

IN THE BOARD OF REVENUE FOR RAJASTAHN AJMER

Appeal/TA/6948/2012/Sriganganagar.

1. Jasveer Kaur wife of Late Gurbhay Singh
2. Jasvinder Singh son of late Gurbhay Singh
3. Sukhvinder Singh son of Gurbhay Singh

All by caste Jatsikh residents of Chak 13 S.P.M. Tehsil Sadulsahar
Distt. Sriganganagar.

...Appellants.

Versus

1. Sukhpal Kaur daughter of Sita Singh wife of Amarjeet Singh caste
Jatsikh resident of Village Sangatpura (8 H.B.) Tehsil & Distt.
Sriganganagar.
2. Jasveer Kaur daughter of Sita Singh wife of Mala Singh caste
Jatsikh resident of Village Sangatpura (8 H.B.) Tehsil & Distt.
Sriganganagar.
3. Gurnam Singh son of late Sita Singh
4. Harjinder Singh son of Gurnam Singh
5. Kulvinder Singh son of Gurnam Singh
6. Gurmeet Kaur wife of Bangad Singh
7. Harjeet Singh son of Mehar Singh
8. Sharwan Singh son of Mehar Singh
All by caste Jatsikh residents of Chak 10 L.N.P. Tehsil & Distt.
Sriganganagar.
9. State of Rajasthan.

...Respondents.

D.B.

Shri Bajrang Lal Sharma, Member
Shri B.L. Naval, Member

Present:-

Shri Vijay Soni, counsel for the appellants.

Shri Bhoop Singh, counsel for the respondents.

Date:.....

J U D G M E N T

This second appeal has been filed by the appellants under section 225 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as 'the Act') being dissatisfied by the judgment passed by the Revenue Appellate Authority, Sriganganagar on 9.8.2012 in appeal No. 81/2012.

2. The brief facts of the case are that the respondents No. 1 and 2 filed a regular suit under section 88, 53, 183 and 188 of the Act

against the appellants and respondents No. 3 to 9 in the court of Assistant Collector-cum-Sub-Divisional Officer, Sriganaganagar. During the adjudication of the suit, the petitioners/ defendants filed an application under order 7 Rule 11 of the Civil Procedure Code before the trial court for rejecting the suit. The trial court accepted the application filed by the appellants on 25.7.2012. The respondents No. 1 and 2 filed an appeal before the Revenue Appellate Authority, Sriganaganagar who accepted the appeal on 9.8.2012 and quashed the order passed by the trial court dated 25.7.2012. This second appeal has arisen out of the Appellate Court judgment dated 9.8.2012.

3. Heard the learned counsels of the parties on admission of the appeal.

4. The learned advocate for the appellants contended that the disputed land belonged to one Shri Surjan Singh. After the demise of the tenant Shri Surjan Singh, the disputed land was inherited by his only son Shri Sita Singh. Shri Sita Singh had two sons namely - Shri Gurnam Singh and Gurbhay Singh. The disputed land was partitioned by Shri Sita Singh, Gurnam Singh and Gurbhay Singh in the lifetime of Shri Sita Singh and a registered document was executed to this effect on 2.8.1999. He further argued that the disputed land is indisputably the ancestral land wherein the daughters of late Shri Sita Singh do not have any right title. Since there is no cause of action in this suit and the suit is barred by law, the trial court rightly accepted the application under Order 7 Rule 11 of the Civil Procedure Code. The learned advocate argued that the Appellate Court has misused its jurisdiction and accepted the appeal whereas the arguments were heard only on the stay application. He submitted that para 6 (page 6) of the impugned judgment explicitly mentions that the arguments were heard only on the stay application and not on the merits of the appeal. He urged the court that the amendment in Hindu Succession Act, 1956 was brought on 9.9.2005 wherein the daughters have been given entitlement in ancestral property. Since the disputed land was ancestral property and the daughters had no share prior to 9.9.2005 (the reference date of amendment inserted in Hindu Succession Act).

The learned advocate termed the impugned judgment as illegal and capricious which has been passed in contravention of the established legal provisions.

5. The learned advocate for the respondents contended that the judgment of the Appellate Court is a reasoned order and does not warrant any interference of this court. He argued that the trial court erroneously rejected the plaint on an application filed under Order 7 Rule 11 of the Civil Procedure Code. The suit filed by the respondent No. 1 and 2 was maintainable in the trial court and the relief sought could have been given by the trial court only. He also submitted that the land in dispute belonged to late Shri Sita Singh and the respondents No. 1 and 2 are his real daughters. Therefore, they are legally entitled for their share in inheritance under the Hindu Succession Act. Therefore, the suit was maintainable in the trial court and it clearly disclosed the cause of action also. The learned advocate urged the court to dismiss the second appeal in limine, as it is devoid of any merit.

6. We have given serious consideration to the rival contentions raised by the learned counsels of the parties. Also perused the record available on file.

