

REPORTABLE

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Revision/TA/1195/2012/Udaipur.

Smt. Geeta Bai daughter of Kesarpuri Goswami resident of Poola Tehsil
Girva Distt. Udaipur.

...Petitioner.

Versus

Shri Jhameshwar Ji Mahadev Murti Minor through manager:-

1. Kalu Ram son of Rama Rawat Meena
2. Ram Singh son of Dalla Rawat Meena
3. Logar alias Sava son of Bhoga Rawat Meena pujari Jhameshwar Mahadev.
4. Nathu son of Uda Rawat Meena

All residents of Jhamar Kotra, Tehsil Girva Distt. Udaipur.

...Non-petitioners.

S.B.

Shri Bajrang Lal Sharma, Member

Present:-

Shri Ishwar Deora, counsel for the petitioner.

Shri Ashok Nath, counsel for the non-petitioners.

Date: 11.3.2014

J U D G M E N T

The petitioner has filed this revision petition under section 230 of the Rajasthan Tenancy Act, 1955 (in short 'the Act') being aggrieved by the order passed by Sub-Divisional Officer, Girva on 14.12.2011 in case No. 374/2007.

2. The factual matrix of the case in hand is that the non-petitioners-plaintiffs filed a regular suit under section 88 and 188 of the Act against the petitioner-defendant in the court of Sub-Divisional Officer, Girva (Distt. Udaipur). During adjudication of the suit, the petitioner filed an application under section 11 and 12 of the Civil Procedure Code along with the objections stating that a regular suit was filed by Kering son of Uda Rawat in the trial court which was decreed on 8.5.1992 and the trial court declared Kering son of Uda Rawat as khatedar tenant of the disputed land and the said decree has never been assailed in any court so far, therefore, the suit filed by the plaintiffs is not maintainable before the trial court. The learned trial court rejected the application filed by the petitioner on 14.12.2011. This revision petition has emanated from the impugned order passed by the trial court on 14.12.2011.

3. Heard the learned counsels of the parties.
4. Mr. Ishwar Deora, learned counsel for the petitioner contended that the disputed land was declared in tenancy of Kering son of Uda Rawat who bought this land from Shankar Puri and Ganesh Puri. He further submitted that since on the basis of a decree of a competent court Kering son of Uda Rawat has been declared as tenant of the disputed land and the petitioner is a bona fide purchaser from Kering. The disputed land has been entered in name of the petitioner. He argued that the case was fully covered by section 11 of the Civil Procedure Code and the suit filed on behalf of the temple idol Jhameshwar Ji Mahadev was not maintainable before the trial court. He finally urged the court that if there was something wrong with the decree passed by the trial court on 8.5.1992 in suit No. 190/1991, the temple idol should have challenged the decree in the court of competent jurisdiction but since the decree has attained finality, no suit can be brought at this stage.
5. Mr. Ashok Nath, learned counsel for the non-petitioners contended that the temple idol is a perpetual minor and the land entered in tenancy of temple idol could not have been sold by its pujaries. The learned advocate also contended that the temple idol is represented by a public trust registered under Rajasthan Public Trust Act, 1959 on 6.11.1975, therefore, in the suit filed in the year 1991 by Kering should have impleaded Devasthan as a party as per the mandatory provisions of Rajasthan Public Trust Act. He finally urged the court that the order passed by the trial court does not have any legal or jurisdictional error therefore, the revision petition be dismissed.
6. I have given serious consideration to the rival contentions raised by the learned counsels of the parties and have perused the record available on file.
7. This court has carefully perused the order passed by learned trial court on 14.12.2011. The impugned order manifestly reads that a suit was filed by Kering son of Uda Rawat (suit No. 190/1991) in the court of Assistant Collector (Headquarters), Udaipur against the temple idol Jhameshwar Ji Mahadev and others. The Assistant Collector (Headquarters) passed a decree on 8.5.1992 whereby the disputed land

situated in village Jhamar Kotra Tehsil Girva numbering 3129, 3130, 3131, 3133, 3134 and 3145 (total six khasra numbers measuring 1.2400 hectares) was declared in tenancy of Kering son of Uda Rawat on 8.5.1992. Prima facie this is very evident that in this suit, filed before Assistant Collector (Headquarters) public trust which was registered on 6.11.1975 for management of trust properties and temple was not made party nor Devasthan was impleaded as a party and the decree seems to be a collusive one because the persons who illegally sold the temple idol's land to Kering son of Uda Rawat were simply made parties. Learned Assistant Collector (Headquarters) just conveniently chose not to examine this fact that whether the land which was in tenancy of a perpetual minor i.e. Jhameshwar Ji Mahadev could be sold to an individual without the permission of the District Judge which is required under the provisions of law. Though this decree is not under examination before this court yet the comments have been made after looking into the certified copy of the judgment available on record.

