

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER**Reference No.4794/2004/LR/Jodhpur :**

1. State of Rajasthan.
2. Kamla W/o Shri Jasaram, by caste Bheel,
R/o Village Sajada, Tehsil Lunee, District Jodhpur.

... Petitioners.

Versus

1. Bhairaram S/o Shri Tejaram
2. Asharam S/o Shri Ogadram
No.2 & 3 are by caste Raika, residents of Village
Sajada, Tehsil Lunee, District Jodhpur.
3. Hariram S/o Shri Bhundaram
4. Sukhi W/o Shri Bhundaram
No.4 & 5 are by caste Bheel, residents of Village
Sajada, Tehsil Lunee, District Jodhpur.
5. Tehsildar, Lunee District Jodhpur.

... Non-Petitioners.

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S.B.

Shri Pramil Kumar Mathur, Member

Present :

Shri Hagami Lal Choudhary : Dy.Govt.Advocate for the State.

Shri Virendra Singh Rathore and Shri Rajesh Gautam : counsels for
non-petitioner no. 2.

None present : on behalf of rest of the non-petitioners.

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Dated : 11 March, 2013

J U D G M E N T

This reference has been made by Additional Collector (First),
Jodhpur under section 82 of the Rajasthan Land Revenue Act, 1956 by his
order dated 03.9.2004.

2. Brief facts of the case are that the disputed land situated at
Village Sajada Tehsil Lunee District Jodhpur bearing khasra no.132
measuring 8 bigha 11 was recorded in the khatedari of member of scheduled
tribe i.e. Bhundaram S/o Ruparam, whose legal representatives are non-
petitioners no. 3 & 4, by caste Bheel (member of Scheduled Tribe) in the
revenue records. Thereafter, according to mutation no.11 dated 25.6.1961,

Bhundaram (member of Scheduled Tribe) sold this land to non-petitioner no. 1 Bhairaram S/o Shri Tejaram, by caste Raika who is the member of non-Scheduled Tribe. Considering this mutation no.11 in favour of non-petitioner no. 1 as illegal being violative of section 42(b) of the Rajasthan Tenancy Act, 1955 (in short to be referred as 'the Act'), Additional Collector (First), Jodhpur has made this reference to the Board of Revenue after affording an opportunity of hearing to the non-petitioners.

3. I have heard the arguments of learned Dy.Govt.Advocate and learned counsels for the non-petitioner no.3 and perused the record.

4. In support of reference, learned Dy.Govt.Advocate submitted that the mutation passed is forbidden by law and against public policy. The disputed land belongs to the member of scheduled tribe, therefore, as per section 42(b) of "the Act", khatedari rights cannot be transferred to a member of general caste. The above said mutation is absolutely against the provisions of law, hence deserves to be set aside. In view of above, learned Dy.Govt.Advocate requested that the reference be accepted.

5. Learned counsels for the non-petitioner no.2 have submitted that non-petitioners' names have been entered in revenue records validly. Sale deed in favour of non-petitioner no. 1 was executed in the year 1961 and such transaction has been made void by legislature in the year 1964. At the time of execution of sale deed, such sale is voidable & not void. As no party has challenged the validity of sale; therefore, the present reference deserves to be rejected. Reference has been filed with an inordinate delay. In support of their contentions, they have placed reliance on the following judgments :-

- (i) 1964 RRD page 342
'Pt. Triveni Shyam Vs. Board of Revenue, Raj.'
- (ii) 1978 RRD page 479
'Ramchandra Vs. Om Prakash'
- (iii) 1994 RRD page 98
'Madhu & ors. Vs. Panna & ors.'
- (iv) 2000 RRD page 30
'Mst. Ladi & ors. Vs. Rajmal & ors.'
- (v) 2007(2) RRT page 1067
'Chhoti Lal & ors. Vs. Balya & ors.'
- (vi) 2009(1) DNJ (Raj.) Page 157
'Smt. Madghu Devi & ors. Vs. Board of Revenue & ors.'

6. I have given my thoughtful consideration to the rival contentions and scanned the matter carefully.

7. According to the facts which have been laid before this court, it is evident that learned Additional Collector (First), Jodhpur has moved above reference petition on the basic ground that mutation no.11 dated 25.6.1961 relating to disputed land was attested in violation of section 42(b) of “the Act” by the concerned authority.

