

IN THE BOARD OF REVENUE FOR RAJASTHAN AJMER

Application/TA/5829/2012/Churu.

Chhagan Lal alias Chhagan Mal son of Asha Ram caste Mali
resident of Ward No.2, Taranagar Distt. Churu.

...Petitioner.

Versus

1. Deu alias Devki daughter of Asha Ram wife of Modu Ram Bagri
caste Mali resident of Ward No. 14, Taranagar, Churu.
2. Nauja wife of Asha Ram caste Mali resident of Ward No.2, Tara
Nagar, Churu.
3. State of Rajasthan through Tehsildar, Taranagar.

...Non-petitioners.

S.B.

Shri Bajrang Lal Sharma, Member

Present:-

Shri S.P. Singh, counsel for the petitioner.

Shri Shashikant Joshi and Shri Ajaipal Dhidhariya, counsels for the
non-petitioner No.1

Date: 24.8.2012

J U D G M E N T

This application has been filed by the petitioner under section 221 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as 'the Act') being dissatisfied by the order passed by the Settlement Officer-cum-Revenue Appellate Authority, Bikaner on 2.7.2012 in appeal No. 78/2012.

2. The brief facts of the case in hand are that the petitioner-plaintiff filed a regular suit under section 88 and 188 of the Act against the non-petitioners-defendants in the court of Assistant Collector, Taranagar (District Churu). Along with the regular suit, an application under section 212 of the Act for obtaining the order of temporary injunction was also filed. The trial court issued temporary injunction restraining the non-applicants/ defendants for maintaining status quo pertaining to record of the disputed land and not to attest

mutation in compliance of the registered sale deed of the disputed land dated 23.5.2012. The case was fixed for next hearing on 27.6.2012. In the meantime, the non-petitioner No. 1 filed an appeal before the court of Settlement Officer-cum-Revenue Appellate Authority, Bikaner assailing the interim order passed by the trial court on 15.6.2012. The appellate court ex-parte stayed the impugned order of the trial court on 2.7.2012. This revision petition has arisen out of the appellate court's order dated 2.7.2012.

3. Heard the learned counsels of the parties on admission of the revision petition.

4. The learned counsel for the petitioner contended that the impugned order passed by the appellate court is illegal, capricious and against the basic principles of law. He submitted that the order of trial court was an interim order restraining the non-petitioners for maintaining the status quo of record till next date of hearing and this interim order was passed in the larger interest of justice to avoid multiplicity of proceedings. He argued that the appellate court has misused its jurisdiction and vacated the order passed by the trial court which will result in multiplicity of proceeding. The learned counsel further argued that the land in dispute was sold by the non-petitioner No. 1 and 2 on 23.5.2012 during the pendency of the regular suit. Since the sale was directly hit by section 52 of the Transfer of Property Act, therefore, an application was filed before the trial court for restraining the non-applicants for maintaining status quo. He also submitted that non-petitioner No. 1 had already sold the land of her share on 23.5.2012, therefore, she was not entitled for filing the appeal before the appellate court. The learned counsel urged the court that this is a case of misuse of court jurisdiction by the appellate court which warrants invoking of extraordinary jurisdiction of this court under section 221 of the Act. He cited 1993 RRD 598, 1980 RRD 01, 2009 RRT 291 and 2008 RRT 110 in support of his arguments.

5. The learned counsels for the non-petitioner contended that this revision petition is not maintainable in this court as it has been filed against an interim order. The bare perusal of the impugned order manifests that it is not in the category of case decided. They

further argued that no judicial order can be challenged under section 221 of the Act and the impugned order does not suffer from any legal infirmity or jurisdictional error. The learned advocates also submitted that the petitioner should raise his contentions in the appellate court. The learned counsels cited 1985 RRD 351, 2000 AIR (SC) 3032, 2008 RLW (Raj.) 444 and 2009 (2) RRT 1094 in support of his contentions.

6. I have given serious consideration to the rival contentions raised by the learned counsels of the parties. Also perused the record and the case law referred by the learned counsels.

7. This is an undisputed fact in this case that petitioner filed a regular suit for declaration of tenancy rights and perpetual injunction pertaining to the disputed land against the non-petitioners. The petitioner is son to non-petitioner No. 1 and brother to non-petitioner No.2, hence they are close blood relatives. Having scanned the record of this case the following facts and legal issues emerge:-

(i) The petitioner/ plaintiff filed a declaratory suit on the basis of a registered will executed by his father in his favour and along with the suit an application for temporary injunction was also filed before the trial court on March 28, 2012. The trial court did not grant any interim relief on the four hearing dates i.e. 28.3.2012, 12.4.2012, 14.5.2012 and 11.6.2012. On 11.6.2012, the case was fixed on 27.6.2012 which was preponed on 15.6.2012 owing to an application filed by the petitioner under section 151 of the Civil Procedure Code. This is also pertinent to mention here that the disputed land was sold by the non-petitioners on 23.5.2012.

(ii) On 15.6.2012, the trial court issued temporary injunction and ordered maintenance of status quo of record pertaining to the disputed land and also specifically restrained that the mutation should not be sanctioned in compliance of the sale deed dated 23.5.2012. And the case was fixed on 27.6.2012. On 27.6.2012, the temporary injunction was extended till the next date i.e. 25.7.2012.

