

RAJASTHAN HIGH COURT

Purshottam

Vs.

Narain

Spl. Appeal Writ No.325 of 2007
(N.P. Gupta and Mohammad Rafiq, JJ.)

10.01.2008

JUDGEMENT

N. P. Gupta and Mohammad Rafiq, JJ.

1. By this appeal the appellant seeks to challenge order of the learned single Judge Dt. 5-1-2006, whereby the learned single Judge allowed the writ petition of the present private respondents No. 1 to 5, and thereby set aside the judgment of the learned Board of Revenue dated 6-1-1990.
2. The brief facts of the case are, that the appellants filed a suit in the Court of *S.D.M. Vallabh Nagar* for declaration of Khatedari rights, alleging inter alia, that the land in question belonged to the deceased Kana, being the father of the defendants No. 2 to 6, and husband of defendant No. 1, which was sold by him to the plaintiff on Jeth Sudi 13, Samvat 2009, and by executing the sale deed the possession was delivered. Then, Lalu and Manga also sold their share to the plaintiffs' father on Phagan Sud 7, Samvat 2009, by executing sale deed, and delivered possession. Then, the fourth brother also sold land to the plaintiffs some 4-5 years before commencement of the Tenancy Act, and thus the land is in Khatedari, and use and occupation of the plaintiffs. However, since the land is not recorded in their name, they want a declaration of the Khatedari rights. The plea of adverse possession was also taken. Then, it was pleaded that the defendant No. 2 is trying to take proceedings for their dispossession, alleging them to be mortgagees. Thus, the suit was filed.
3. This suit was contested, *inter alia* contending, that the alleged sale deed is unregistered and unstamped, and denying the theory of sale as had the sale been affected, mutation would have been effected, apart from the fact, that such transaction is barred by the provisions of the Rajasthan Tenancy Act.

4. The learned trial Court, vide judgment Annexure-3 Dt. 28-2-78, dismissed the suit, finding the documents to be not admissible in evidence, and also not believing the evidence led on the side of the plaintiff, and finding, that they have failed to establish their legal right.

5. Against this judgment, the plaintiffs filed appeal before the learned Revenue Appellate Authority, which was also dismissed vide judgment Dt. 23-6-79. Being further aggrieved, the plaintiffs filed a second appeal before the learned Board of Revenue. As the things have come, during pendency of the appeal before Board of Revenue, it was contended, that on 9-6-1983 the parties submitted a compromise in the Court of Munsiff Magistrate, Maoli, purporting to compromise the litigation pending in Second Appeal No. 259/79 in the Board of Revenue, wherein next date fixed was 19-8-83. On this compromise, the Magistrate directed the matter to be put up along with the concerned filed on 10-6-83. Then on 10-5-83 the compromise was recorded, and was returned to the parties.

6. It is not understood, as to what was the matter before the Munsiff Magistrate. Be that as it may. The matter went on before the learned Board of Revenue, and it was as late as on 24-2-86, that the counsel for the present appellant produced the said compromise, before the learned Board of Revenue, and on that basis the learned Board of Revenue allowed the appeal, and decreed the suit.

7. Coming to know of it, the defendants filed a review petition, which was dismissed by the learned Board of Revenue, vide judgment Dt. 6-1-1990, holding inter alia, that in the compromise the defendants admitted that their father had transferred the disputed land to the plaintiffs father 32 years back. Thus, the transaction appears to be of a period, anterior to commencement of Rajasthan Tenancy Act, with the result, that the bar of Section 42 is not attracted, and then the contention about the compromise being invalid on the ground of Section 42, was not accepted. And since it was nowhere alleged that the compromise was obtained by misrepresentation or fraud etc. Therefore, the review petition was dismissed.

8. Aggrieved of this judgment of the learned Board of Revenue, the defendants filed the writ petition before this Court, and the learned Single Judge found, that the learned Board of Revenue has nowhere recorded any satisfaction about lawfulness of the compromise, placed before it. Then, the compromise was found to be produced by the counsel for the plaintiffs, in absence of counsel for the defendants, or the defendants themselves, who were contesting the suit, right from inception. Then the compromise,