8. It appears that mutation no.11 has been effected on the basis of the sale deed alleged to have been executed in favour of non-petitioner no.1 Bhairaram. In column no.14 of the mutation register, relevant entries of the sale deed namely date & whether sale deed is registered or not, are missing and still not available on record. But on the gathered circumstances, reference was framed on the assumption that the sale has been effected in the year 1961, before attestation of mutation.

9. Though the learned counsels for the non-petitioners vehemently argued that the sale executed by the member of Scheduled Caste/ Scheduled Tribe in favour of the member of general caste before 1964 was voidable & not void and any party to the sale has not objected the transaction; therefore, in view of the above legal position, the sale is not ab initio void & invalid. Hence, the reference deserves to be disallowed.

10. But before expressing any opinion regarding the rival arguments on legal aspects, it would be appropriate to narrate here the historical background of section 42 of “the Act” and the amended provisions made therein :

Legislative history of Section 42 :

“The Act” was enforced from 15.10.1955 and on that date, Section 42 exists as under :

As on 15.10.1955

Section 42. Sale or Gift - Except with the general or special permission of the State Government, no khatedar tenant shall have the right to transfer by sale or gift his interest in the whole or a part of his holding to any person who at the date of such transfer is already in possession of land which together with the land so

transferred will exceed 90 acres of unirrigated or 30 acres of irrigated land.

Explanation - If such land is partly irrigated and partly unirrigated, one acre of irrigated land, shall, for calculating the area of land for the purpose of this Section, be deemed to be equivalent to three acres of unirrigated land.

Thus, according to this Section, the restriction was confined to the transferee who could not acquire land, by sale or gift, more than the limits placed in this Section.

“The Act” was for the first time amended by the Act No.27 of 1956 dated 22.9.1956, which received the assent of the President on 14.9.1956. In this Amendment Act, this Section was not touched.

Section 42 was then amended by the Rajasthan Tenancy (Second) Amendment Act, 1956 (Act 28 of 1956) which also came into force on 22.9.1956. By this Amendment Act, a proviso to Section 42 was added. The proviso added was as under :

As on 22.9.1956

“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 a Scheduled Caste or a Scheduled Tribe.”

The provisions as now stand after Amendment Act No. 12 of 1964 effective from **1.5.1964** run as follows :

“42. General Restrictions on sale, gift and bequest - The sale, gift or bequest by a khatedar tenant of his interest in the whole or part of his holding shall be void, if –

- (a) deleted w.e.f. 11.11.1992
- (b) **Such sale, gift or bequest is by a member of Scheduled Caste in favour of a person who is not a member of the Scheduled Caste, or by a member of Scheduled Tribe in favour of a person who is not a member of the Scheduled Tribe;**
- (bb) Such sale, gift or bequest, notwithstanding anything contained in clause (b), if by a member of Saharia Scheduled Tribe in favour of a person who is not a member of the said Saharia Tribe.
- (c) Omitted.”

11. It is obvious from the language of the proviso which was added to Section 42 on 22.9.1956 by the Rajasthan Tenancy (Second) Amendment Act, 1956 (Act 28 of 1956). That after the amendment, a khatedar tenant who was member of a Scheduled Caste or a Scheduled Tribe was restrained

from transferring his interest in the whole or any part of his holding to any person who was not a member of a Scheduled Caste or a Scheduled Tribe. It appears that this restriction was imposed for protecting the interests of the khatedar tenants who were members of Scheduled Caste or Scheduled Tribe. Though the legislature did not incorporate the word 'void' in such amendment, but it may be pointed out that the proviso is couched in negative form. Negative words are clearly prohibitory and are ordinarily used as a legislative device to make a statute imperative. Therefore, the alleged sale made in the year 1961 was void as there was clear prohibition after 22.9.1956 against making any sale by a member of Scheduled Caste or Scheduled Tribe in favour of a person who was not a member of Scheduled Caste or Scheduled Tribe.

