

IN THE BOARD OF REVENUE FOR RAJASTHAN
AJMER

Revision/TA/3368/2013/Churu.

1. Sitaram) sons of Rawat Mal caste Mali resident of
 2. Murlidhar) Sardar Sahar Distt. Churu.
- ...Petitioners.

Versus

1. Shivbhagwan) sons of Rawat Mal caste Mali
 2. Parmeshwar Lal) residents of Sardarsahar Distt.
Churu
 3. Gayatri Devi widow of Mahaveer Prasad
 4. Ram Manohar) sons of Mahaveer Prasad
 5. Ramnivas)
 6. Bharti) daughters of Mahaveer Prasad
 7. Sarita)
- All by caste Mali residents of Sardarsahar Distt.
Churu.
8. State of Rajasthan through Tehsildar-cum-Sub-
Registrar, Churu.
- ...Non-petitioners.

9. Babu Lal son of Ramwat Mal caste Mali resident of
Sardarsahar Distt. Churu.
- ...Proforma non-petitioner.

S.B.
Shri Bajrang Lal Sharma, Member

Present:-
Shri Ashok Agarwal, counsel for the petitioners.

Date: 23.5.2013

J U D G M E N T

The petitioners have filed this revision petition under section 230 read with section 221 of the Rajasthan Tenancy Act, 1955 (in short 'the Act') being aggrieved by the order passed by Settlement Officer-cum-Revenue Appellate Authority, Bikaner on 17.5.2013 in appeal titled as Shivbhagwan and ors. Vs. Sitaram and ors.

2. The brief facts of the case are that the petitioners-plaintiffs filed a regular suit under section 188 of the Act before Sub-Divisional Officer, Sardarsahar (Distt. Churu) against the non-petitioners-defendants. Along with the suit, an application under section 212 of the Act

for temporary injunction was also filed by the petitioners before the trial court. The trial court issued an ex-parte order on 17.5.2013 restraining the non-petitioners to maintain status quo of record and possession and not to alienate the disputed land till next date of hearing that is 14.6.2013. On the same day, the non-petitioner Shivbhagwan and ors filed an appeal before Settlement Officer-cum-Revenue Appellate Authority, Bikaner and the learned appellate court stayed the order passed by the trial court on 17.5.2013 on the very day. Being aggrieved by the impugned order passed by the learned appellate court, this revision petition has been preferred before this court.

3. Heard the learned counsel for the petitioners on admission of this revision petition.

4. Indisputably the petitioners-plaintiffs filed a regular suit for permanent injunction in the court of Sub-Divisional Officer, Sardarsahar (Churu Distt.) against Shivbhagwan and ors. The trial court passed the following ex-parte order on 17.5.2013:-

“वकील प्रार्थीगण की एक पक्षीय बहस सुनी गई। पत्रावली पर उपलब्ध अभिलेख व शपथ पत्र के प्रकाश में विचार किया जाकर अप्रार्थीगण को जरिये अन्तरिम स्थगन आदेश से वर्जित किया जाता है कि आगामी तारीख पेशी तक खेत ख0न0 223/4 तादादी10 बीघा रोही मोजा सरदारशहर में स्थित कृषि भूमि को रहन, बय, स्थानान्तरण नहीं करे, रिकार्ड व मौका स्थिति की यथास्थिति बनाये रखें जिसमें कोई उजर एतराज हो तो दिनांक 14-6-13 को न्यायालय में उपस्थित होकर पेश करें।

उपरोक्त आदेश आज दिनांक 17-5-13 को मेरे हस्ताक्षर व कार्यालय मोहर से जारी किया गया।”

The bare perusal of the above ad-interim temporary injunction reveals that the non-petitioners have been restrained to maintain status of record and

possession and not to alienate the disputed land till 14.6.2013. If they had any objection on this order they could raise it on or before the next date of hearing before the trial court. This is manifestly clear from the order passed by the trial court on 17.5.2011.

5. The petitioners have alleged that the order was passed on 17.5.2013 by the trial court in the afternoon and the learned appellate court colluded with the non-petitioner Shivbhagwan and ors and passed the stay order on the same day after working hours of the court in Bikaner. They have also alleged that it was not humanly possible to draft the appeal and file it before the appellate court on the same date before 5 p.m. They have also filed an affidavit in support of their contentions. This court has carefully perused the order passed by the trial court as well as by the appellate court.

