

Reportable

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal Decree/TA/10153/2004/Hanumangarh.

1. Harphool son of Anu Ram
 2. Nand Ram son of Anuram (deceased) through LRs:-
 - 2/1 Smt. Tulchhi Devi widow of Nand Ram
 - 2/2 Surendra Kumar son of Nand Ram
 - 2/3 Mst. Sunder daughter of Nand Ram
 - 2/4 Pawan son of Nand Ram
 3. Tulchha widow of Mahaveer
 4. Ram Kumar son of Anu Ram
 5. Satpal son of Anu Ram
- All by caste Jat residents of Bhuranpura Tehsil Tibbi Distt.
Hanumangarh.

...Appellants.

Versus

1. Mani Ram son of Lekh Ram (deceased) through LRs:-
 - 1/1 Mst. Geeta widow of Mani Ram
 - 1/2 Sahab Ram son of Mani Ram
 - 1/3 Ramkumar son of Mani Ram
 - 1/4 Bhagirath son of Mani Ram
 - 1/5 Sulochna daughter of Mani Ram

All by caste Jat residents of village Bhuranpura Tehsil
Tibbi Distt. Hanumangarh.

2. Mana Ram son of Lekhrum (deceased) through LRs:-
 - 2/1 Smt. Shringari widow of Mana Ram
 - 2/2 Gauri Shankar son of Mana Ram
 - 2/3 Bhoop Ram son of Mana Ram
 - 2/4 Atma Ram son of Mana Ram
3. State of Rajasthan through Tehsildar (Revenue), Tibbi.

...Respondents.

D.B.
Shri Bajrang Lal Sharma, Member
Shri Rajendra Singh Choudhary, Member

Present:-

Shri N.K. Goyal, counsel for the appellant.
Shri Bhoop Singh, counsel for the L.Rs. of respondent No.2
Shri Bhoop Singh, brief holder counsel on behalf of Shri
Manish Pandya, counsel for the LRs. Of respondents No.1.

Date: 10.7.2013

J U D G M E N T

This second appeal has been filed by the appellants 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, Hanumangarh on 25.6.2001 in appeal No. 63/2001.

2. The brief facts of this appeal are that Mani Ram, the respondent No.1-plaintiff filed a regular suit for declaration of tenancy rights and recovery of possession before Assistant Collector, Sangariya (Distt. Hanumangarh) against Mana Ram and ors. pertaining to the land situated in chak 1 B.R.N. The defendant Mana Ram also filed counter-claim in this suit. The learned trial court rejected the counter-claim filed by Mana Ram and decreed the suit of the plaintiff on 27.3.2001. Being aggrieved by the judgment and decree passed by the trial court, an appeal was preferred by the appellants before Revenue Appellate Authority, Hanumangarh which was dismissed by the appellate court. In this second appeal, the judgment and decree dated 26.5.2001 passed by the appellate court has been assailed before this court.

3. Heard the learned counsels of the parties.

4. Mr. N.K. Goyal, the learned counsel appearing for the appellants contented that the judgments and decrees passed by both the lower courts are against the basic principles of law. He argued that the trial court framed five issues and the issues were decided while ignoring evidence available on the file. He vehemently argued that in chak 1 B.R.N. the trial court explicitly opined that Mani Ram is entitled for 6 bighas 9 biswas land, whereas there was a family settlement mutually agreed between Mani Ram and Mana Ram. Therefore, this entire case should have been considered in light of the family settlement reached between the parties and sale deeds executed by both the brothers in chak No. 1 B.R.N. and 2 B.R.N. He further submitted that Mana Ram had no possession on the land situated in chak 1 B.R.N. as the land had already been sold by Mana Ram in chak 1 B.R.N. to the

appellants through two registered sale deeds in the year 1979. And the transactions of sale were binding on both the brothers. He also argued that the appellants were in possession of the disputed land since the date of execution of the sale deeds. He argued that both the brothers are in collusion and now fraudulently denying the right, title of the appellants who are the bona fide buyers. He finally urged the court that Mani Ram and Mana Ram, the brothers, know about the entire occurrences pertaining to the disputed land and the sale deed executed by them but now they are in collusion and denying their family settlement and on the technical grounds the sale deeds executed in favour of the appellants have been rendered as useless papers. The learned advocate urged the court that the second appeal filed by the appellants be accepted and the judgments and decrees passed by both the courts below be quashed and set aside. The learned counsel cited 2006 (1) RRT 65 in support of his contentions.

