

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal Decree/TA/6347/2012/Jhalawar.

Amra son of Nathya caste Meena resident of Pachola Tehsil Aklera Distt.
Jhalawar.

...Appellant.

Versus

Mangi Lal son of Chhotu Lal caste Meena resident of Pachola Tehsil Aklera
Distt. Jhalawar.

...Respondent.

D.B.
Shri Bajrang Lal Sharma, Member
Shri L.D. Yadav, Member

Present:-

Shri Mukesh Jain, counsel for the appellant.

Shri Ashok Agarwal, counsel for the respondent.

Date: 22.1.2014

J U D G M E N T

The appellant has filed this second appeal under section 224 of the Rajasthan Tenancy Act, 1955 (in short 'the Act') being aggrieved by the judgment and decree passed by Settlement Officer-cum-Revenue Appellate Authority, Kota on 6.9.2007 in appeal No. 75/2007.

2. The brief facts of the appeal are that the appellant-plaintiff filed a regular suit under section 183 of the Act against the respondent-defendant in the court of Sub-Divisional Officer, Aklera (Distt. Jhalawar). The learned trial court decreed the suit and rejected the counter-claim filed by the defendant on 29.1.2007. Being dissatisfied by the judgment and decree passed by the trial court, an appeal was preferred by Mangi Lal, the respondent, which was accepted on 5.3.2007 and Mangi Lal was declared tenant of one-third of the disputed land. Being aggrieved by the judgment and decree passed by the first appellate court, this second appeal has emanated.

3. Heard the learned counsels of the parties.

4. Mr. Mukesh Jain, the learned counsel for the appellant contended that the judgment and decree passed by the appellate court is illegal and perverse because the learned appellate court has conferred tenancy rights on the basis of adverse possession, whereas the disputed land was alleged to be bought by the respondent through an agreement to sale. He further argued that when

Mangi Lal, the respondent, claims his title on the basis of agreement to sale dated 1.6.1987, the possession handed over in compliance of the agreement to sale is permissive possession and cannot be termed as adverse possession. He also submitted that the judgment of the appellate court was passed on 6.9.2007 and this second appeal has been filed on 24.7.2012, therefore, this appeal has been filed belatedly because the appellant lost his mental balance owing to certain familial problems. He has filed an affidavit in support of his application under section 5 of the Indian Limitation Act and the grounds mentioned in the application are such which need to be construed in right spirit. Therefore, the delay in filing the appeal be condoned and the appeal be disposed of on merits.

5. Mr. Ashok Agarwal, learned counsel for the respondent contended that Mangi Lal purchased the disputed land on 1.6.1987 through an unregistered sale deed and the respondent is in possession of the disputed land since 1.6.1987. Therefore, he is entitled to get his possession protected under section 53-A of the Transfer of Property Act, 1882. He further submitted that Mangi Lal, the respondent, did not file any suit for declaration of rights before the trial court but on the basis of his counter-claim a separate issue was framed to this effect by the trial court and the learned appellate court has justly decreed the suit in favour of the respondent. He further argued that the appeal filed by the appellant is hopelessly time barred, therefore, it should be dismissed on the sole basis of limitation.

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.

7. Indisputably, the second appeal filed by the appellant has been filed after expiry of almost five years. This court has carefully perused the application filed by the appellant under section 5 of the Indian Limitation Act. The appellant has categorically mentioned that his advocate did not inform him about the judgment passed by the appellate court in the year 2007 and since his daughter was seriously ill as her in-laws harassed her. She lost her mental balance and because of the familial problems the appellant also became a psychiatric patient. He has filed an affidavit in

support of his application. In the circumstances of this case, this court finds it suitable to hold that the appellant is an illiterate person of scheduled tribe community and he was not well-versed with the legal provision of limitation, therefore, it will be appropriate if the appeal is decided on merits instead of dismissing it on the technical grounds. In view of this court the application filed by the appellant under section 5 of the Limitation Act is hereby accepted and the delay in filing the appeal is condoned.

8. This court has carefully perused the plaint filed by the appellant-plaintiff before the trial court. Mangi Lal, the respondent, in his written statements filed before the trial court has categorically mentioned that he purchased the disputed land on 1.6.1987 through an unregistered sale deed. The document of sale has been exhibited before the trial court and Mangi Lal, the defendant, also filed his counter-claim before the trial court.