6. In a reportable case by this court relating to the learned appellate court, this court issued explicit directions to the appellate court in Chhagan Lal alias Chhagan Mal Vs. Deu alias Devki and ors decided on 24.8.2012. This case was heard by this court under section 221 of the Act arising from Settlement Officer-cum-Revenue Appellate Authority, Bikaner's judgment dated 2.7.2012 in appeal No. 78/12. The observations of this court were as under:-

“10. The impugned order passed by the appellate court is an interim order and cannot be termed as a case decided. Therefore, the revision petitioned filed by the petitioner is not maintainable in this court. In the circumstances of this case, this court finds it appropriate to make the following observations/ guidelines for consideration of the appellate court while granting the stay order:-

(i) The appellate court is expected to ponder over that whether its interference with the impugned order of the trial court will serve a justifiable purpose and curb the multiplicity of

the proceedings between the parties. The courts have been established to mitigate the hostilities between/ amongst parties. Therefore, their every action should aim at this objective.

(ii) The appellate court has to use its jurisdiction in a just and balanced manner. Indiscriminate interference in the trial court's functioning by the appellate court is unwarranted. The appellate court should see that whether the stay order will result in court's protection to a wrong doer or lead to legal complications ?

(iii) The trial court is a court of original jurisdiction and the parties are expected to furnish their evidence before it. On the basis of initial evidence, the trial court passes ad interim ex parte order maintaining status quo of possession and record or restrain the parties not to alienate the disputed land. Generally such orders are made effective till the next date of hearing. In such cases, the appellate court is expected to interfere only when there is a manifest illegality or perversity in the impugned order. The appellate court may consider to direct the appellants to raise their contentions before the trial court.

(iv) A new trend has emerged that when the trial court chooses not to pass an interim ex parte order on an application of temporary injunction and issues notices to the non-applicants for the next date of hearing. In some cases the applicant files the appeal before the first appellate court to obtain the interim order of temporary injunction. In such cases where the proceedings are still in progress with the trial court and no order has been passed, there is no reason to unnecessarily disturb the independent functioning of the trial court. In appropriate cases directions for early disposal of such applications can be given.

(v) The appellate courts are the courts of appeal and they are expected to respect the independent functioning of the trial court. Wherever the trial court goes astray or flout the basic provisions of law, the appellate court can interfere with such orders explaining the infirmities of the trial court order. This is a general presumption that trial courts being in proximity to the disputed land have better awareness and access, about the relevant record, evidence and circumstances of the

case. Therefore, the trial court may be given full functional liberty to decide the temporary injunction/ stay applications on merits”.

7. This court has been watching the behaviour of learned Settlement Officer-cum-Revenue Appellate Authority, Bikaner who is in habit of passing casual orders resulting in interference in the independent working of trial court. The learned appellate court has been directed by this court in two other cases also that he should maintain restrain where the orders passed by the trial court are enforceable till next date of hearing only and the appellants can easily be directed to appear before the trial court and file their objections. The conduct of the appellate court in this case is also unbecoming and casual. In view of this court such casual orders by an appellate court bring disrepute to the justice delivery system in the revenue courts as well as pose questions on impartiality of the presiding officer.

8. In view of this court, the trial court's order was in the larger interest of justice and effective till next date of hearing so there was hardly any need to interfere with such a reasoned order. Therefore, in the larger interest of justice this court finds it appropriate to order that the order passed by the trial court on 17.5.2013 will prevail till next date of hearing. The non-petitioners are at liberty to file their objections before the trial court on or before 14.6.2013. The trial court is also directed to hear the non-petitioners whenever they file their objections before it.

9. This court is aware that the jurisdiction of this court under section 221 of the Act is to be rarely used in exceptional circumstances. The learned appellate court has been strongly advised against such casual orders but the orders of this court could not help him to maintain restrain. In view of this court, the learned

appellate court in Bikaner has misused its jurisdiction time and again and it is a drag on the independent functioning of the trial courts falling in its jurisdiction. Therefore, the circumstances of this case it is quite appropriate for this court to exercise jurisdiction provided under section 221 of the Act.

10. As discussed above, the revision petition filed by the petitioners is accepted at the stage of admission. The impugned order passed by the learned appellate court Srws 17.5.2013 is quashed and set aside.

Pronounced.

(Bajrang Lal Sharma)
Member