

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER**Appeal Decree/T.A./1610/2002/Nagaur**

Shri Raghuveer Singh s/o Shri Chandra Singh, caste Rajput, r/o
Dugor, Tehsil Degana, District Nagaur (Raj.)

..... Appellant.

Versus

- 1- Smt. Rameshwari Devi w/o Shri Premsukh, Caste Jat, r/o of
village Kherwa, Tehsil Degana, District Nagaur
- 2- Mst. Sajjankanwar w/o Shri Chandra Singh, caste Rajput, r/o
village Dugor, Tehsil Degana, District Nagaur
- 3- State of Rajasthan.

..... Respondents

Division Bench

Shri Moolchand Meena, Member

Shri R. C. Gupta, Member

Present:

Shri Bhawani Singh, Advocate for appellants.

Shri G. S. Lakhawat, Brief-holder Shri Anil Gaur, Advocate for
respondent No. 1 and 2.

JUDGEMENT

Date: - 30-07-2013

1- This 2nd appeal, under section 224 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as 'the Act of 1955') has been preferred by the appellants against the judgment dated 04-01-2002 in appeal No.57/98 passed by Revenue Appellate Authority, Nagaur, whereby decision and decree dated 09-07-1998 was upheld.

2- The relevant facts of the case in brief, leading to the present second appeal, are that appellant-plaintiff filed a suit under section 88, 53 and 183 of the Act of 1955 in the court of Assistant Collector, Degana, District Nagaur. It was stated in the suit that appellant is adopted son of respondent No.2 Mst.

Appeal /Decree/TA/1610/2002/Dist. Nagaur
Raghuveer Singh Versus Rameshwari Devi & ors

Sajjankanwar and her husband late Shri Chandra Singh. The disputed land bearing khasra No.28 area 56 Bigha 15 Biswa situated in village Dugordasa, is khatedari land of late Shri Chandra Singh, who had taken appellant-plaintiff in adoption as his son. After the death of Shri Chandra Singh, the disputed land mutated in the name of his widow Mst. Sajjankanwar alone, whereas the disputed land is undivided joint khatedari land of appellant-plaintiff and respondent No.2 and it should have been mutated jointly in the name of appellant-plaintiff and respondent-2. The respondent-2 sold 29 Bigha 3 Biswa land out of the disputed land to respondent-1 Rameshwari Devi and the possession was also handed over to the purchaser respondent-1. It was averred that appellant-plaintiff had 1/2nd share in the disputed land, the respondent-2 alone had no authority to sell the land. It was requested that plaintiff should be declared khatedar tenant of 1/2nd share of the disputed land, and it should be partitioned by meats and bound, a separate khata should be recorded in the name of plaintiff. It was also agitated that respondent-1 is occupying the land as trespasser, so he should be ejected and possession should be restored to the plaintiff-appellant.

3- The Trial Court issued notices to the defendant-respondents and, since they did not appear in the Court even after service of the summons, the Trial Court ordered ex-parte proceedings against the defendants. The Trial Court concluded that the disputed land is recorded in the name of Chandra Singh in zamabandi Samvat 2039-42 and also in khasra girdawari Samvat 2036-39. There is no adoption deed- registered or un-registered- in the file. So the suit was not found to be proved and it was dismissed by the Trial Court vide its decision and decree dated 09-07-1998.

4- An appeal was filed by the appellant in First Appellate Court, which was also dismissed by impugned order dated 04-01-2002. Therefore, the present second appeal has been preferred by the appellant in the Board of Revenue.

5- Learned counsels for both the parties were heard. Learned Shri Bhawani Singh argued on behalf of the appellant,

Appeal /Decree/TA/1610/2002/Dist. Nagaur
Raghuveer Singh Versus Rameshwari Devi & ors

whereas respondents were represented by learned Shri G. S. Lakhawat, who was brief holder of Advocate Shri Anil Gaur.