8. In view of this court, the temple Jhameshwar Ji Mahadev is a juristic person who is physically disabled and perpetually minor. There is an explicit provisions in the Indian Minority and Guardianship Act wherein it has been specifically provided that the immovable property belonging to a minor cannot be sold without the express permission of the respective District Judge. In this case the disputed land has been allegedly sold by Shankar Puri and Ganesh Puri who happened to be the pujaries of the temple. The Hon'ble Rajasthan High Court has manifestly observed that the pujaries of the temple are the trustees of the temple property and if they sell the property of the trust it is termed as breach of trust. The Hon'ble Rajasthan High Court has held in AIR 1998 (Raj.) 85 as under:-

I. The petitioner-temple was shown as khatedar of the land in dispute and the khatedari rights accrued in favour of Shri Mangha Ram Pujari would not be legal because of the application of the provisions of section 46 of the 1955 Act.

II. The provisions of section 46 of the Act 1955 Act are based on public policy and have been enacted to secure a laudable object. The provisions of any other act cannot override the special protection accorded to the class of persons mentioned therein. Thus, the

protection/ exemption granted to deity a perpetual minor/ permanent disable/ infirm person cannot be taken away by the provisions of any other Act.

III. It is the solemn duty of and legal obligation on the State Administrative Authorities and Courts to protect the interest of minor, disabled person and the deity being perpetual minor, physically disabled and infirm, is entitled to special protection of law.

IV. The entry recorded in favour of Mangha Ram Pujari as khatedar, was an outcome of fraud played by him on the statute as well as on petitioner-deity and thus, has to be treated as null and void.

V. Respondents Nos. 2 and 3, being purchaser from respondents Nos. 4 to 7, cannot claim to have better title than respondents No. 4 to 7 could have, being successors of Mangha Ram Pujari, who had no title, right or interest in the land in dispute in the eye of law as acquisition of khatedari right by him was contrary to law and thus illegal, was obtained by fraud, thus void. Respondents Nos. 2 and 3 are merely trespassers and liable to be evicted forthwith.

VI. It has never been the case of Mangha Ram Pujari or his successors that Shri Mangha Ram was the tenant of the land in dispute and, therefore, he could acquire the khatedari rights under the law. On the contrary, the record proved that in settlement made in 1973, the petitioner-temple was shown as khatedar and the Board did not take note of this important factor, which is sufficient to tilt the balance in favour of the petitioner.

VII. The course of substantial justice cannot be defeated on technicalities. The order passed by the Revenue Appellate Authority had achieved the ends of justice, thus the Board committed a gross error setting aside the same on mere technicalities without appreciating that the revenue authorities were not lacking inherent jurisdiction to decide the issue involved, even if reference had not been made to any statutory provisions.

VIII. Any judgment/ order to which petitioner-temple was not a party cannot be binding on it even if the case was filed to help the present petitioner as the genuineness of the persons, who were claiming to be worshippers etc cannot be examined as the said persons are not before this court. It may be a collusive affair with other interested persons.

IX. The Board of Revenue has been clothed with special powers under the provisions of section 232 of the Act of 1955 to examine a case, where the reference is made by the Collector and fraud etc. has been played by a party. There is no period of limitation to make such a reference. This provision is to provide "substantial justice" to

the party, which has been cheated. Thus, Board failed to appreciate the issues involved in its correct perspective.

9. In light of the observations made by Hon'ble Rajasthan High Court this court is of the considered opinion that the land which was in tenancy of temple idol Jhameshwar Ji Mahadev could not have been sold by anybody and the learned trial court has not committed any illegality or jurisdictional error while passing the impugned order.

10. Before parting, this court finds it appropriate to direct District Collector, Udaipur to examine the decree passed by the learned Assistant Collector (Headquarters), Udaipur on 8.5.1992 in suit No. 190/1991 titled as Kering son of Uda Rawat Vs. Temple idol Jhameshwar Ji Mahadev and others and if found appropriate a reference may be filed within next three months. The Additional Registrar (Judicial), Board of Revenue, Ajmer is directed to send a copy of the judgment per registered post to District Collector, Udaipur in next seven days of the judgment. Learned trial court is also directed to comply with the directions of this court.

Pronounced.

(Bajrang Lal Sharma)
Member