HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Spl. Appl. Writ No. 547/2015

Prem Bai and Ors

----Appellants

Versus

Smt Jatan Bai and Ors

----Respondents

For Appellant(s)	:	Mr. Chaitanya Gahlot with Ms. Vandana Prajapati, Mr. Bhawani Singh & Mr. Amit Kumar Purohit
For Respondent(s)	:	Mr. Sandeep Shah Sr. Adv. assisted by Mr. Abhimanyu Singh Rathore

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MS. JUSTICE REKHA BORANA

Order

02/01/2025

1. The present special appeal has been filed against the judgment dated 04.05.2015 passed by learned Single Judge in S.B. Civil Writ Petition No.417/1996 whereby the writ petition as preferred by the petitioners against order dated 11.01.1996 passed by the Board of Revenue, was dismissed.

2. A brief history of the matter is as under:

i. A suit for permanent injunction was filed under Section 188 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as, 'the Act of 1955') by one Fateh Lal against his sons and one Smt. Chunni Bai. The said suit was dismissed on 25.10.1960 because of non-impleadment of Lehar Bai, his wife in whose favour Fateh Lal had already executed a document dated 26.12.1958 and had handed over the land

in question to her for maintenance as she was living separately from her husband Fateh Lal.

ii. The order dated 25.10.1960 was challenged by Fateh Lal before the Revenue Appellate Authority, Udaipur (hereinafter referred to as 'RAA') who vide order dated 06.02.1962 remanded the matter to Sub-Divisional Officer (hereinafter referred to as 'SDO') with a direction to implead Lehar Bai as a party respondent to the suit. The order of remand was affirmed by the Board of Revenue (hereinafter referred to as 'BOR').

iii. In pursuance to the remand order, the SDO, vide judgment and decree dated 29.04.1967, decreed the suit in favour of Fateh Lal. The appeal against the said decree also stood dismissed.

iv. However, the BOR set aside the orders passed by the SDO as well as the RAA vide its judgment dated 03.01.1968 and again remanded the matter to SDO with a direction to decide afresh.

v. Meanwhile, Fateh Lal, vide sale-deed dated 24.06.1967, sold out the land in question to Sohan Lal son of Magan Lal who at that point of time, was not aware of pendency of any suit qua the land in question.

vi. When Sohan Lal subsequently came to know about pendency of the suit, he filed an application under Order 22 Rule 10, CPC on 21.08.1969/18.11.1969 for being impleaded in the suit. The next date fixed in the matter was 26.02.1970. Before the said application could be decided, an application for preponing the date in the matter was filed by Fateh Lal

on 22.01.1970 with a submission that a compromise has been arrived into between the parties and hence the suit be decreed in light of the said compromise.

vii. On 29.01.1970, the suit was decreed in terms of the compromise and as per the decree, the property was to remain with Lehar Bai and income as received by the receiver during the said period was directed to be handed over to Lehar Bai. It is relevant to note here that during this period, the property in question was in possession of a receiver.

viii. On coming to know about the above compromise decree, Sohan Lal filed a suit on 20.04.1971 under Sections 88 & 183 of the Act of 1955 for declaration and possession with a submission that the compromise decree dated 29.01.1970 was a collusive one obtained fraudulently by Fateh Lal and Lehar Bai and the same deserves to be declared void qua him and the possession of the land deserves to be handed over to him.

ix. The suit as filed by Sohan Lal was decreed in his favour vide judgment and decree dated 07.04.1980 and the appeal preferred against the said decree also stood dismissed on 18.05.1985. The second appeal preferred by legal representatives of Fateh Lal and Lehar Bai also stood dismissed.

x. It is relevant to note here that at the first instance, there was a conflict of decision of two members of the Board of Revenue and hence, the same was referred to a third member. The third member, vide order dated 11.01.1996,

agreed with the view of member Mr. Mathew and affirmed the orders of both the two Courts below.

xi. It is against the said order dated 11.01.1996 that the writ petition was preferred by the petitioners i.e. legal representatives of Fateh Lal and Lehar Bai which stood dismissed vide the judgment impugned dated 04.05.2015.

3. Before the learned Single Judge the following three grounds were raised on behalf of the petitioners:

i. The suit as preferred by Sohan Lal was not maintainable before the Revenue Court as it was specifically for a relief of cancellation of a decree and the said relief could have been granted only by a Civil Court.

ii. The sale-deed dated 26.04.1967 executed by Fateh Lal in favour of Sohan Lal was itself void being hit by the provisions of Section 52 of the Transfer of Property Act, 1882 (hereinafter referred to as, 'the Act of 1882').

iii. Sohan Lal was bound by the compromise decree in terms of Section 52 of the Act of 1882 as he himself had moved an application for impleadment in the suit as preferred by Fateh Lal. He being a party to the suit was bound by the decree passed in the said suit.

