

**IN THE BOARD OF REVENUE FOR RAJASTHAN AJMER**

**Special Appeal/LR/9740/2012/Barmer.**

1. Bhanwra )
2. Panna ) sons of Gena Ram
3. Wala )
4. Kanna )
5. Maga )
6. Roopa son of Hema Ram
7. Kheraj son of Purkha
8. Rekha son of Purkha
9. Smt. Cheni wife of Purkha

All by caste Jat residents of village Juni Undri Tehsil Gudamalani  
Distt. Barmer.

...Appellants.

Versus

Jetha Ram son of Hema Ram caste Bheel resident of village Juni  
Undri Tehsil Gudamalani Distt. Barmer.

...Respondent.

**D.B.**

**Shri Bajrang Lal Sharma, Member  
Shri Chain Singh Panwar, Member**

**Present:-**

Shri Dunichan Dhidhariya, counsel for the appellants.

Shri Hagami Lal Choudhary, Dy. Govt. Advocate for respondent.

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Date: 7.2.2013

**J U D G M E N T**

This special appeal under section 10 read with section 9 of the Rajasthan Land Revenue Act, 1956 (in short 'the Act') has been preferred against the judgment passed by Single Bench of this court on 12.11.2012 in reference matter No. 4225/2005.

2. The factual matrix of the case is that the disputed land in village Juni Undri in Tehsil Gudamalani (Distt. Barmer) was in the tenancy of Hema son of Kishna Bheel (scheduled tribe). Hema filed a regular suit under section 183 and 188 of the Rajasthan Tenancy Act against Hema son of Prabhu Jat (non-scheduled tribe) before Sub-Divisional Officer, Barmer. On filing consented written statement, the learned Sub-Divisional Officer issued a decree of 120 bigha 10 biswas of disputed land in favour of Hema son of Prabhu Jat on 22.4.1965. District Collector, Barmer filed a reference before this court stating that the disputed land was in tenancy of Hema Bheel who belonged to the scheduled tribe and the disputed land

was given in decree by the Sub-Divisional Officer in favour of a non-scheduled tribe person. Therefore, this decree be quashed and the land be restored in the name of Hema Bheel. This court after hearing both the parties passed a judgment on 12.11.2012 and accepted the reference and the decree passed by Sub-Divisional Officer, Barmer on 22.4.1965 was quashed and set aside. Being aggrieved by the judgment passed by the Single Bench of this court in reference petition No. 4225/05, this special appeal has been preferred before this court.

3. Heard the learned counsels of the parties.

4. The learned counsel for the appellants contended that the Single Bench of this court has passed the impugned order arbitrarily without considering this fact that when a decree is appealable no reference could have been filed and this is also settled position that the reference made by Collector, Barmer was hopelessly time barred and it was filed after some 40 years. The learned advocate also argued that section 232 of the Rajasthan Tenancy Act was amended on 5.10.1981 and the decrees passed under this Act were also brought in the purview of reference on 5.10.1981 only. The decree in question was passed on 22.4.1965 by the trial court which was much before than the amendment brought in section 232 of the Act. Therefore, as per the provisions of section 232 of the Rajasthan Tenancy Act the decrees could not have been challenged by way of a reference which were issued prior to the reference date of the amendment. In this case, the learned Collector was not competent to file this reference after 40 years and when this decree was issued on 22.4.1965. The learned advocate finally urged the court that there has been miscarriage of justice and wrong interpretation of the legal provisions. Therefore, this special appeal be accepted and the order passed by the learned Single Bench of this court be quashed and set aside. The learned counsel took support of legal pronouncements cited in 2012 (1) RRT 419, 2012 (2) RRT 756, 1978 RRD 507, 2000 RRD 52, 2005 RRD 365, 669, 742, 2006 RRD 163 and 1996 (1) RLW 396.

5. The learned Dy. Govt. Advocate contended that the impugned judgment passed by the Single Bench of this court is legally sustainable and the appeal is devoid of any merit. He submitted before this court that no court could have issued a decree against the public policy of the State because basically the suit was filed under section 183 and 188 of the Act by Hema Bheel and the learned Sub-Divisional Officer passed a decree in favour of the appellants who are from non-scheduled tribe and there has been an absolute bar under section 42 of the Tenancy Act right from beginning that such transfer was void ab-initio. The learned advocate also submitted that as per section 23 of the Indian Contract Act such transactions are forbidden by law as they are against the public policy of the State. Therefore, in such circumstances no decree could have been issued in favour of the appellants by the trial court and since the decree passed by the trial court was ab-initio void and illegal, the issue of limitation becomes secondary. In such circumstances, such decree had no legal effect and it could be quashed and set aside at any time. The learned advocate finally urged the court that this court has adequate powers under section 221 of the Rajasthan Tenancy Act, also if any illegality comes to the notice of the court such illegalities should not be allowed to continue and the court has rightly accepted the reference and quashed and set aside the impugned decree which was ab-initio void. The learned advocate took support of 2012 RRD 778 wherein Hon'ble Apex Court has held that such transfers are void.

6. This court has carefully perused the order passed by the learned District Collector, Barmer on 28.7.2005, by whom this reference was referred to this court. This court has also closely examined the judgment passed by Single Bench of this court in reference case on 12.11.2012.

