[2024] 2 S.C.R. 650 : 2024 INSC 121

The Tehsildar, Urban Improvement Trust and Anr.
v.
Ganga Bai Menariya (Dead) Through Lrs. and Others

(Civil Appeal No. 722 of 2012)

20 February 2024

[Vikram Nath and Rajesh Bindal,* JJ.]

Issue for Consideration

Civil Appeal No. 722 of 2012

The respondents-plaintiffs claimed that they had been granted patta (lease) of the land by Gram Panchayat in the year 1959 and on the basis thereof, they were continuing in possession. However, the land was still being shown in the ownership of the Government. A civil suit was filed by the respondents for permanent injunction and for ownership and possession of the suit land. The suit was filed as a notice was issued by the appellants u/s. 92A of the Rajasthan Urban Improvement Act, 1959. Whether a suit simpliciter for injunction was maintainable as the title of the property of the plaintiff/respondent was disputed by the appellants/defendants.

C.A. Nos.8977/2012, 468/2013, 524/2013, 467/2013 and Civil Appeal @ S.L.P.(C)No.25200/2013

In the aforesaid bunch of appeals and the Special Leave Petition, the High Court had disposed of all the appeals, relying upon its earlier judgment dated 14.07.2009 in S.B. Civil Second Appeal No.6/2008 titled as The Tehsildar, Urban Improvement Trust and another v. Late Smt. Ganga Bai Menariya through legal representatives. The aforesaid appeal decided by the High Court is subject matter of consideration before this Court in C.A. No.722 of 2012.

Headnotes

Rajasthan Urban Improvement Act, 1959 – In C.A. No.722 of 2012, the trial Court found that the respondents-plaintiffs were found to be in illegal possession of the land and were not entitled to the injunction prayed for – It was specifically noticed that the suit had not been filed for declaration as it was merely for injunction and the encroachers on the land were not found entitled to the relief of injunction – First Appellate Court reversed the findings of the trial Court and the suit was

* Author

decreed – The High Court upheld the judgment and decree of the First Appellate Court – Propriety:

Held: The fact remains that no revenue record was produced by the respondents-plaintiffs to show that the land in question was ever mutated in their favour – In the evidence led, they were found to be in possession as even the case set up by the appellants is that they issued notice to the respondents-plaintiffs u/s. 92A of the 1959 Act – The respondents-plaintiffs while filing the civil suit did not implead the Gram Panchayat as party – In such circumstances, the respondents-plaintiffs were required to prove the document as the competence of the Gram Panchayat to lease out the land itself was in question – In the revenue record produced on record by the appellants, it is shown that the land in question was shown in ownership of Government – In the light of the aforesaid stand and the evidence led on record by the appellants-defendants, it was incumbent on the respondents to have proved their title on the land, which they failed to establish – Further a suit simpliciter for injunction may not be maintainable as the title of the property of the plaintiff/respondent was disputed by the appellants/defendants – In such a situation it was required for the respondent/plaintiff to prove the title of the property while praying for injunction – In opinion of this Court, the judgment of the High Court suffers from patent illegality – Consequently, the judgment and decree of the First Appellate Court as well as the High Court are set aside and that of the Trial Court is restored. [Paras 20,21,21.1,21.2]

Rajasthan Panchayat (General) Rules, 1961 – r. 266 – In C.A. Nos.8977/2012, 468/2013, 524/2013, 467/2013 and Civil Appeal @ S.L.P.(C) No.25200/2013, civil suits were filed claiming that the land in question was leased out to the plaintiffs by the Gram Panchayat – In support of the plea, the plaintiff/ respondent placed on record the document dated 27.08.1985, the lease deed – However, the same was not proved – The trial Court came to the conclusion that no case was made out by the plaintiff/respondent – Hence, the suit for permanent injunction was dismissed – First Appellate Court passed the decree of permanent injunction – Same was upheld by the High Court – Propriety:

Held: As recorded by the Trial Court, the respondents/plaintiffs had not been able to prove the document on the basis of which they were claiming a right of possession of the property in question – Even if the aforesaid document is considered, the sale was clearly violative of Rule 266 of the 1961 Rules, under which aforesaid alleged lease

deed/sale deed has been issued in favour of the respondents/plaintiffs – In terms of Rule 266 of the 1961 Rules, only in certain specified situation, the land could be transferred by way of sale on private negotiation, namely, where any person has a plausible claim of title to the land and auction may not fetch reasonable price or it may not be the convenient mode for disposal of land or where such a course is regarded by the Panchayat necessary for advancement of Scheduled Castes and Scheduled Tribes or other Backward Classes – Another situation envisaged is where the person is in possession of land for more than 20 years but less than 42 years – Nothing was produced on record to show that the due process required for leasing out/sale of the land in favour of the respondents/plaintiffs by private negotiation was followed – Gram Panchayat from whom the land was taken was not impleaded as party to admit or deny the allegations made by the respondents/plaintiffs in the plaint – The impugned judgments of the High Court as well as the First Appellate Court are set aside and that of the trial Court is restored – Resultantly, the suits are dismissed. [Paras 29, 30]