7. This is an undisputed fact, in this case, that the respondent No. 1 and 2/ plaintiffs are the daughters of late Shri Sita Sing. Shri Sita Singh died on 7.4.2011. After Shri Sita Singh's death, the respondents No. 1 and 2/ plaintiffs filed an regular suit under section 88, 53, 183 and 188 of the Act against the appellants and other respondents. The appellants filed an application under Order 7 Rule 11 of the Civil Procedure Code before the trial court which was accepted and the plaint was rejected on the ground that the disputed land is ancestral land.

8. This court has carefully perused the order of the trial court dated 25.7.2012. The operative para of the order is as under:-

“हमने दोनों पक्षों के सुयोग्य अभिभाषकों की बहस पर मनन किया, प्रतिवादीगण के सुयोग्य अभिभाषकगण द्वारा प्रस्तुत नजीरों का ध्यानपूर्वक

अध्ययन किया एवं रेकार्ड का अवलोकन किया गया। सीतासिंह की भूमि पैतृक होना साबित नहीं है इसलिए वादियों का हक व हिस्सा नहीं बनता है। सम्पत्ति पैतृक साबित होने वादियों का वाद पत्र काबिले खारिजी है। अतः प्रार्थना पत्र 7 रूल्स 11 सीपीसी स्वीकार किया जाता है और वादियागण द्वारा प्रस्तुत वाद पत्र इसी स्टेज पर खारिज किया जाता है। ” (emphasis supplied)

9. A bare perusal of the order manifests that it gives a contradictory finding. The trial court has succinctly rejected the plaint in 4-5 lines without assigning any reason. The trial court utterly failed to infer that how the plaint could be rejected under Order 7 Rule 11 of the Civil Procedure Code. Whether the disputed land is ancestral or self acquired, the suit pertaining to declaration, partition and perpetual injunction on the agricultural land shall be tried in the court of Assistant Collector of local jurisdiction. This court has perused the plaint of the suit. The plaint distinctly discloses the cause of action. Prima facie the respondents No. 1 and 2 who are the daughters of late Shri Sita Singh inherit their share in their father's property. This is very strange that on what grounds the trial court rejected the plaint in the instant case. The ingredients of Order 7 Rule 11 of the Civil Procedure Code which are considered while rejecting the plaint are as under:-

11. Rejection of plaint-The plaint shall be rejected in the following cases:-

- (a) Where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;
- © Where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the court, failed to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) Where it is not filed in duplicate;

(f) Where the plaintiff fails to comply with the provisions of rule 9]"

10. The bare perusal of the above provision makes it unequivocally clear that only on the grounds mentioned hereinabove a plaint can be rejected. In this case there is explicit disclosure of cause of action. The suit is not barred by any law in force. For declaration and partition of agricultural holding the competent court was the trial court and under no circumstances, the plaint of the instant suit could have been rejected.

11. Hon'ble Apex Court of India has explicitly observed in *Popat Kotecha Property Vs. State Bank of India Staff Association* (2005 (7) SCC 517) as under:-

19. There cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.

20. Keeping in view of the aforesaid principles the reliefs sought for in the suit as quoted supra have to be considered. The real object of Order 7 Rule 11 of the code is to keep out of courts irresponsible law suits. Therefore, Order 10 of the Code is a tool in the hands of the courts by resorting to which and by searching examination of the party in case the court is prima facie of the view that the suit is an abuse of the process of the court in the sense that it

is a bogus and irresponsible litigation, the jurisdiction under Order 7 Rule 11 of the Code can be exercised.

12. In light of the observations made hereinabove, we have perused the plaint filed by the plaintiffs in the trial court. The bare perusal of the plaint reveals that the relief sought in the plaint is not specifically barred by any law and it clearly discloses the cause of action. The court of competent jurisdiction to provide the relief is the trial court. In considered opinion of this court the trial court has misused its jurisdiction and committed factual and legal errors while rejecting the plaint. There was no ground to reject the plaint under Order 7 Rule 11 of the Code. The impugned order has been passed in a very casual and careless manner by the learned trial court.

13. We have also perused the impugned judgment of the learned Appellate Court. In para 6 of page 6 of the impugned judgment the Appellate Court has mentioned that arguments on stay application have been heard whereas it has finally decided the appeal on merits. There was no ground to remand the case for decision on the application under Order 7 Rule 11 of the Civil Procedure Code. There was adequate material before the learned appellate court to conclusively decide the appeal.

14. As discussed above this second appeal is partly accepted, the impugned order of the learned appellate court is quashed and set aside, the order of the learned trial court dated 25.7.2012 is also quashed. The application filed by the appellant/ defendants under Order 7 Rule 11 of the Civil Procedure Code is rejected. The trial court is directed to adjudicate upon the suit and proceed as per law for deciding the case on merits.

Pronounced.

(B.L. Naval)
Member

(Bajrang Lal Sharma)
Member