9. There is a manifest provision provided in section 53-A of the Transfer of Property Act, 1882, wherein it has been mentioned that where a document of sale has not been registered but executed, the person in whose favour such a deed has been executed may claim that certain rights had accrued in his favour in the immovable property for which such document has been executed. An unregistered sale deed can be looked into for finding factum and nature of possession while making reference to the proviso to section 49 of the Indian Registration Act. An unregistered sale document may be a source of good evidence for part performance of a contract as it gives statutory rights and where the transferee has been put in possession, he cannot be ejected without following procedure prescribed by law. In *Bhaya Ramanuj Pratap Deo Vs. Lalu Maheshanuj Pratap Deo and others* (AIR 1981 (SC) 1937) the Hon'ble Apex Court has held as under:-

"As regards the second reason, the argument is based on section 17 read with section 49 of the Registration Act. Section 17 of the Registration Act enumerates the documents requiring registration. Section 49 of the Registration Act provides that no document required by section 17 or by any provision of the Transfer of Property Act, 1882 to be registered shall (a) affect any immovable property comprised therein, (b) (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered, Khorposh (maintenance) deed is a document which requires registration within the meaning of section 17 of the Registration Act and as the document was not registered it cannot be received as evidence of any transaction

affecting such property. Proviso to section 49, however, permits the use of the document, even though unregistered, as evidence of any collateral transaction not required to be effected by registered instrument. In this view of the legal position the maintenance deed can be looked into for collateral purpose of ascertaining the nature of possession".

In light of the provisions provided in section 53-A of the Transfer of Property Act, 1882, this court is of the view that Mangi Lal, the defendant, had the right to protect his possession on the disputed land which was given to him by the seller of the land on 1.6.1987 by the plaintiff and the document of sale which was unregistered may also come to his help for his protection from eviction. The learned trial court passed the decree of ejectment under section 183 of the Act ignoring the basic fact that the disputed land was sold long back in 1987 and possession was also handed over to mangi Lal, the purchaser. The document of sale was also exhibited and proved by the adequate evidence in the trial court. Therefore, such a decree of eviction could not have been passed by the trial court. In view of this court the learned trial court chose to ignore the provisions of section 53-A of the Transfer of Property Act. Therefore, the judgment passed by the learned trial court was erroneous, illegal and arbitrary.

10. The learned appellate court has also conferred tenancy rights to Mangi Lal on the basis of adverse possession. Possibly, the learned appellate court ignored the written statements filed by Mangi Lal before the trial court, wherein he categorically averred that he took possession of the disputed land on the basis of agreement to sale executed on 1.6.1987. As per the averments of Mangi Lal his possession on the disputed land is permissive possession and by any stretch of imagination it cannot be termed as adverse. In considered opinion of this court the learned appellate court has travelled beyond the record available on file and arbitrarily declared tenancy rights in favour of the respondent on the disputed land. The judgment passed by learned appellate court is also perverse and illegal.

11. In light of the circumstances and facts of this case, this court is of the considered view that the appellant's suit before the trial court was for ejectment of Mangi Lal, the defendant which could not have been decreed by the trial court because Mangi Lal, the defendant, was in possession of the disputed land on the basis of agreement to sale dated 1.6.1987 and he could

protect his possession on the disputed land on the basis of such agreement to sale and no decree of eviction could have been passed in his favour. Likewise first appellate court also conferred tenancy rights in favour of Mangi Lal on the basis of adverse possession. The learned appellate court's decision on this ground is perverse and illegal because Mangi Lal himself has averred before the trial court that he is in possession of the disputed land on the basis agreement to sale dated 1.6.1987. Therefore, his possession was of permissive nature. The purchaser should have filed a suit for specific performance to get the title transferred. Therefore, the judgment and decree passed by the first appellate court is also illegal and perverse which cannot be sustained.

12. As discussed hereinabove, in considered opinion of this court the judgments and decrees dated 6.9.2007 and 29.1.2007 passed by learned Settlement Officer-cum-Revenue Appellate Authority, Kota and Sub-Divisional Officer, Aklera respectively are illegal and bad, therefore, quashed and set aside. The second appeal filed by the appellant is disposed of accordingly.

Pronounced.

(L.D. Yadav)
Member

(Bajrang Lal Sharma)
Member