12. In the case of '**Babu Singh Vs. State of Rajasthan & ors.**' reported in **1998 RRD page 396**, Hon'ble Rajasthan High Court held that before amendment in 1964 in Section 42 of "the Act", sale of land by Scheduled Caste to non-Scheduled Caste was though not expressly held to be void, yet it was forbidden by Section 42, therefore, such sale was forbidden by law within meaning of Section 23 of the Contract Act and no Court will lend its assistance to give effect to a contract forbidden by law and therefore, when a person has purchased the land in contravention of Section 42, he cannot acquire khatedari rights.

13. A Division Bench of the Hon'ble Rajasthan High Court in the case of '**Ram Chandra Vs. Om Prakash**' cited in **1978 RLW 442** has clearly held that a sale in contravention of the proviso to Section 42 being forbidden by law, within meaning of Section 23 of the Indian Contract Act is void and not enforceable in law. The sale in question was held to be void and not merely voidable.

14. In the case of '**Soni (Smt.) & ors. Vs. Board of Revenue & ors.**' published in **2008(2) DNJ page 1021**, Hon'ble Rajasthan High Court expressly held that :

"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.”

15. Though the learned counsels for the non-petitioner have placed reliance on several judgments of Hon’ble Rajasthan High Court and of this Court, but in the judgment reported in 1964 RRD page 342 titled as ‘Pt. Triveni Shyam Vs. Board of Revenue, Raj.’, the sale has been effected on 31.12.1955 i.e. prior to 22.9.1956. While in the case before us, the alleged sale has been made in the year 1961 which is much later to the coming into force of the Second Amendment Act and no question of any rights having been vested in non-petitioner no.1 prior to 22.9.1956 is involved in the present case.

16. In other judicial pronouncements reported in 1978 RRD page 479 (Ramchandra Vs. Om Prakash), 1994 RRD page 98 (Madhu & ors. Vs. Panna & ors.), 2009(1) DNJ page 157 (Smt. Madghu Devi & ors. Vs. Board of Revenue & ors.), the position of relevant law as on 22.9.1956 was not considered.

17. Similarly, Hon’ble Division Bench of this court in judgment reported in 2007(2) RRT page 1067 titled as ‘Chhoti Lal & ors. Vs. Balya & ors.’ carries no significance because in that judgment, full reliance has been placed on the judgment reported in 1964 RRD page 342 titled as ‘Pt. Triveni Shyam Vs. Board of Revenue, Raj.’ which has already been distinguished earlier.

18. The observation of the Division Bench of this court reported in 2000 RRD page 30 titled as ‘Mst. Ladi & ors. Vs. Rajmal & ors.’ is also of no avail in the present case because in that case, sale deed was executed on 8.11.1954 prior to commencement of “the Act”.

19. Therefore, the above cases, heavily relied by the learned counsel for non-petitioner no.2, render no assistance at all to the non-petitioners in the present case.

20. The prohibition of section 42(b) of "the Act" about the transfer of agriculture land by a member of SC/ST in favour of non-SC/ST person is absolute and cannot be evaded by any device.

21. In this view of the matter, there is no force in the contention of learned counsels for non-petitioner no.2 that the transaction in question being made prior to 1.5.1964 was not void and voidable only.

22. As far as contention with regard to inordinate delay is concerned, as law does not permit the conferment of khatedari to non-scheduled tribe person by a member of scheduled tribe in any manner and having distinguished status of member of scheduled tribe, such transfer is ab initio void; therefore, on the technical ground of limitation, such illegal practices cannot be encouraged.

23. The larger bench of the Hon'ble Rajasthan High Court in "Chiman Lal Vs. State of Rajasthan & others" reported in 2000(1) WLN page 200 has specifically arrived to the conclusion that -

“when (i).....;

(ii).....;

(iii) orders are against the public interest;

(iv) the orders are passed by the authorities who have no jurisdiction;

(v) the orders 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 ab 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.”

24. Consequently, in view of what has been discussed above and taking into consideration the ratio decidendi laid down in the above referred rulings, the reference is accepted and the mutation no.11 dated 25.6.1961 made in favour of non-petitioner no. 1 is liable to be set aside, hence set aside. The reference is disposed of accordingly.

Pronounced in open court.

(PRAMIL KUMAR MATHUR)
Member

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