

REPORTABLE

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Revision/TA/6296/2013/Dausa

1. Sardar son of Kalyan
2. Kuldeep son of Kalyan

Both by caste Mali residents of village Kandoli Tehsil & Distt. Dausa.

...Petitioners.

Versus

1. Babu Singh son of Rampal
2. Sumer Singh son of Rampal

Both by caste Gurjar residents of village Moradi Tehsil Baswa Distt. Dausa.

...Non-petitioners.

S.B.

Shri Bajrang Lal Sharma, Member

Present:-

Smt. Poonam Mathur, counsel for the petitioners.

Shri Sameer Ahmed, counsel for the non-petitioners.

Date: 19.5.2014

J U D G M E N T

The petitioners have filed this revision petition under section 230 of the Rajasthan Tenancy Act, 1955 (in short 'the Act') being aggrieved by the order passed by Settlement Officer-cum-Revenue Appellate Authority, Jaipur Camp Dausa on 10.10.2013 in appeal No. 117/2013.

2. The factual matrix of the case in hand is that the petitioners-plaintiffs filed a regular suit under section 88 of the Act against the non-petitioners-defendants in the court of Assistant Collector, Dausa. Along with the regular suit an application under section 212 of the Act was also filed. The trial court passed an ad-interim order on 15.2.2013 for maintaining status quo of the disputed land till next date of hearing that was 11.3.2013. Being aggrieved by the order passed by the trial court, an appeal was preferred under section 225 of the Act by Babu Singh and others before Settlement Officer-cum-Revenue Appellate Authority, Jaipur camp Dausa. The learned appellate court passed the following order in appeal No. 10.10.2013:-

“पत्रावली पेश हुई। वकील अपीलान्त उपस्थित। रिकार्ड तलब करें। सम्मान जारी करें। स्थगन प्रार्थना पत्र पर वकील अपीलान्त को सुना गया। न्यायहित में अधीनस्थ न्यायालय सहायक कलक्टर दौसा के अपीलाधीन आदेश दिनांक 15-2-2013 की क्रियान्विति आगामी पेशी दिनांक 7-11-2013 तक स्थगित की जाती है। स्थगन तहरीर जारी करें। पत्रावली दिनांक 7-11-2013 को पेश करें।”

Being aggrieved by the order passed by the appellate court, this revision petition has been preferred before this court.

3. Heard the learned counsel of the parties.

4. Smt. Poonam Mathur, learned advocate for the petitioners contended that the appellate court should not have unnecessarily interfered with the ad-interim order passed by the trial court as the order passed by the trial court was effective till 11.3.2013 only whereas the appeal was preferred by Babu Singh was not maintainable because the order was not operative at the time of filing the appeal. She further argued that no appeal was maintainable against an ad-interim order passed by the trial court under section 225 of the Act but the appellate court unjustly and arbitrarily interfered with a lawful and plausible order passed by the trial court. She vehemently argued that it was a misuse of jurisdiction by the appellate court. Therefore, this revision petition be accepted.

5. Mr. Sameer Ahmed, learned advocate for the non-petitioners contended that this revision petition filed by the petitioners is not maintainable before this court as the order passed by the appellate court on 10.10.2013 is an ad-interim order. The learned advocate referred the Full Bench judgment passed by this court in Jagdish Prasad Vs. Bhopal Ram and others on 12.3.2014 and requested the court that in light of the Full Bench judgment this revision petition is not maintainable.

5. I have given serious consideration to the contentions raised by the learned counsels of the parties and have perused the record available on file.

6. Indisputably the order passed by the trial court on 15.2.2013 was an ad-interim order and was operative till next date of hearing

that was 11.3.2013. If Babu Singh and others, non-petitioners, had any grievance against the ad-interim order passed on 15.3.2013, they should have filed their reply before the trial court and get the matter finally disposed of at the level of the trial court but instead of filing the reply before the trial court they preferred to file an appeal before the appellate court.

7. This court has carefully perused the Full Bench judgment passed in Jagdish Prasad Vs. Bhopal Ram and others decided by this court on 12.3.2014. This court has issued guidelines to the trial courts as well as to the appellate courts for disposal of the such cases in a judicious manner. In view of this court this revision petition filed before this court is not maintainable as it has been filed against an ad-interim order and as per section 230 of the Act such a revision is not maintainable because it does not fall in the category of a case decided.

8. This court also finds it appropriate to direct the appellate court to decide the matter in appeal which is pending before it in light of the observations made by this court in the Full Bench judgment of Jagdish Prasad Vs. Bhopal Ram and others wherein following guidelines have been issued to the appellate court:-

- (1) On the outset, every Appellate Court is duty bound to examine the issue of limitation, if any, in the appeal. If the appeal is time barred the stay application can be considered only in the light of the mandatory provisions of Order 41 Rule 3A of the Code. Meaning thereby, no ad-interim ex-parte stay order can be passed without hearing the opposite party in time bared appeals.
- (2) The Appellate Courts have no jurisdiction to entertain appeals against such ad-interim ex-parte orders which are effective only till next date of hearing and have been passed under Rule 3 and 3A of Order 39 of the Code or where there is no order of the trial court on the application of temporary injunction or appointment of receiver.
- (3) The Appellate Court is expected to examine as to 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 are meant to mitigate the hostilities between/ amongst litigating parties, and they are not to add the fuel to fire. Therefore, their every action should aim at this objective.
- (4) The Appellate Court has to use its jurisdiction in a just and balanced manner. Indiscriminate and casual interference in

the Trial Court's functioning by the Appellate Court is unwarranted. The Appellate Court should ensure that its stay order will not result in court's protection to a wrong doer or will not lead to legal complications?

- (5) 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 an ad-interim ex-parte order for maintaining status quo of possession and record or for restraining 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 should direct the appellants to raise their contentions before the Lower Court.
- (6) A new trend has emerged that when the Trial Court chooses not to pass an ad-interim ex-parte order on an application of temporary injunction, and issues notices to the non-applicants to appear and to file their objections, if any, on the next date of hearing, in the meantime the applicant prefers an 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 either way, 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.
- (7) 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's 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 should be given full functional liberty to decide the temporary injunction/ stay applications on merits.

9. Consequently, this revision petition is dismissed being not maintainable. The appellate court is directed to dispose of the appeal within thirty days of this order filed by Babu Singh and others in light of the pronouncement of the Full Bench of this court in Jagdish Prasad Vs. Bhopal Ram and others dated 12.3.2014.

Pronounced.

(Bajrang Lal Sharma)
Member