Case Law Cited

Union of India v. Brahim Uddin and another, [2012] 8 SCR 35 **: (2012) 8 SCC 148;** *Anathula Sudhakar v. P. Buchi Reddy (Dead) by Lrs. and ors.,* [2008] 5 SCR 331 **: (2008) 4 SCC 594 – referred to.**

List of Acts

Rajasthan Urban Improvement Act, 1959; Indian Evidence Act, 1872; Rajasthan Panchayat (General) Rules, 1961.

List of Keywords

Lease of land by Gram Panchayat; Suit for permanent injunction; Title of the property; Proving the title of the property while praying for injunction.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 722 of 2012

From the Judgment and Order dated 14.07.2009 of the High Court of Judicature for Rajasthan at Jodhpur in SBCSA No.6 of 2009

With

Civil Appeal Nos. 8977 of 2012, 468, 524, 467 of 2013 And 2687 of 2024

The Tehsildar, Urban Improvement Trust And Anr. v. Ganga Bai Menariya (Dead) Through Lrs. And Others

Appearances for Parties

S. Niranjan Reddy, C. S. Mohan Rao, Sr. Advs., Ms. Aruna Gupta, Ramesh Allanki, Lokesh Kumar Sharma, Syed Ahmad Naqvi, Ms. Palak, Advs. for the Appellants.

V.K.Shukla, Sr. Adv., Rishabh Sancheti, Ms. Padma Priya, Anchit Bhandari, Suyash Jain, Chirag Kalani, Karan Bhootra, Garvit Sharma, K. Paari Vendhan, T. Mahipal, Vivek Gupta, Mrinmay Bhattmewara, Manish Mogra, Ankit Verma, Dashrath Singh, Gp. Capt. Karan Singh Bhati, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Rajesh Bindal, J.

1. Leave granted in S.L.P.(C)No.25200 of 2013.

2. This order will dispose of a bunch of appeals as common issues are involved.

Civil Appeal No. 722 of 2012

3. In the case in hand, a Civil Suit[1] was filed by the respondents for permanent injunction and for ownership and possession of the suit land. The Trial Court[2] dismissed the suit, however, First Appellate Court[3] accepted the appeal and decreed the suit restraining the defendants therein from interfering in the possession of the plaintiffs in the suit land. The appeal preferred before the High Court[4] by the present appellants was dismissed. It is the aforesaid judgment[5], which is impugned before this Court.

4. The respondents filed the suit on 10.05.1999 for permanent injunction against the appellants and also claimed ownership and possession of the suit land, situated at Mauja Madri, Savina Road, measuring 35x38 i.e., 1,330 square yards on which a room measuring 20x30 feet had been constructed. It was claimed that the suit land was

1 Civil Sut Case No. 153/99ED

2 Civil Judge (K-Kha) City (South) Udaipur

3 Additional District Judge, Udaipur

4 Rajasthan High Court at Jodhpur

5 Judgement dated 14.07.2009 in Civil Second Appeal No. 06 of 2009

purchased by the respondents-plaintiffs from Panchayat Titardi on 13.12.1959 and a boundary wall was constructed in the year 1960. The suit was filed as a notice was issued by the appellants under Section 92A of the 1959 Act[6].

5. The stand taken by the appellants in the written statement was that the land in question is a Government land (Bilanam Sarkar) earmarked for grazing cattles (gochar land), which was forming part of Khasra No. 1163 (old Khasra No. 838) in village Mauza Madri Menaria, Tehsil Girva. The Gram Panchayat, Titardi was not competent to grant lease in respect to the aforesaid land, especially when it was ear-marked for grazing cattles. Notice was issued on receiving information that the respondents-plaintiffs had encroached upon the land. It was also pleaded that Gram Panchayat, Titardi was a necessary party but had not been impleaded. In the revenue record, the land was still shown to be owned by the Government. In case the claim of respondents-plaintiffs was that it was given on lease to them, there was no mutation entered on the basis thereof.

