

IN THE BOARD OF REVENUE FOR RAJASTHAN AJMER

Appeal Decree/TA/6298/2002/Chittorgarh.

1. Bagdi Ram)
2. Nagji Ram) sons of Laxman
3. Banshi Lal)
4. Gokal son of Hokma
5. Dhukal son of Hokma
6. Roop Lal so of Hokma
7. Kani Ram son of Kalu
8. Kajod)
9. Jeetu) sons of Bholu
10. Madan)

All by caste Dangi residents of village Bamniya Tehsil & Distt.
Chittorgarh.

...Appellants.

Versus

1. Rama) sons of Biram caste Chamar resident of Nai Abadi
2. Mohan Lal) Shambhupura Tehsil & Distt. Chittorgarh.
3. State of Rajasthan through Tehsildar, Chittorgarh.

... Respondents.

D.B.

Shri Bajrang Lal Sharma, Member
Shri Madan Mohan Sharma, Member

Present:-

Shri J.K. Purohit, counsel for the appellants.

Shri Shankar Lal, counsel for the respondents.

Date: 7.5.2013

J U D G M E N T

The appellants have filed this second appeal under section 224 of the Rajasthan Tenancy Act, 1955 (in short 'the Act') being aggrieved by the judgment and decree passed by Revenue Appellate Authority, Chittorgarh in appeal No. 61/2001 on 13.8.2002.

2. The brief facts of the case are that the appellants-plaintiffs, who belong to the Other Backward Caste (O.B.C.), filed a regular suit under section 88 of the Act against the respondents-defendants, who belong to the scheduled caste, before Assistant Collector, Chittorgarh. The trial court dismissed the suit on 13.3.2001. Being aggrieved by the judgment and decree passed by the trial court, first appeal was preferred by the appellants before Revenue Appellate Authority, Chittorgarh which was also dismissed on 13.8.2002. Being

dissatisfied by the judgment passed the first appellate court, this second appeal has been preferred before this court.

3. Heard the learned counsels of the parties.

4. Mr. J.K. Purohit, learned advocate for the appellants contended that the disputed land was in tenancy of Birma Chamar which was sold by him to Kalu son of Kanwla Dangi on 12.6.1962. The learned advocate vehemently argued that since the disputed land was purchased by the appellants in the year 1962 and at that time such a sale was not void and provisions of section 42-B of the Act did not apply on transfer of the disputed land. He also submitted that the appellants are in uninterrupted possession of the disputed land for last 50 years. Therefore, on the basis of even adverse possession they have become tenants of the disputed land. The learned advocate contended that the limitation for ejectment from the disputed land was only for twelve years and for filing a case under section 175 of the Act, the amended limitation is 30 years. In such circumstances, the limitation has passed and the appellants can neither be dispossessed nor an application can be filed by the State under section 175 of the Act at this juncture. The learned advocate finally urged the court that the judgments passed by both the lower courts are in contravention of the existing provisions of law, therefore, be quashed and set aside and the second appeal be accepted. He heavily relied on 2001 RRT 177 in support of his contentions.

5. Mr. Shankar Lal, learned advocate for the respondents emphatically contended that the concurrent findings of both the courts below are based on legal provisions and record available on file. Therefore, no interference is warranted at this stage. He further contended that the appellants belong to Dangi community who are not scheduled caste, whereas the respondents belong to scheduled caste community. Therefore, transaction of sale pertaining to the disputed land which was done in the year 1962 was squarely hit by section 42-B of the Act and such a sale is void ab-initio and does not

confer any right to the buyer. The learned advocate cited 2008 RRD 681 and 2009 RRD 272 in support of his contentions.

6. We have given thoughtful consideration to the rival contentions raised by the learned counsels of the parties and have also perused the record available on file.

7. This is an undisputed fact that the disputed land was in tenancy of Birma Chamar who belonged to the scheduled caste community. The disputed land was sold to Kalu son of Kanwla Dangi on 12.6.1962. In Rajasthan the Dangi caste belong to the other backward class (O.B.C.). This is also very pertinent to mention here that at the time of sale (on 12.6.1962) the provisions of section 42-B of the Act were as under:-

"Provided that no khatedar tenant being a member of scheduled caste or a scheduled tribe shall so transfer his rights in the whole or a part of his holding to any person who is not a member of scheduled caste or a scheduled tribe".

The provisions mentioned hereinabove were brought to the statute book on 22.9.1956. These provisions explicitly provide absolute bar on such transfers. The Division Bench of Hon'ble Rajasthan High Court in the case of Ramchandra Vs. Om Prakash reported in 1978 RLW 444 observed that the sale in question being in contravention of proviso to section 42 of the Act which explicitly forbids to sale by a member of schedule caste or scheduled tribe in favour of persons who are not members of that class, is therefore, forbidden by law within the meaning of section 23 of the Indian Contract Act and it is well settled position of law that where a contract, which a party seeks to enforce, is expressly or by implication forbidden by any law, no court will lend assistance to give it effect.

8. In a recent judgment by the Single Bench of the Hon'ble Rajasthan High Court in Smt. Soni and ors. Vs. Board of Revenue and ors. (2000 RRD 681) the Hon'ble High Court has held as under:-

"Having given the thoughtful consideration, this court is of the opinion that the weight of the authorities or precedents is clearly in

favour of the petitioners wherein it has been categorically laid down that after insertion of proviso in section 42 of the Rajasthan Tenancy Act w.e.f. 22.9.1956, in view of clear prohibition contained in said proviso, transfer of land by sale, gift or bequest by a member of Scheduled Caste or Tribe to a member of other caste not being Scheduled Caste or Scheduled Tribe is void being prohibited by law and thus being against the public policy and as per section 23 of the Indian Contract Act, such sales could not be enforced against the members of Scheduled Caste and Scheduled Tribes. Of course the words "such sale shall be void" came on the statute book w.e.f. 1.5.1964, but the effect remains the same for the period between 22.9.1956 to 1.5.1964 also, namely that persons of such other caste cannot claim or cannot seek to enforce any such right transferred to them by a member of Scheduled Caste or Scheduled Tribe in the agricultural land of which they were khatedar tenants, if sale or gift or bequest is prohibited by law as was position contained in proviso to section 42 between 22.9.1956 to 1.5.1964. The respondents naturally cannot claim any benefit on the basis of such alleged sale deed in their favour made on 16.9.1957."

This court has carefully perused the judgment cited by the learned advocate for the appellants (2009 (1) RRT 177) Madgu Devi and ors. Vs. Board of Revenue and ors. wherein it has been held that the amendment brought in 1964 by which the such transfers have been declared void is not retrospective. This court is in full agreement with the ratio decided by Hon'ble High Court in this case but there was an explicit bar provided under the Act right from 22.9.1956. Therefore, the sale deed executed on 12.6.1962 was ab-initio void. As such transactions were explicitly forbidden by law.

9. As discussed above, this court is of the considered opinion that both the courts below have not committed any error in passing the impugned judgments. Therefore, this second appeal filed by the appellants is dismissed being devoid of any merit.

Pronounced.

(Madan Mohan Sharma)
Member

(Bajrang Lal Sharma)
Member