5. Mr. Bhoop Singh, the learned counsel appearing on behalf of the respondents contended that the judgments and decrees passed by both the courts below do not warrant any interference at the stage of second appeal. He argued that there was no family settlement between the parties as the disputed land was in joint tenancy. The learned advocate further contended that no family settlement took place as the landholder was not a party to such division of holdings and it cannot be recognized by law. The learned advocate argued that since the shares of the co-tenants were already entered in the jamabandi, therefore, there was no need to pass a preliminary decree and the trial court has rightly issued the decree in favour of the plaintiff. The learned advocate urged the court that there are concurrent findings of both the courts below and there is no justification to interfere with the concurrent findings of the courts at this juncture. Therefore, the second appeal be dismissed. He relied on 2001 RRD 19,

1989 RRD 121, 1984 RRD 281 and 1985 RRD 655 in support of his arguments.

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

7. That on the basis of plaint and written statement with the and counter-claim the trial court framed the followings issues:-

(i) Whether the plaintiff is entitled to get his share of the land mentioned in para No. 2 of the plaint separately in the revenue record?

(ii) Whether the plaintiff is entitled for recovery of possession from the defendants?

(iii) Whether the plaintiff has disposed of all the land of his share situated in both the chaks (1 B.R.N. and 2 B.R.N.) as per the family settlement?

(iv) Whether the plaintiff is entitled for getting the name of the defendants deleted from the land situated in chak 1 B.R.N. on the basis of the family settlement?

(v) Relief

8. In this appeal, the trial court decreed the suit for division of holdings and recovery of possession filed by Mani Ram in chak 1 B.R.N. on the ground that Mani Ram is co-tenant of the land, therefore, he is entitled for division of holdings and recovery of possession of the disputed land. If we look into the matter in the macro-situation this scene emerges that Mani Ram and Mana Ram are real brothers and they had land in co-tenancy situated in chak 1 B.R.N. and 2 B.R.N. Both the brothers gave impression to the purchasers of the land in the late seventies and early eighties that they had family settlement and the co-tenancy land has been divided. Mana

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Ram sold the land in chak 1 B.R.N. by registered sale deeds in the following manner:-

S.N.	Date	Stone and Kila No.	Measurement	Name of purchaser
1	26.6.79	222/381, kila No. 1 & 10/0.10	1.10 bigha	Harphool son of Anu Ram
2	2.7.79	222/381, kila No. 9,12, 19, 22	4 bighas	Harphool, Nand Ram, Mahavir, Ram Kumar and Satya Pal sons of Anu Ram
3	28.6.79	222/381, Kila No. 20, 21/0.11	1.11 bighas	Nand Ram and Sita Ram sons of Anu Ram
4	28.6.79	222/381, kila No. 10/0.10 and 11	1.10 bigha	Mahavir and Satyapal sons of Anu Ram
5	17.6.82	222/380, Kila No. 21	18 biswas	Harphool and Ram Kumar sons of Anu Ram

Likewise Mani Ram also sold the land in chak 2 B.R.N. through registered sale deeds in following manner:-

S.N.	Date	Stone and kila No.	Measurement	Name of purchaser
6	21.7.79	22/1381, kila No. 6, 15, 16	3 bighas	Banwari Lal son of Shri Ram
		221/380, kila No. 7	19 biswas	Banwari Lal son of Shri Ram
7	21.7.79	221/380, kila No. 14, 17, 18,	4.16 bigha	Banwari Lal son of Narain Ram

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		23/0.18, 24/0.18		
8	15.7.83	221/381 Kila No. 3	1 bigha	Brij Lal son of Narain Ram

