

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal Decree/TA/5253/2003/Udaipur.

Smt. Shanti Mehta wife of late Vijay Singh Mehta resident of Sukharia circle, Udaipur Tehsil Girva Distt. Udaipur.

...Appellant.

Versus

State of Rajasthan through Tehsildar, Girva.

...Respondent.

D.B.

**Shri Bajrang Lal Sharma, Member
Shri Priyavrat Pandya, Member**

Present:-

Shri P.S. Dashora, counsel for the appellant.

Shri Hagami Lal, Dy. Govt. Advocate for respondent.

Date: 22.11.2013

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, Udaipur on 14.7.2003 in appeal No. 61/2003.

2. The brief facts of the appeal are that the appellant-plaintiff filed a regular suit under section 88 and 188 of the Act before Assistant Collector, Girva (Distt. Udaipur), wherein the appellant-plaintiff averred that in village Bansliya Tehsil Girva the disputed land was entered in tenancy of Ekling Ji Trust, Udaipur. The said Trust sold 214 bighas 6 biswas land to Vijay Singh Mehta, the husband of the plaintiff on 8.1.1970 through a registered sale deed. It was also averred that the disputed land has been in continuous possession of the appellant. The learned trial court dismissed the suit filed by the appellant-plaintiff on 16.10.2002. Being aggrieved by the judgment and decree passed by the trial court, first appeal was preferred before Settlement Officer-cum-Revenue Appellate Authority, Udaipur which was also dismissed on 14.7.2003. This second appeal has been preferred by the appellant assailing the judgment and decree passed by the appellate court on 14.7.2003.

3. Heard the learned counsels of the parties.
4. Mr. P.S. Dashora, learned counsel appearing for the appellant, contended that the judgments and decrees passed by both the lower courts are arbitrary, illegal and against the established principles of law. He submitted that out of the land purchased from the Ekling Ji Trust on 8.1.1970, Vijay Singh Mehta, the husband of the appellant further sold 89 bighas 5 biswas of land to Shanti Lal son of Kanhaiya Lal Jain through registered sale deed on 15.7.1989. The rest 124 bighas 5 biswas of land continued to be in possession of Vijay Singh Mehta, the husband of the appellant. He also apprised the court that on the basis of the registered sale deed executed by Vijay Singh Mehta (deceased) on 15.7.1989, a mutation was sanctioned in favour of Shanti Lal son of Kanhaiya Lal Jain and the land stands entered in name of the buyer as on today but the rest of the land which was held by the appellant's husband could not be entered in name of the appellant, after death of her husband. He further argued that the disputed land is in continuous possession of the appellant after death of her husband and prior to his death it was in his possession right from the date of purchase i.e. 8.1.1970. Therefore, the appellant-plaintiff is entitled to get tenancy rights declared on the disputed land on the basis of sale deed executed by Ekling Ji Trust on 8.1.1970. He also argued that the evidence produced by the appellant was sacrosanct and adequate in support of her plaint but the learned courts below erringly presumed that the disputed land is presently entered as ceiling surplus government land and no tenancy rights can be conferred on the basis of such a sale deed. He finally urged the court that both the courts below have arbitrarily observed that the appellant's husband had purchased the land from the Trust, which came under ceiling law, therefore, no rights can be accrued in favour of the appellant. He requested the court to accept the second appeal and quash and set aside the judgments and decrees passed by both the courts below and the suit filed by the appellant be accepted.
5. Mr. Hagami Lal, learned Dy. Government Advocate on behalf the respondent-State contended that the judgments and decrees passed by both the lower courts do not suffer from any infirmity as the disputed

land is entered as government land. He also contended that the entire land belonged to the ex-ruler of Udaipur which was likely to come under ceiling law but the Trust was formed just to frustrate the provisions of Ceiling Law. Since the Ekling Ji Trust was also managed by the same family they illegally transferred this land through a power of attorney to Vijay Singh Mehta who in turn transferred some part of the purchased land to Shanti Lal Jain. He also argued before this court that this entire matter needs detailed enquiry that how a public trust could transfer its land to Vijay Singh Mehta through a power of attorney and from Vijay Singh Mehta to Shanti Lal Jain. These transactions have been made to defeat the provisions of Ceiling Law and Rajasthan Public Trust Act. The learned Dy. Govt. Advocate finally urged the court that the judgments and decrees passed by both the lower courts are in compliance of the provisions of law and there is no possibility of interference in the concurrent findings given by both the courts below.