7. First of all this court would like to take this case on the issue of limitation that whether such reference could be filed after some 40 years of passing the decree by the revenue court. This is factually true that under the Rajasthan Tenancy Act no period has been

prescribed for filing the reference. In such a situation the reference should be filed within a reasonable period. In this regard Hon'ble Rajasthan High Court in *Chiman Lal Vs. State* (2001(1) WLN (Raj.) 207) has very categorically observed that if the order is void such order can be examined whenever it comes to the notice of the authority. The relevant extract of this judgment is reproduced for convenient reference:-

"In view of the above discussion, we are of the opinion that it is not the function of the court to prescribe the limitation where the legislature in its wisdom had thought it fit not to prescribe any period. As held by the Supreme Court in *Ajaib Singh's* case the courts only interpret law and do not make laws. Personal view of the Judge presiding the court cannot be stretched to authorise them to interpret law in such a manner which would amount to legislation intentionally left over by the legislature. Hence we are of the opinion that when no period of limitation under Rule 272 of the Rules 1961 is prescribed by the legislature then we cannot prescribe any period of limitation that in what time the revisional powers can be by the authority under Rule 272 of the 1961 Rules. When no period of limitation is provided then in our opinion the same has to be exercised within a reasonable time and that will depend upon facts and circumstances of each case like (1) when there is fraud played by the parties; (ii) **the orders are obtained by mis-representation or collusion with public officers by the private parties;** (iii) **Orders are against the public interest;** (iv) **the orders are passed by the authorities who have no jurisdiction;** (v) **the order are passed in clear violation of rules or the provisions of the Act by the authorities;** and (vi) **Void orders or the orders are void at initio being against the public policy or otherwise. The common law doctrine of public policy can be enforced wherever an action affect/ offends the public interest or where harmful result of permitting the injury to the public at large is evident. In such type of cases, revisional powers can be exercised by the authority at any time either suo moto or as and when such orders are brought to their notice."**

...emphasis added.

8. The similar view has also been expressed by Hon'ble Apex Court in *Ajaib Singh's* case as reported in (JT 1999 (3) SC 38).

9. This court is in agreement with the learned advocate of the appellants that section 232 of the Rajasthan Tenancy was amended on 5.10.1981. Earlier to this amendment, reference for setting aside a decree could not have been filed. In this case, it is very pertinent to mentioned here that the suit was filed by Hema Bheel under section

183 and 188 of the Rajasthan Tenancy Act against Hema son of Prabhu Jat who is a non-scheduled tribe person.

10. In this case of ejectment and perpetual injunction filed by the person of a scheduled tribe community how the court could issue a decree relating to declaration of tenancy rights on the disputed land to the defendant under section 88 of the Act. The trial court basically overlooked this legal position that the suit was filed by Hema Bheel which was for ejectment and perpetual injunction and the court issued a decree of declaration of tenancy rights on the disputed land to the defendant based on compromise between the parties. How such a compromise could be accepted which in flagrant violation of section 42 of the Act. In view of this court the trial court issued the decree in contravention of section 42 of the Rajasthan Tenancy Act. Section 42 of the Rajasthan Tenancy Act explicitly bars such transfers and the decree, so issued was in open contravention of the legal provisions enshrined in the Act and against state public policy.

11. This court is fully aware that section 221 of the Act empowers this court to examine such illegal and void decrees. This is a technical issue whether the decree has been quashed under reference jurisdiction or under section 221 of the Act. This court finds that such a decree cannot sustain which is void ab-initio. This means that such decree had no enforceability and it never existed legally. At this juncture we find it appropriate to invoke the jurisdiction under section 221 of the Act to quash such a void decree.

12. This court is also aware that section 23 of the Indian Contract Act, 1872 also comes in succour of the respondent because such a contract of sale which is against public policy of the State is void and there is no limitation to examine such decrees or orders. Technically the argument advanced by the learned advocate for the appellants is correct, yet in the larger interest of justice such illegal or void decrees cannot be allowed to remain in force as such judgment and decree is against the public policy of the state. The Division Bench of Hon'ble High Court has explicitly held in Ramchandra Vs. Om Prakash (1979 RRD 207) that the contract of sale of land in

contravention of section 42 of the Rajasthan Tenancy Act is forbidden sale and such a contract is void and no court of law will lend assistance to give effect to such contract. The relevant extract of this judgment is reproduced below:-

"The sale in question is, therefore, in contravention of the proviso to section 42, which categorically forbids the sale by a member of the scheduled caste or scheduled tribe in favour of persons who are not members of that class. The sale in question is, therefore, forbidden by law within the meaning section 23 of the Indian Contract Act. It is well settled that where a contract, which a party seek to enforce, is expressly or by implication forbidden by any law, no court will lend its assistance to give it effect."

13. This court has also perused the judgments passed by Hon'ble Rajasthan High Court and which were referred by the learned counsel for the appellants but in this case there is an explicit and established law that rendered by Hon'ble Apex Court that such transfers are void and they cannot be given legal effect. The Hon'ble Apex Court in State of Rajasthan Vs. Aanjaney Organic Herbal Pvt. Ltd. (2012 RRD 777). The Hon'ble Apex court has observed that such transactions of sale are void and cannot be made legally enforceable.

14. In light of the judgments referred hereinabove this court is of the view that the learned Single Bench has not committed any illegality in setting aside the impugned decree which was void and illegal. Therefore, the special appeal filed by the appellants, being devoid of any merit is dismissed.

Pronounced.

(Chain Singh Panwar)  
Member

(Bajrang Lal Sharma)  
Member