6. The Trial Court framed six issues as extracted below:

> "1. Whether the land mentioned in para 1 of the suit is the land and house in the ownership and possession of the plaintiff? Plaintiff
>
> 2. Whether the defendants forcibly wanted to demolish the plaintiff's house? Plaintiff
>
> 3. Whether the plaintiff has tried to unauthorisedly acquire the land which is in the ownership of Nagar Vikas Pranyas? Defendant
>
> 4. Whether in absence of pleading the Gram Panchayat Titardi as necessary party, the suit of the plaintiff is not maintainable? Defendant
>
> 5. Whether the Gram Panchayat Titardi was not authorized to issue the patta in favour of the plaintiff, the patta issued in favour of plaintiff is forged? Defendant

6 Rajasthan Urban Improvement Act, 1959

6. Whether without declaration suit for injunction filed by the plaintiff is not maintainable? Defendant"

7. Issues No. 1 to 3 and 5, being inter-related, were decided together. The respondents-plaintiffs had not been able to make out the pleaded case on the basis of evidence led by them and the same were decided against them. Issue No. 4 was decided against the plaintiffs and in favour of the defendants and so was the finding recorded on issue No. 6. Finally, the Trial Court found that the respondents-plaintiffs were found to be in illegal possession of the land and were not entitled to the injunction prayed for. It was specifically noticed that the suit had not been filed for declaration as it was merely for injunction and the encroachers on the land were not found entitled to the relief of injunction.

8. In appeal before the First Appellate Court by the respondents, the findings recorded by the Trial Court were reversed and the suit was decreed. Even the issue regarding non-impleadment of Gram Panchayat, Titardi as necessary party in the suit was reversed. So was the position with regard to maintainability of the suit simpliciter for injunction without praying for relief of declaration. This is despite the fact that the respondents-plaintiffs had claimed their title or legality of possession on the land from the Gram Panchayat, which was not impleaded.

9. The High Court upheld the judgment and decree of the First Appellate Court in an appeal filed by the present appellants. The High Court noticed that allotment of land in favour of the respondents-plaintiffs in the year 1959 was proved with the evidence of two witnesses, who were members of the Gram Panchayat at the relevant time. The High Court also recorded that patta (lease) is in existence, which was granted by a statutory body, Gram Panchayat, Titardi. The respondents-plaintiffs were entitled to decree of permanent injunction. The suit simpliciter for injunction was held to be maintainable without seeking declaration. The High Court found that no substantial question of law was involved in the second appeal.

C.A. Nos.8977/2012, 468/2013, 524/2013, 467/2013 and Civil Appeal @ S.L.P.(C)No.25200/2013

10. In the aforesaid bunch of appeals and the Special Leave Petition, in which leave was granted, the High Court had disposed of all the appeals, merely relying upon its earlier judgment dated 14.07.2009

in S.B. Civil Second Appeal No.6/2008 titled as ***The Tehsildar, Urban Improvement Trust and another v. Late Smt. Ganga Bai Menariya through legal representatives.*** The aforesaid appeal decided by the High Court is subject matter of consideration before this Court in C.A. No.722 of 2012, which is being dealt with in the present judgment.

ARGUMENTS

Civil Appeal No. 722 of 2012

11. Learned counsel for the appellants submitted that the findings recorded by the First Appellate Court, as upheld by the High Court, are erroneous. In fact, the judgment and decree of the Trial Court was passed while properly appreciating the legal position and the evidence produced on record. It is a case in which the respondents-plaintiffs claimed that they had been granted patta (lease) of the land by Gram Panchayat, Titardi in the year 1959 and on the basis thereof, they were continuing in possession. However, the fact remains that the land was still being shown in the ownership of the Government. It was ear-marked for grazing cattles (pasture land). The Gram Panchayat did not have any authority to lease out the same. It cannot even change user of the land. Simpliciter a suit for permanent injunction was filed without seeking a declaration of the rights vested in the respondents-plaintiffs on the basis of documents produced by them on record, which was not maintainable. Gram Panchayat, Titardi from which the respondents-plaintiffs were claiming rights in the property, was not even impleaded as party. The patta (lease) in favour of the respondents-plaintiffs was sought to be proved merely by producing two witnesses, who were claimed to be the members of the Panchayat at the relevant time but not signatory to the document. The record from Gram Panchayat was not summoned. The High Court had failed to frame any substantial question of law.

C.A. Nos.8977/2012, 468/2013, 524/2013, 467/2013 and Civil Appeal @ S.L.P.(C)No.25200/2013

12. Additional argument raised in the bunch of other appeals was that the Gram Panchayat had granted patta (lease) in favour of the respondents therein in contravention of Rule 266 of the 1961 Rules[7]

7 The Rajasthan Panchayat (General) Rules, 1961

in terms of which the panchayat land could be sold by way of private negotiation only in case it was not possible to fetch reasonable price if the land was put to auction. Specific reasons were required to be recorded. The respondents-plaintiffs being in illegal possession of the land, notices were rightly issued for their eviction. It was after following the due process of law, which could not be challenged merely by filing a suit for injunction.