(iii) In the meantime, the non-petitioners who had already sold the disputed land of their share on 23.5.2012 filed the appeal before the Settlement Officer-cum-Revenue Appellate Authority, Bikaner challenging the impugned order of the trial court dated 15.6.2012.

The Appellate court issued an ex-parte interim order on 2.7.2012 and vacated the impugned order dated 15.6.2012 passed by the trial court on the first hearing. This material fact of sale of the disputed land was concealed at the time of filing of the appeal before the appellate court.

(iv) It is unequivocally clear that the disputed land was sold during the pendency of the suit before the trial court and, therefore, the alienation of the subject matter of the suit was hit by section 52 of the Transfer of Property Act. The trial court issued the temporary injunction for maintaining status quo of record and restrained the non-petitioners for not getting the mutation sanctioned in compliance of the registered sale deed dated 23.5.2012. This order seems justifiable as it aimed to curb multiplicity of proceedings.

(v) If we focus on the conduct of the non-petitioners and the role of the Appellate Court in this case, we find that the non-petitioners fraudulently obtained the impugned order because on the day of filing the suit, they had no rights left on the disputed land as it stood sold on 23.5.2012. The appellate court also did not consider this aspect of the impugned order that whether interference with the order of trial court is warranted? The appellate court unnecessarily interfered with the just order of the trial court. The action of the learned appellate court was uncalled for and it helped the wrong doer. The appellate court should ponder on this issue before interfering with the impugned order that whether it will be in the larger interest of justice or will result in multiplicity of proceedings. The appellate court does not exist to intervene indiscriminately with the orders passed by the trial court. They should use their jurisdiction in larger interest of justice which should result in durable solutions. They should not add fuel to fire but they simply exist to extinguish the fire. The petitioner has filed this application under section 221 of the Act and this revision petition has arisen out of the lower appellate court's order dated 2.7.2012 which is indisputably an ex-parte ad-interim stay order.

(vi) The jurisdiction under section 221 of the Act can be invoked by this court only in extraordinary and rare circumstances. Such jurisdiction should be invoked sparingly and not in routine matters of

stay which are not related to public interest or which prima facie do not lead to miscarriage of justice.

8. In this case the moot point before this court is whether this court can invoke the jurisdiction provided under section 221 of the Act. Section 221 of the Act provides:-

"221- Subordination of revenue courts- The general superintendence and control over all revenue courts shall be vested in, and all such courts shall be subordinate to the Board; and subject to such superintendence, control and subordination:-

- (a) x x x (omitted)
- (b) all Additional Collectors, Sub-Divisional Officers, Assistant Collectors and Tehsildars in a district shall be subordinate to the Collector, thereof,
- (c) All Assistant Collectors, Tehsildar and Naib Tehsildars in sub-division shall be subordinate to the Sub-Divisional Officer thereof, and
- (d) All Additional Tehsildars and Naib Tehsildars in a tehsil shall be subordinate to the Tehsildar thereof".

Hon'ble Rajasthan High Court has explicitly observed in Kana and others Vs. Board of Revenue (1955 ILR 5 Raj. 55) and in Raghuveer Singh Vs. The Board of Revenue for Rajasthan and ors. (1980 RRD 1) that if a subordinate court disregards any specific provision of law and does something manifestly illegal in the judicial proceedings pending before it, it is open to the Board of Revenue to interfere and set the matters right. Hon'ble Apex Court has also maintained in Surendra Pal Singh Vs. Board of Revenue & Ors. (1993 RRD 598) that the Board of Revenue can invoke its jurisdiction under section 221 of the Act where the subordinate courts have committed gross errors in justice delivery. The relevant part of the Hon'ble Apex Court judgment is as under:-

"Section 221 of the Act of 1955 is not subject to the other provisions of the Act. It is clear from the language of section 221 of the Act of 1955 that the Board of Revenue has general powers of superintendence and control over all revenue courts. It is both administrative as well as judicial powers. It is open to the Board to exercise its powers of superintendence on all its subordinate courts in order to regulate the functioning of the subordinate courts so as to keep them within their respective spheres of jurisdiction. If the subordinate court disregards any specific provision of law and does something illegal it is open to the Board of Revenue to interfere and set the matter right. A similar question

arose before the Rajasthan High Court in Kana and others Vs. Board of Revenue, Rajasthan :ILR (1955) 5 (Raj.) 55 where the High Court had to construe the powers of the Board of Revenue, Rajasthan, conferred on it by the Rajasthan Board of Revenue Ordinance (No. XXII of 1949).

9. In light of the Apex Court pronouncement this court is of the firm view that Board of Revenue is fully empowered to invoke its jurisdiction under section 221 of the Act where miscarriage of justice has manifestly taken place and a public cause has suffered in a judicial proceeding before subordinate revenue court. This jurisdiction under section 221 of the Act should be sparingly invoked. This case in hand is a routine case of stay of the proceedings. In considered view of this court it is not an appropriate case to invoke jurisdiction under section 221 of the Act.

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.

In this case, as discussed above, this court is not inclined to interfere with the interim order passed by the appellate court. Therefore, the revision petition fails and hence is dismissed in limine. The appellate court is directed to act in light of the observations made by this court.

Pronounced.

(Bajrang Lal Sharma)
Member