9. All the transactions of sale pertaining to the land of co-tenancy in both the chaks were executed by both the brothers in favour of the purchasers in the year 1979, 82 And 1983, whereas litigation relating to the disputed land between the parties arose in the year 1993. The circumstances and facts of this case explicitly prove that Mani Ram and Mana Ram allowed most of the registered sale deeds executed by them to be mutated in land revenue record, except one of Banwari Lal son of Shri Ram (appellant in appeal No. 10152/2004) and of the appellants. They handed over possession of the disputed land to the purchasers and after a decade this litigation started. The chain of incidents in both these cases unfolds this situation that in suit No. 245/1993 filed before the trial court by Mani Ram, Mana Ram the defendant filed counter-claim which was rejected by the trial court, but Mana Ram chose not to file any appeal before the appellate court against the judgment passed by the trial court on 27.3.2001 wherein his counter claim was rejected. This conduct of Mana Ram manifestly reveals that both the brothers are in collusion and they sold the disputed land of co-tenancy to the bona fide and gullible purchasers in the year 1979-1983 and now on some or other technical grounds they want to deprive them of their right, title on the purchased land.

10. In the circumstances of this case after analyzing the evidence available on file, this court decides the issues framed in this case as under:-

ISSUE NO.1:

In this case Mani Ram, the plaintiff, filed a suit for division of holding and recovery of possession before the trial

court against Mana Ram and appellants. The basis of the suit filed by the plaintiff was that he is a co-tenant of the land situated in chak 1 B.R.N. as per the revenue record. Therefore, his share should be specifically partitioned and the possession which has been with the defendants should be got recovered. Both the lower courts have decided this issue in favour of the plaintiff. The evidence available on file unequivocally suggests that both the brothers executed as many as eight registered sales deeds in their co-tenancy lands situated in both the chaks. In this case Mana Ram, the defendant, also filed a counter claim and in his statement before the trial court he has stated that there was a family settlement between two brothers in the year 1968 for the co-tenancy land situated in both the chaks. This is also very pertinent to mention here that Mani Ram had co-tenancy land in 1 B.R.N. and chak 2 B.R.N., therefore, it was legally desirable to file the partition suit inclusively for the land held in co-tenancy in both the chaks. In these circumstances the plaintiff wants to get the land partitioned of only one chak i.e. 1 B.R.N. because he is benefited by this technicality. In considered view of this court, the plaintiff is not entitled to get a partition decree of his co-tenancy land situated only in chak 1 B.R.N. He should have clearly mentioned in the suit that he has co-tenancy land in two chaks and the division of holdings should have been done of the entire co-tenancy land in a regular suit. Therefore, this issue is decided against the plaintiff and we hereby quash and set aside the findings given by both the lower court. The lower courts were expected to examine the partition suit in its entirety and inclusiveness.

ISSUE NO.2

Since the disputed land was sold by Mana Ram to the appellants-defendants in the year 1979 while giving impression to the purchasers that there was a family settlement between two brothers and Mana Ram was competent to sell the land. After the sale deed was executed

by Mana Ram, the possession was given to the appellants in the year 1979 and this regular suit for partition has been filed by Mani Ram in the year 1993, almost after 14 years. At the time of handing over possession in compliance of the sale deed executed by Mana Ram in the year 1979 was never protested by the plaintiff. Therefore, in such a case where prima facie collusion is evident between the two brothers, the plaintiff is not entitled for recovery possession from the defendants. In our view the inference given by both the lower courts on this issue is perverse and not based on facts and circumstances of this case. Therefore, this issue is decided against the plaintiff.

ISSUE NO.3

This fact has been brought before the trial court that Mani Ram and Mana Ram sold their co-tenancy land to the purchasers, as per column 8 of this judgment. They also handed over possession to the purchasers in the year 1979-83. The trial court was under obligation to examine this case in totality and was expected to see that there is no hardship to the bona fide and gullible buyers. The learned trial court as well as appellate court decided this issue in favour of the plaintiff whereas this was factually true that when Mani Ram sold his share of land in both the chaks irrespective of share he was entered as tenant how could he file a suit for partition? In view of this court, the plaintiff was under obligation to explain to the court that how much land he has sold so far in both the chaks and what was his share ? If there is some land left in his share, he could have taken it in partition but certainly it should have been partition suit for co-tenancy land situated in both the chaks. Therefore, in view of this court, the judgment passed by both the courts below are not based on the evidence available on file and the court is directed to examine this issue in totality and decide the share of plaintiff if at all left after the sale deeds he executed in favour of the purchasers in both the chaks.