6- Learned counsel for the appellant, while repeating the facts and grounds mentioned in the appeal-memo, has submitted that:-

- (1) The disputed land was khatedari land of late Shri Chandra Singh and the appellant, being his adopted son, is entitled to get 1/2nd share in the disputed land. The defendant-respondents did not appear in the Trial Court in spite of service of summons nor was any written statement filed on their behalf. Mere absence of the defendants was their admission of plaintiff's claim and it should have been decreed. In the absence of any denial, the plaintiff was proved to be adopted son of late Shri Chandra Singh, But the Trial Court has committed gross irregularity in rejecting the suit on the ground that no adoption deed was submitted on record. It was argued that no written deed is necessary in support of adoption and mere performance of adoption rituals is sufficient.
- (2) The appellant had produced the sale deed before the First Appellate Court, in which Mst. Sajjankanwar had admitted the plaintiff as her adopted son. So the suit, treating the plaintiff as adopted son of late Shri Chandra Singh, should have been decreed by the First Appellate Court. If it was felt necessary, the First Appellate Court should have remanded the suit to the Trial Court for providing an opportunity to the plaintiff to prove this sale deed. But the First Appellate Court treated the sale deed as doubtful and dismissed the appeal.
- (3) It was contended by the learned counsel that First Appellate Court has dismissed the appeal on the ground that the suit was filed delayed, whereas there is no time limit prescribed for filing a declaratory suit.
- (4) The learned counsel for the appellant, with above mentioned contentions, has stated that decisions of both the lower courts have been passed without proper appreciation of the facts and evidence. Both the decisions are against the law and deserve to be set aside. It has been requested that the second appeal in hand be accepted and the plaintiff's suit be decreed.

Appeal /Decree/TA/1610/2002/Dist. Nagaur
Raghuveer Singh Versus Rameshwari Devi & ors

7- The learned advocate Shri G.S. Lakhawat arguing for the respondents has submitted that:-

- (1) Chandra Singh, the late khatedar of the disputed land died without leaving any successor or heir except his wife, respondent-2 Mst. Sajjankanwar. On his death, only his widow was his successor and the disputed land was rightly mutated in her name. After becoming recorded khatedar, Mst. Sajjankanwar was legally authorised to sell the land at her own wishes. So registered sale deed executed by respondent-2 in favour of respondent-1 was a valid and lawful conveyance of transfer of property.
- (2) Respondent-1 is in physical possession of the land sold to her by respondent-2.
- (3) Appellant has also purchased some another land from respondent-2. It has been argued by the learned counsel that if the appellant were adopted son of late Shri Chandra Singh, the record of rights must have been in his name. If he was adopted son and successor of late khatedar Chandra Singh then what is the reason that he has purchased his own land.
- (4) The appellant had not produced any adoption deed in the Trial Court and for this reason; the Trial Court has rightly dismissed his suit.
- (5) Since, there were some un-attested cuttings/corrections in the photocopy of the said sale deed produced by the appellant in the First Appellate Court; the court has rightly treated that document doubtful.

In view of the above mentioned contentions, the learned counsel for the respondents has stated that the findings of both the lower courts are based on facts and there is no ground for interfering with such concurrent findings. The appellant is unable to prove any legal or factual irregularity in the decisions of lower courts, and therefore, the appeal in hand being forceless and void of merits deserves to be rejected.

8- We have given a thoughtful consideration to the rival contentions made by both the learned counsels for the parties and have gone through the record and the impugned order available in the file. It is not disputed that late Shri Chandra Singh was recorded khatedar tenant of the disputed land, who