despite being arrived at as early as in 1983, was not produced before the learned Board of Revenue till 24-2-86, apart from the fact, that the compromise was not presented before the Board of Revenue, but was got verified before the Munsiff Magistrate, without any rhyme or reason. All these create doubt about the truthfulness of the compromise, and the learned Board of Revenue should have examined the matter, before acting upon the compromise. Then it has also been found, that there is violation of Section 42, as the plaintiffs are Brahmins, and the defendants are Bhil, and that the defendants from very inception have been contesting the issue, with specific stand, that the land was never sold to father of the plaintiff, and in the compromise, the period of sale of the land is mentioned when the provisions of Tenancy Act were not in force, therefore, it was all the more necessary for the Board of Revenue to make necessary efforts to verify genuineness of the compromise. It has also been observed, that to protect the rights of weaker sections, the peasants, and to achieve the objects of land reform, the Board of Revenue must have been vigilant, and in that direction it could have waited for few days, to call the defendants, or their counsel, to verify truthfulness and genuineness of the compromise. It has also been found, that it is not understood as to what was the occasion before the plaintiffs to get the compromise verified in the year 1983, before Munsiff and Judicial Magistrate Maoli, where no case with regard to dispute in question was pending. It was also noticed, that the suit is for declaration of 10= bighas of land, while the compromise is for 12 bighas and 4 Biswas of land. Then, the learned Single Judge deprecated this type of verification by judicial officer, before whom no litigation was pending. In the result, the writ petition was allowed, and the order of the learned Board of Revenue was set aside.

9. In our view, the learned single Judge was perfectly right in setting aside the order of the learned Board of Revenue. The suspicious circumstances are writ large, inasmuch as, if there had been some semblance of genuineness, or truthfulness, in this theory of compromise, nothing prevented the parties from entering into compromise before the learned Board of Revenue, or in any case, compromise could have been submitted before the learned trial Court, being the Court of S.D.M., which was the local Court. Submitting the compromise, simply for getting verified before Munsiff Magistrate, which Court had nothing to do with any litigation of the disputed land, is not contemplated by the provisions of Order 23, Rule 3 C.P.C., and the alleged verification by the Munsiff Magistrate could not entitle the Board of Revenue to decide the suit on that basis.

10. A look at the provisions of Order 23 Rule 3 shows, that it should be proved to the satisfaction of the Court, obviously the Court before which litigation is pending, that the suit has been adjusted, wholly, or in part, by lawful agreement, or compromise, in writing, and signed by the parties, and in that event the Court, again obviously the Court dealing with the litigation, is to order such compromise or satisfaction to be recorded, and then a decree can be passed. Here as noticed by the learned Single Judge, the defendant was not even present before the learned Board of Revenue. There is no question of it being proved to the satisfaction of the learned Board of Revenue, that the suit had been adjusted or compromised. Then, the compromise could not be said to be lawful agreement, on the face of Section 42 of the Rajasthan Tenancy Act, and then, in any case, it had not been recorded by the learned Board of Revenue, or by the learned trial Court, with the result, that no decree could be passed by the learned Board of Revenue, on the basis of the said alleged compromise.

11. That apart, a look at the judgment of Hon'ble the Supreme Court, in *State of Madhya Pradesh v. Babu Lal*, reported in ¹ makes it clear, that even such compromise to obtain a decree, could not entitle the plaintiffs to get the suit decreed, and a compromise decree as upheld by the High Court was set aside by the Hon'ble the Supreme Court, finding that agricultural land of aboriginal caste, or tribe, could not be transferred to a person, not belonging to such aboriginal caste, or tribe, by the subterfuge of such compromise. Then, very strong view has again been expressed by Hon'ble the Supreme Court, in such matters, about divesting or vesting of agricultural lands of aboriginal tribes, vis-a-vis person not so belonging to such aboriginal caste, in the case of *Amrendra Pratap Singh v. Tej Bahadur*, reported in ² It may also be considered, that even in the compromise, all that is alleged to have been said is, that the defendants and their father had sold their land before commencement of the Tenancy Act, but then, admittedly the documents are neither registered, nor stamped, therefore, they cannot have the effect of transferring the title. And as held in *Amrendra Pratap Singh's* case, in such case, the title cannot be acquired by the person not belonging to Scheduled Caste or Scheduled Tribe, even by adverse possession.

12. Thus, considering from any stand point, we do not find any ground to interfere in the judgment of the learned single Judge. The appeal thus has no force, and is dismissed summarily.

Appeal dismissed.

Cases Referred.

1. AIR 1977 SC 1718
2. 2004 AIR SCW 4103