13. On the other hand, learned counsel for the respondents submitted that it was claimed that the respondents-plaintiffs had title of the property by way of lease executed by Gram Panchayat, Titardi on 13.12.1959. It is claimed by the appellants that chunk of land was transferred by District Collector vide order dated 15.4.1989 to the Urban Improvement Trust for extension of abadi. It was said to be Government bilanam. There was no reference of gochar land, as is sought to be claimed by the appellants. Notice was issued to the respondents more than 19 years after the land was transferred to Urban Improvement Trust. As the respondents wanted to protect their right in the land as also possession, the suit was filed merely for permanent injunction as they had title of the property on the basis of patta executed by Gram Panchayat in their favour. There was no need to file a suit for declaration. The patta (lease) executed by the Gram Panchayat was exhibited. It was issued by the Sarpanch in the presence of two witnesses. Both were examined as PW4 and PW5. The documents being more than 30 years old, there was presumption available under Section 90 of the 1872 Act[8]. There is no error in the judgment and decree passed by the First Appellate Court, as upheld by the High Court.

14. It was further argued that on 17.10.2012, the State Government introduced a Scheme, whereby land in possession of persons prior to the year 1965 was being regularised. In terms of that, 23.43 hectares of land in village Paneriyo Ki Madari was transferred by the appellants to Municipal Council, Udaipur vide letter dated 29.01.2013. NOC was also issued by Municipal Council, Udaipur on 04.04.2013 for issuance of patta under the State Grants Act, 1961 to the persons in possession of the land prior to 01.01.1965. Thus, in view of this subsequent developments, the appellants have nothing

8 Section 90 of the Indian Evidence Act, 1872

to do with the land in question. Number of pattas had already been issued in favour of occupants of the land. In fact, for part of the land in question, pattas have already been issued on 21.10.2012. The aforesaid Scheme i.e. known as '*Parshashan Shehron Ka Sang Abhiyan, 2012'.* It continued from time to time in the State till the year 2020-21.

15. It was further submitted that a clarification was issued by the State Government on 21.04.2022 regarding the Scheme of 2021 for issuance of free hold patta. As per the aforesaid clarification, the patta may be issued in favour of last purchaser in the absence of link document, who purchased land after 31.12.2018.

16. Heard leaned counsel for the parties and perused the relevant referred record.

DISCUSSION

Civil Appeal No. 722 of 2012

17. In the case in hand, the respondents claimed that they were given the land measuring 1330 square yards on lease by Gram Panchayat, Titardi on 13.12.1959. It is claimed that they were in possession of the land ever since then. The fact remains that no revenue record was produced by the respondents-plaintiffs to show that the land in question was ever mutated in their favour. In the evidence led, they were found to be in possession as even the case set up by the appellants is that they issued notice to the respondents-plaintiffs under Section 92A of the 1959 Act. To prove the lease in their favour, the respondents-plaintiffs had produced in evidence Ex.1, claimed to be lease deed dated 13.12.1959 executed by the Gram Panchayat in favour of late Ganga Bai widow of Jai Shankar Menaria. In the stand taken by the appellants, the land being reserved for grazing cattles could not possibly be leased out by the Gram Panchayat.

17.1. On one side, the plea sought to be taken by the respondents is that the document being more than 30 years old, there was presumption of truth in terms of Section 90 of the 1872 Act. This section provides that if the document is more than 30 years old and is being produced from proper custody, a presumption is available to the effect that signatures and every other part of such document, which purports to be in

the handwriting of any particular person, is in that person's handwriting and in case a document is executed or attested, the same was executed and attested by the persons by whom it purports to be executed and attested. This does not lead to a presumption that recitals therein are correct. (Reference can be made to the judgment of this Court in **Union of India v. Brahim Uddin and another**[9].

