

N THE BOARD OF REVENUE FOR RAJASTHAN AJMER

Revision/TA/10597/2008/Sikar

Sohan son of Jhabar caste Jat resident of Village Kishanpura Tehsil
Fatehpur Distt. Sikar.

...Petitioner.

Versus

1. Roopa Ram son of Ratta Ram
2. Soni Devi widow of Sultan
3. Laxman Singh son of Sultan
4. Santosh son of Sultan
5. Mahaveer Prasad son of Sultan
6. Bhagwana Ram son of Ganpat
7. Dhanna son of Ganpat
8. Hanuman son of Nagar
9. Heera widow of Nagar
10. Ram Lal son of Jhabar
11. Khetaram so of Jhabar
12. Mani widow of Jhabar
13. Girdhari son of Nagar Mal

All by caste Jat residents of village Kishanpura Tehsil Fatehpur
Distt. Sikar.

14. Shyana daughter of Ganpat caste Jat resident of Karnga Chhota
Tehsil Fatehpur Distt. Sikar.

15. Tehsildar, Fatehpur Shekhawati Distt. Sikar.

16. Tehsildar, Ratangarh Distt. Churu.

...Non-petitioners.

S.B.

Shri Bajrang Lal Sharma, Member

Present:-

Shri Ajit Lodha, counsel for the petitioner.

Shri Y.D. Sharma, counsel for the non-petitioners.

Date: 31.8.2012

J U D G M E N T

This revision petition has been filed by the petitioner under
section 230 of the Rajasthan Tenancy Act, 1955 (hereinafter

referred to as 'the Act') being dissatisfied by the order passed by Sub-Divisional Officer, Fatehpur (Distt. Sikar) on 2.8.2008 in suit No. 31/05.

2. The factual matrix of this case is that the non-petitioners No. 1 to 9/ plaintiffs filed a regular suit before the Assistant Collector (Sub-Divisional Officer), Fatehpur Shekhawati against the petitioner and non-petitioners No. 10 to 16 under section 53 and 88 of the Act. This is very pertinent to mention here that the land in dispute falls within the territorial jurisdiction of Tehsildar, Fatehpur Shekhawati (Distt. Sikar) and Tehsildar, Ratangarh (Distt. Churu). During the adjudication of this case an application under Order 7 Rule 11 of the Civil Procedure Code was filed by the petitioner Sohan Lal stating that the land situated in Tehsil, Ratangarh does not fall within the territorial jurisdiction of the trial court. Therefore, the trial court has no jurisdiction to decide this case, hence the plaint should be rejected or it should be returned to the plaintiffs. The trial court after giving a fair opportunity of hearing to the parties rejected the application filed by Sohan son of Jhabar on 2.8.2008. Being aggrieved by the trial court's impugned order dated 2.8.2008, this revision petition has been filed before this court.

3. Heard the learned counsels of the parties.

4. The learned advocate for the petitioner contended that since the land situated in Tehsil Ratangarh District Churu is not within the territorial jurisdiction of the trial court. Therefore, the suit for partition and declaration of the disputed land is not maintainable before the trial court. He argued that section 53 of the Act specifically provides that the competent court for partition and declaration is the local court having territorial jurisdiction over the disputed land. He submitted that the trial court has arbitrarily passed this impugned order relying on section 17 of the Civil Procedure Code which provides that a suit for division of property can be filed before any court of territorial jurisdiction where the property is situate. The learned advocate also argued that the order passed by the trial court is not a speaking and reasoned order and section 17 of the Civil

Procedure Code does not apply in this case, as this is a special Act which has specific provision for partition of agricultural holdings. He finally urged the court to accept this revision petition.

5. The learned advocate for the non-petitioners contended that the order of the trial court is based on legal provisions and in larger interest of justice. He submitted that this is a suit for partition and the large part of the disputed land is situated in Fatehpur Shekhawati Tehsil and some part of the disputed land is in Ratangarh Tehsil of Churu District. Therefore, it will be in the larger interest of justice that the division of holdings is done by one presiding officer so that he can have a complete view of the facts and circumstances of the case. He argued that since there is no explicit provision in the Rajasthan Tenancy Act, section 17 of the Civil Procedure Code provides that in a case where immovable property is situated within the jurisdiction of two different courts, the suit can be instituted in any court within the local limits of whose jurisdiction any part of the property is situated. He also argued that the petitioner is unnecessarily procrastinating the proceedings of partition. Therefore, this revision being devoid of any substance and be dismissed.

6. I have given serious consideration to the arguments advanced by the learned counsel of the rival parties. Also perused the record and legal provisions relating to the partition.