6. We have given thoughtful consideration to the rival contentions raised by the learned counsels and have perused the record available on file.

7. Indisputably the appellant claims tenancy rights of the disputed land on the basis of a sale deed executed by Ekling Ji Trust in favour of Vijay Singh Mehta (deceased), her husband. This is a vital issue before this court that whether the disputed land along with other lands could be transferred to Ekling Ji Trust by the then ex-ruler of Udaipur and thereafter, if at all, a trust has been created then whether the Trust has any right to dispose of the Trust property to some individuals on valuable consideration with or without prior approval of the competent authority and what will be the effect of such sale deeds? This issue is also to be examined that whether the appellant has any lawful claim on the disputed land on the basis of the registered sale deed dated 8.1.1970?

8. In this case, this is an accepted fact that Vijay Singh purchased 214 bighas 6 biswas land situated in village Bansliya (khasra No. 440 and 442) on 8.1.1970 from Ekling Ji Trust thereafter Vijay Singh Mehta transferred 89 bighas 5 biswas land out of 214 bighas 6 biswas land to

Shanti Lal son of Kanhaiya Lal Jain through a registered sale deed dated 15.7.1989. This court has also been given to understand that the transaction made in favour of Shanti Lal Jain by Vijay Singh Mehta has been honoured by the revenue officials by sanctioning mutation No. 15 village Bansliya on the basis of the registered sale deed dated 15.7.1989.

9. It is indeed an amazing fact that Vijay Singh who was the original buyer from the Ekling Ji Trust in whose favour the registered sale deed was executed for 214.06 bighas of land by one Manohar Singh son of Nahar Singh, power of attorney holder for the Trust on 8.1.1970, this purchased land could not find place in the land records in name of Vijay Singh but the subsequent sale deed Vijay Singh executed on 15.7.1989 in favour of Shanti Lal son of Kanhaiya Lal Jain was entered in the revenue record through mutation No. 5 of village Bansaliya.

10. Both the courts below have strongly relied upon the report of the Patwari, Ishwal (Tehsil Girwa) which was exhibited on 25.4.2001 by the trial court. The report of the Patwari and his statements are of great consequence in this case. The report manifestly reveals that the disputed land was mutated in name of Vijay Singh in the year 1989 but since the disputed land was acquired under ceiling proceedings therefore, it was entered as siwai chak and out of this land, 45 bighas was allotted to nine persons. The report also reads that the disputed government land was encroached by many persons against whom proceedings under section 91 of the Rajasthan Land Revenue Act were initiated. The report of the Patwari explicitly makes it clear that the disputed land is not in possession of Mrs. Shanti Mehta as 45 bighas of the land has been allotted and the rest of the government land is under trespass. In this way, the appellant could not bring a suit for declaration of tenancy rights and perpetual injunction as she was not in possession of the disputed land when she filed the suit before the trial court in the year 1999. We concur with the congruent inference of the courts below.

11. This is a also significant issue in this case that the disputed land was bought from the Ekling Ji Trust, Udaipur on 8.1.1970 but the Trust

has not been impleaded as a party in this case. Even as on today as per Patwari's report 3.3900 hectares of land is entered in name of Ekling Ji Trust in village Bansaliya. Had the Ekling Ji Trust been impleaded as a party, vital information pertaining to the acquisition of the disputed land as ceiling surplus, the impugned sale and possession on the disputed land could have been brought on record.