died without leaving any natural son or daughter as his successor. Therefore, on his death, the disputed land was mutated in the name of his widow Mst. Sajjankanwar. Thus, Mst. Sajjankanwar became khatedar tenant of the disputed land and she sold some 29 Bigha 3 Biswa land to respondent-1 out of total disputed land. The suit for declaration and partition, filed by the plaintiff-appellant in the Trial Court was based on the sole ground that plaintiff was adopted son of late Shri Chandra Singh. Therefore, success of the plaintiff's suit was dependent on the proof that he was adopted son of late Shri Chandra Singh. From perusal of record available on the Trial Court's file it is evident that the plaintiff has not produced any evidence to prove himself as adopted son of Shri Chandra Singh. The Trial Court has expressively observed that no document regarding adoption-registered or unregistered - has been submitted by the plaintiff. We are in agreement with the argument advanced by learned counsel for the appellant that documentation or registration of any adoption deed is not necessary, however at the same time, we are of the view that if there had been any such registered adoption deed duly signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has taken place. Section 16 of the Hindu Adoption and Maintenance Act, 1956 is as under:-

“16. Presumption as to registered documents relating to adoption-

Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.”

Thus, **if there were any registered adoption deed on record, the plaintiff was not required to produce any other evidence to prove his adoption. Since there is no such deed, the plaintiff was required to produce other appropriate oral or documentary evidence to prove that he was adopted son of late Shri Chandra Singh.** But there was no iota of oral or documentary evidence before the Trial Court to prove the said adoption. Therefore, we are of the view that the plaintiff has utterly failed to prove his adoption and for this reason, his suit for declaration was bound not to succeed. So the Trial Court has

not committed any factual or legal irregularity in dismissing the plaintiff suit.

9- The learned counsel for the appellant has contended that defendants did not appear in the court and did not file any written statement, in spite of service of notices. So their absence should have been treated their admission and the plaintiff's suit should have been decreed only on this ground. It is the basic principle that **plaintiff has to prove his suit beyond doubt without taking any benefit of respondent's weakness. The plaintiff-appellant, in the instant case, has brought a declaratory suit against recorded khatedars and, in our opinion, he cannot succeed without disproving title of a recorded khatedar by acceptable and un-rebuttable piece of evidence.**

10- The plaintiff-appellant filed an application under order 41 rule 27 in the First Appellate Court and produced a photocopy of a registered sale deed dated 28-07-1986 allegedly executed by Mst. Sajjankanwr in favour of the plaintiff. Since there are some unattested and unverified corrections in the said photocopy document, the First Appellate Court has doubted about genuineness of this document. We have perused the said photocopy document minutely. It is regarding alleged sale of another land by the respondent-2 Mst. Sajjankanwar in favour of plaintiff Raghuveer Singh. The document was registered on 28-07-1986. Originally it was in favour of "श्री रघुवीरसिंह पुत्र गुमानसिंह" in which there are corrections to make it in favour of "श्री रघुवीरसिंह खोले चन्दरसिंह", and these corrections have not been attested and verified by any competent authority. The original document has also not been produced. This photocopy document, in view of this court is doubtful on two grounds. Firstly, why the document dated 28-07-86 was originally prepared in favour of "श्री रघुवीरसिंह पुत्र गुमानसिंह" and thereafter corrected without any attestation to make it in favour of "श्री रघुवीरसिंह खोले चन्दरसिंह", and if it was corrected bonafidely then why such corrections were not attested and verified by a competent authority? Secondly, what requirement was there to purchase the said land by the plaintiff from respondent-2 when he claims to be adoptive son of respondent-2 and her husband late Shri Chandra Singh. The plaintiff-appellant has not tried to

Appeal /Decree/TA/1610/2002/Dist. Nagaur
Raghuveer Singh Versus Rameshwari Devi & ors

clear these doubts and suspicious circumstances. So, we hold with a considered view that First Appellate Court has not committed any irregularity in not considering this photocopy document. The First Appellate Court has rightly upheld the decision and decree passed by the Trial Court.

11- In the light of discussions held in paragraphs hereinabove, this court is of considered opinion that the plaintiff has failed to prove his suit for declaration and partition, and he is also not entitled to get any decree of ejectment against the defendants. Summarisingly, we hold that this second appeal is without any substance and deserves to be rejected.

12- Resultantly, the second appeal in hand is hereby dismissed.

(R. C. Gupta)
Member

(Moolchand Meena)
Member