ISSUE NO.4:

This is an accepted fact that the appellants-defendants are the bona fide buyers of the disputed land and the mutation was also entered in the jamabandi just after the sale deeds were executed. The revenue entries in the revenue record were never assailed by the appellant. He filed this partition suit after some 14 years of the sale deed executed by his real brother. In view of this court until-and-unless the co-tenancy land held by both the brothers in both the chaks is partitioned as a whole, such deletion of entries which was made in favour of the defendants cannot be carried out. Both the lower courts have erroneously inferred that the deletion of entries in favour of the defendants can be done on the basis of the suit filed by the plaintiff. In our view such the inference drawn by both the courts below is perverse and illegal, therefore, cannot be sustained.

ISSUE NO.5

Mani Ram and Mana Ram executed eight sale deeds in the year 1979-83. Execution of none of the sale deed has been denied by both the brothers nor they filed any suit in the civil court for cancellation of such deeds. If they did not have their share in the co-tenancy land, how could they sell such a land which is not in their possession/ share? Evidently they misrepresented the facts before the gullible buyers and executed deeds and possession was handed over to them at the time of sale, Now they both have colluded and are denying their right, title based on their sale deeds. In our view this is ex-facie a collusive and fraudulent act on the part of Mani Ram and Mana Ram. Therefore, the courts below were expected to unravel this collusion and could have ensured the dispensation of justice in favour of the bona fide purchasers. If any share is left, even after the execution of the sale that could have been partitioned between late Mani Ram and late Mana Ram or in favour of their legal representatives.

12. When the mutations of the registered sale deeds were sanctioned by the competent authorities none of the brothers filed any grievance against such mutations at any stage and they never objected that the disputed land is not partitioned or is not in their possession. In considered opinion of this court both the brothers colluded to keep the buyers at bay from their reasonable claim as bona fide buyers on the disputed land. Prima facie the conduct of late Mani Ram and late Mana Ram seems to be fraudulent and collusive and as per Hon'ble Apex Court in Lazarus Estate Ltd., Vs. Besalay (1956 All. E.R. 349), the court observed without equivocation that "no judgment of a court, no order of a minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything.

13. Hon'ble Apex Court has also reiterated the same opinion in Smt. Shrisht Dhawan Vs. Shaw Brothers (AIR 1992 SC 1555) – Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct.

Hon'ble Supreme Court has also observed in United India Insurance Co. Ltd. Vs. Rajendra Singh & Ors., (2000) SCC 581- "Fraud and justice never dwell together (*fraud et jus nunquam cohabitant*) and it is a pristine maxim which has never lost its temper over all these centuries".

14. In light of the observations made by Hon'ble Supreme Court on the fraudulent conduct of the parties, this court finds it appropriate to hold that this is an ex-facie collusion of Mani Ram and Mana Ram who sold the land to the buyers which is mentioned in para 8 of this judgment. All the buyers are entitled to get their names mutated in the revenue records on the basis of registered sale deeds executed by both the brothers on different dates. Therefore, in larger interest of justice the courts below were expected to look into the matter in totality and should have unearthed the collusion of Mani

Ram and Mana Ram. This is also very important here that the court have not been established to lend any assistance to the fraudulent and collusive act of the parties but the court should sincerely make efforts to unravel such collusive designs of the parties to dispense real justice.

15. As discussed above, this court accepts the second appeal filed by the appellants, the judgment and decree passed by the trial court dated 27.3.2001 as well as by the appellant court dated 25.6.2001 are quashed and set aside. The trial court is directed to consolidate both the cases and decide them afresh in light of the observations made hereinabove in this case. The trial court is also directed to decide these cases within next six months. Both the parties are directed to present before the trial court on 30.8.2013.

Pronounced.

(Rajendra Singh Choudhary)
Member

(Bajrang Lal Sharma)
Member