12. As discussed hereinabove, in considered opinion of this court, the appellant does not deserve any relief in this appeal as the disputed land, being the ceiling surplus land, has been allotted to nine persons and the rest is under encroachment. The appellant chose not to assail the allotment orders and also tolerated the trespassers for a long period. We are in full conformity with the concurrent findings of the courts below. There is no legal or factual infirmity in the impugned judgments and decrees. Therefore, the second appeal filed by the appellant is dismissed being devoid of any merit. The judgment and decree passed by Sub-Divisional Officer, Girwa (Udaipur) on 16.10.2002 and by Settlement Officer-cum-Revenue Appellate Authority, Udaipur on 14.7.2003 are upheld.

13. In the process of adjudication of this second appeal, it comes to the knowledge of this court that the land bought by Vijay Singh Mehta on 8.1.1970 was part of the land involved in ceiling proceedings initiated against the ex-ruler of Udaipur. And the disputed land was also acquired in ceiling proceedings by Sub-Divisional Officer, Girwa on 28.6.1976. The Sub-Divisional Officer allotted 45 bighas of land out of the acquired land to nine persons and the rest was entered as *siwai chak*.

14. We are aware that ceiling laws relating to agricultural holdings were legislated as a measure of land reforms through out the country. These legislations were vital part of our historical national agenda after independence. The Union Government also insulated these land reforms laws from judicial scrutiny and put them in IX Schedule of the Constitution.

15. In this particular case, formation of a Public Trust (Ekling Ji Trust) in late sixties, transfer of big chunk of agricultural land to the Public Trust by the settler of the Trust and thereafter alienation of 214 bighas 6 biswas land to Vijay Singh by some power of attorney holder of the trust on 8.1.1970 in village Bansaliya are significant chronological occurrences. The Sub-Divisional Officer acquired the same land on 28.6.1976 as ceiling surplus. In backdrop of these stark facts this court is of the view that the plaint filed by the plaintiff hides more and reveals inadequately. There seems deliberate concealment of vital information in this case. We believe that clouds surrounding the plain facts relating to the disputed land should disappear now in larger interest of justice as has been said that **the sunlight is the best disinfectant**. Therefore, this court finds it appropriate to order an independent enquiry for making the relevant facts transparent. The matter shall be enquired by the Divisional Commissioner/ Additional Divisional Commissioner, Udaipur within three months on the following terms of reference:-

- (i) Who was the settler of the Ekling Ji Trust and who applied before the competent authority for registration of the trust? How much land the family of the settlers had in land records at the time of application for registration of the trust?
- (ii) When the application for registration of the Ekling Ji Trust was filed and when was the certificate of registration issued by the concerned authority?
- (iii) Whether the land situated in Bansaliya village was shown as trust property by the settlers of the trust? What were the details of other agricultural lands transferred to the trust by the settlers?
- (iv) Transactions of alienation of land by the trust after registration are to be examined in detail.
- (v) Whether competent sanction under section 31 of the Rajasthan Public Trust Act or any other law in force has been obtained prior to the

execution of sale deeds? Whether the land has been sold by public auction or there is any mandate of the trust for such alienation?

(vi) Whether the settler of the trust was facing ceiling proceedings before the authorized officer? Whether the formation of a trust and transferring agricultural holdings to the trust and further sale by the trust through power of attorney holder after a brief span was done to frustrate the provisions of ceiling laws or any other provisions of law in force?

(vii) Whether mutation No. 15 of village Bansaliya sanctioned in favour of Shanti Lal and subsequent entries in the land records are as per law?

(viii) Whether there is culpability or violation of legal provisions while making these transactions relating the land involved? If, yes, the responsible persons be brought to book and statutory action be initiated at the competent level.

16. The enquiry report be put up before this Bench through the Registrar in the stipulated period. A copy of the judgment may also be sent to Commissioner, Devasthan, Udaipur to enquire the issue of transfers of land by the Ekling Ji Trust in light of the provisions of section 31 of the Rajasthan Public Trust Act, 1959. The Registrar is further directed to send a copy of this judgment to learned Divisional Commissioner, Udaipur by a demi-official cover for necessary compliance of the judgment.

Pronounced.

(Priyavrat Pandya)
Member

(Bajrang Lal Sharma)
Member