18. Nothing was referred to by learned counsel for the respondents from the record to show the reasons for producing copy of the document in Court and not summoning the record from the Gram Panchayat to prove execution of the alleged lease in their favour. The contents of the documents were required to be proved. Effort was made to prove the document by producing two witnesses. (PW4 and PW5 stated that the lease was granted in favour of the respondents). It was signed by the Sarpanch. There was no material on record to show that, except the oral statements of aforesaid two witnesses that at the relevant time, namely, in the year 1959, they were members of the Gram Panchayat otherwise the document Ex.1 (lease deed) placed on record by the respondents-plaintiffs as such does not contain their signatures. The document only contains signatures of some Sarpanch who had attested the same stating to be true copy. It was claimed that at the relevant time, Sarpanch was Kushal Singh, however before the evidence could be led, he expired and hence could not be produced in evidence. If the respondents-plaintiffs wished to prove the contents of the document in question, they could very well summon the record from the Gram Panchayat when a specific plea taken by the appellants was that the document was forged and the Gram Panchayat did not have competence to lease out the land.

19. The respondents-plaintiffs while filing the civil suit did not implead the Gram Panchayat as party. In such circumstances, the respondents-plaintiffs were required to prove the document as the competence of the Gram Panchayat to lease out the land itself was in question. The Gram Panchayat could have filed the written statement admitting or denying execution of the lease deed and place complete facts before the Court as per records.

9 [2012] 8 SCR 35 : (2012) 8 SCC 148

20. In the revenue record produced on record by the appellants, it is shown that the land in question was shown in ownership of Government (Bilanam Sarkar). Its new Khasra Number was 1163 and old Khasra Number is 838 in Mauza Madri Menaria, Tehsil Girva. As per jamabandi Ex. A-1, the land forming part of Khasra No. 838 was shown to be non-agricultural reserved for grazing cattles (shamlat deh).

21. In the light of the aforesaid stand and the evidence led on record by the appellants-defendants, it was incumbent on the respondents to have proved their title on the land, which they failed to establish. As per the stand of the appellants, the respondents were encroachers upon the land for which notice under Section 92A of the 1959 Act was issued to them. The same was replied to by the respondents stating therein that they have patta executed in their favour by the Gram Panchayat.

    21.1. Further a suit simpliciter for injunction may not be maintainable as the title of the property of the plaintiff/respondent was disputed by the appellants/defendants. In such a situation it was required for the respondent/plaintiff to prove the title of the property while praying for injunction. Reference can be made to the judgment of this Court in **Anathula Sudhakar v. P. Buchi Reddy (Dead) by Lrs. and ors.**[10]

    21.2. In view of aforesaid discussions, in our opinion, the judgment of the High Court suffers from patent illegality. Consequently, the judgment and decree of the First Appellate Court as well as the High Court are set aside and that of the Trial Court is restored. As a consequence, the suit filed by the respondents is dismissed.

C.A. Nos.8977/2012, 468/2013, 524/2013, 467/2013 and Civil Appeal @ S.L.P.(C)No.25200/2013

22. In the aforesaid bunch of appeals, Radheshyam son of Bhagwati Prasad and his family members, as detailed below filed five civil suits praying for permanent injunction:

10 [2008] 5 SCR 331 : (2008) 4 SCC 594

The Tehsildar, Urban Improvement Trust And Anr. v. Ganga Bai Menariya (Dead) Through Lrs. And Others

Case No. and Title in Supreme Court of India	Case No. & title in the Trial Court	Case No.& title in the lower Appellate Court
C.A. No.524/2013 Urban Improvement Trust v. Radhey Shyam Tripathi	Original Civil Suit No.60/2002-Radheshyam v. Secretary, Urban Improvement Trust	Civil Appeal No.01/2004 (72/03)-Radheshyam v. Secretary, Urban Improvement Trust
C.A. No.8977/ 2012 Nagar Vikas Pranyas v. Sumitra Devi	Original Civil Suit No.61/2002-Sumitra Devi v. Secretary, Nagar Vikas Pranyas	Civil Appeal No.03/2004 (75/03)-Sumitra Devi v. Secretary, Nagar Vikas Pranyas
C.A.No.467/2013 Urban Improvement Trust v. Vipin Kumar S/o Radhey Shyam Tripathi	Original Civil Suit No.78/2002-Vipin Kumar v. Secretary, Urban Improvement Trust	Civil Appeal No.02/2004 (74/03)-Vipin Kumar v. Secretary, Urban Improvement Trust
C.A.No.468 of 2013 U.I.T. Udaipur v. Sumitra Devi W/o Radhe Shyam Tripathi	Original Civil Suit No.60/2002-Sumitra Devi v. Secretary, Urban Improvement Trust	Civil Appeal No.04/2004 (76/03)-Sumitra Devi v. Secretary, Urban Improvement Trust
C.A. arising out of S.L.P.(C) No.25200/2013 Urban Improvement Trust v. Radhey Shyam Tripathi s/o Bhagwati Prasad Tripathi	Original Civil Suit No.62/2002-Radhey Shyam v. Secretary, Urban Improvement Trust, