially against Prem Devi (defendant No. 1) in the Court of Assistant Collector Dudu with the averments that the agricultural land bearing khasra No. 1225 measuring 4 bighas 6 biswas and khasra No. 1232 measuring 4 bighas 14 biswas situated in village Dudu was in joint khatedari of Padam Chand and Paras Mal. After the death of Padam Chand name of his wife Prem Devi (defendant No.1) was substituted in revenue record. The plaintiff claimed in the suit that being the mother of Prem Chand she was also entitled to equal share as per the provisions of Hindu Succession Act.

3. On or about November 26, 1990 the plaintiff moved an application under Order 1, Rule 10 read with Order 6, Rule 17 Civil Procedure Code, wherein it was stated that Prem Devi executed sale deed on October 15, 1990 whereby she sold her share in the aforesaid agricultural land to Paras Mal and Pawan Kumar. The plaintiff sought impleadment of the purchasers of the land. The purchasers were impleaded as defendants and they filed written statement stating therein that sale deed was rightly executed and until and unless the sale deed was cancelled by the Civil Court no relief

could be granted by Revenue Court. On the basis of pleadings of parties as many as 10 issues were framed, out which issue No. 9 was as under :-

"Whether the revenue Court has jurisdiction to try the suit?"

4. The Assistant Collector, Dudu decided issue No. 9 as preliminary issue vide order dated January 17, 1998 in favor of the plaintiff holding that revenue Court had jurisdiction to hear the suit. The order of Assistant Collector was assailed by defendant Paras Mal before the Board of Revenue by filing revision petition that was dismissed on May 1, 1999. It is against the judgment of the Board of Revenue that the instant writ petition has been preferred by defendant Nos.2 and 3.

5. I have heard the submissions and scanned the material on record.

6. Section 52 of Transfer of Property Act, 1882 is expression of the principle of the maxim "pendente lite nihil innovetur" (pending a litigation nothing new should be introduced). "Pendency of any suit" occurring in Section 52 is defined under the explanation to the section as including the time of the presentation of the suit and extending up to the time when the final decree or order is passed therein and even to the time when the decree or order is completely satisfied or discharged. Section 52 does not envisage any notice of the pending proceedings to the subsequent purchaser. It is the duty of the vendor to inform the intending purchaser about the pendency. Section 52 intended to protect the parties to litigation against alienations by their opponents during the pendency of the suit.

7. In *Sayar Bai v. Yashoda Bai*¹ this Court indicated as under:-

"As a matter of fact, the doctrine of lis pendens is intended to strike at attempts by parties to a litigation to circumvent the jurisdiction of the Court when a dispute in respect of any right or interest in immovable property is pending. A party to the litigation cannot by private dealings remove the subject-matter of litigation from the ambit of the Court's power to decide a pending dispute or to frustrate the decree that may be passed in the suit. It could be effective against such third parties who are dealing with parties to the pending litigation."

8. In *Jaswant Singh v. Board of Revenue*² it was indicated that if the suit was filed by the plaintiff for possession treating the deed 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, who could ignore the void document.

9. In the instant case, the defendant No. 1 in making attempt to circumvent the jurisdiction of the revenue Court deliberately executed the sale deed. Therefore in view of the principle of lis pendens, the transfer was nullity and it was not necessary for the plaintiff to seek relief of cancellation of sale deed by filing a suit in Civil Court. The Revenue Court thus is competent to try the suit.

10. For these reasons, I do not see any illegality in the impugned judgment of the Board of Revenue. The writ petition being devoid of merit stands dismissed without any order as to costs.

Petition dismissed.

Cases Referred.

1. (AIR 1983 Raj 161)
2. (1984 Raj LW 573)