7. This is undisputedly clear that the disputed land is khasra No. 6/201 measuring 4.11 hectares, khasra No. 6 measuring 1.3 hectares, khasra No. 9 measuring 2.10 hectare, khasra No. 1 area 6.01 hectare, khasra No. 38 measuring 1.87 hectare and khasra No. 142 measuring 6.89 hectares in village Kishanpura Tehsil Fatehpur Shekhawati and khasra 681 measuring 6 biswa and khasra No. 682 measuring 14 bigha 5 biswa in village Bhukheredi Tehsil Ratangarh of Churu District. The suit for partition and declaration has been filed before Sub-Divisional Officer, Fatehpur in whose jurisdiction the larger part of the disputed land is located. The main issue before this court is that whether the trial court is competent to decide this case of division of agricultural holding and declaration of rights in such a

circumstance where two khasra numbers of the disputed land are situated in Tehsil, Ratangarh. To decide this issue, it is very pertinent to visit the provisions of section 53 of the Act which deals with the division of holdings.

Division of tenancies:-

[(1) XX deleted - XXX w.e.f. 11.11.1992.

(2) A division of holding shall be effect in the following manner-

(i) by agreement between the co-tenants in respect of-

(a) such division of holding; and

(b) the distribution of rent over the several poritions in to which the holding is so divided; or

(ii) by the decree or order of competent court passed in a suit by one or more of the co-tenants for the purpose of dividing the holding and distributing the rent thereof over the several poritions in to which it is divided.

(3) XXX deleted XXX]

(4) To every suit for the division of one or more than one holding, all the co-tenants and the landholder shall be made parties. [XXX]

(5) A suit for the division of more than one holding may be instituted provided that the parties are the same.

The above provision is silent about this fact that when agricultural holdings which are situated in jurisdiction of two different courts how and where such partition proceedings will be undertaken. The learned advocate for the non-petitioners have specially taken support of section 17 of the Civil Procedure code which deals with suits for immovable properties situated within jurisdiction of two different courts the provisions of section 17 of the Civil Procedure Code are cited here for ready reference:

"17. Suits for immovable property situate within jurisdiction of different courts- Where a suit is to obtain relief respecting, or compensation for wrong to immovable property situated within the jurisdiction of different courts, the suit may be instituted in any court within the local limits of whose jurisdiction any portion of the property is situate:

Provided that, in respect of the value of the subject matter of the suit, the entire claim is cognizable by such court".

The above provisions of Civil Procedure Code empowers the trial court to decide this suit of partition and declaration. Furthermore, there is a provision in section 55 of the Rajasthan Land Revenue Act, 1956 which provides consolidation of such cases involving specially the same question for determination and based on same cause of action which are pending in one or more revenue courts. In this case, the court is aware that the suit filed by the non-petitioners about declaration and partition of the disputed agricultural holding is only in one court i.e. the trial court. Therefore, invoking the provisions of section 55 of the Rajasthan Land Revenue Act, 1956 for consolidation of the case is not appropriate in this case.

8. I have carefully perused the order passed by the trial court dated 2.8.08. The trial court has logically decided the application filed before it under Order 7 Rule 11 of the Civil Procedure Code. Since this is a simply a case of partition and declaration relating to ancestral lands amongst the parties. This court does not find any infirmity in the impugned order passed by the trial court. Since Rajasthan Tenancy Act is silent on this issue that when the agriculture holdings under partition is located in the jurisdiction of two different courts, what will the modus operandi in settlement of such disputes. In such a case the provision of section 17 of the Civil Procedure Code is quite relevant and can be a basis for deciding this case. Section 208 of the Act provides that provisions of Civil Procedure Code will apply in the proceedings under this Act in certain conditions. The provision of section 208 of the Act is being cited here for convenient reference:

"208. Application of Civil Procedure Code- The provisions of the Code of Civil Procedure, 1908 (Central Act V of 1908), except:

(a) provisions inconsistent with anything in this Act, so far as the inconsistency extends.

- (b) provisions applicable only to special suits or proceedings outside the scope of this Act, and
- (c) provisions contained in List I of the Fourth Schedule, shall apply to all suit and proceedings under this Act, subject to the modifications contained in List II of the Fourth Schedule".

In light of the provisions made hereinabove and Schedule IV of the Act, this court is of the considered opinion that Assistant Collector, Fatehpur Shekhawati (Distt. Sikar) is the competent court for partition of the disputed land in this case. Since this case also relates to declaration of tenancy rights for which the provisions of Civil Procedure Code will not apply. In such circumstances, in larger interest of justice this court confers the jurisdiction to the Assistant Collector, Fatehpur Shekhawati (Distt. Sikar) to decide this case of partition and declaration on merits. Consequently, now the trial court shall be competent to deal with the disputed land situated in Tehsil, Ratangarh (Distt. Churu) also.

9. As discussed above, the revision petition filed by the petitioner is devoid of any merit and hence is dismissed. The trial court is directed to decide this case on merits. Tehsildar, Ratangarh District Churu is also directed to comply with the orders passed by the of Sub-Divisional Officer, Fatehpur Shekhawati (Distt. Sikar) in this case.

Pronounced.

(Bajrang Lal Sharma)
Member