4. The learned Single Judge held all the three grounds as raised by the petitioners to be not tenable, with an elaborate discussion on all the said three issues.

5. After hearing both the counsels and perusing the record, this Court is in complete agreement with the view taken by the learned Single Judge on all the issues for the following reasons:

i. As is clear on record and even observed by the learned Single Judge, the reliefs as prayed for in the suit in question were ***firstly,*** for possession of the property in question ***secondly,*** for declaration of the plaintiff to be the *khatedar* of the land in question and ***thirdly,*** to hold the compromise deed to be of no effect qua the plaintiff. The cancellation of compromise decree dated 29.01.1970 was nowhere prayed for. Meaning thereby, a prayer for declaration of the compromise decree to be of no effect qua the plaintiff was made but no cancellation of the same was prayed for.

ii. As is settled position of law, it is the main relief which decides the maintainability of the suit before a Court. So far as the present matter is concerned, evidently the main relief is for possession of the property in question. The other reliefs are ancillary reliefs and as per Explanation to Section 207 of the Act of 1955, if the main relief can be granted by the Revenue Court, it is immaterial that the relief asked for from the Civil Court is greater than, or addition to, or is not identical with, that which the Revenue Court could have granted. Meaning thereby, if the Revenue Court is competent to grant the main relief, it would be competent to grant the ancillary reliefs too.

iii. Further, as observed above, it is only a declaration which has been prayed for in the present suit and as is settled position of law and as relied upon by the learned Single Judge on the ratio laid down in the cases of ***Rukmani vs. Bhola & Ors.; 2012(4) RLW 3050 (Raj.)*** and ***Vijay Singh & Anr. vs. Buddha & Ors.; 2012(4) RLW 2932 (Raj.)***, once a

declaration under Section 88 of the Act of 1955 is granted, prayer for cancellation is not even essential as the document would automatically be rendered void and ineffective.

iv. Furthermore, in terms of Section 207 of the Act of 1955, all suits and applications of nature specified in the Third Schedule are to be heard and determined by a Revenue Court only. Item No.6 of Third Schedule to the Act of 1955 specifically provides for suits relating to the declaration and Item No.23A provides for suits for recovery of possession. Meaning thereby all the reliefs prayed for in the suit definitely lie within the jurisdiction of the Revenue Court.

v. It is further relevant to note that the defendants, at the very inception i.e. before the S.D.O., did not even press the ground of maintainability of the suit before the Revenue Court. The same was however, emphasized before the Revenue Appellate Authority and the Board of Revenue but the said two Courts concurrently held that the suit was maintainable before the Revenue Court.

6. So far as the issue regarding *lis pendens* is concerned, as the learned Single Judge observed and rightly so, the application for impleadment as filed by Sohan Lal was not even decided and the suit was decreed on basis of compromise even before decision of the said application. It cannot therefore be held that Sohan Lal was a party to the suit and would be bound by the compromise decree as passed in the said suit.

7. Regarding the applicability of the principle of *lis pendens* qua the sale deed dated 26.04.1967, as observed by the learned Single Judge, for applicability of Section 52 of the Act of 1882, it is

essential that the right to immovable property is directly and specifically in question and the same must affect the rights of any other party thereto under any decree or order which may be made therein. In the present case, the suit as filed by Fateh Lal was a simplicitor suit for injunction and there was no issue pertaining to the ownership or right to the property in question. Even vide decree dated 29.01.1970, no right of any party was decided and the suit was simplicitor permitted to be withdrawn by Fateh Lal and the possession was agreed to be kept with Lehar Bai. Further, there was no counter-claim by Lehar Bai in the said suit pertaining to her ownership. Therefore, a simplicitor withdrawal of the suit without declaration of any right of ownership qua the immovable property cannot be said to be hit by the provisions of Section 52 of the Act of 1882.

8. Further, all said and done, as been concurrently held by all the Courts below, the compromise decree dated 29.01.1970 was obtained by fraud and without any notice to Sohan Lal. Therefore, in view of the said particular fact also, Section 52 of the Act of 1882 would not apply in the present matter.

9. In view of the above analysis, this Court does not find any ground to interfere with the impugned judgment dated 04.05.2015 and the present appeal is hence, dismissed.

(REKHA BORANA),J **(PUSHPENDRA SINGH BHATI),J**

53-T.Singh/-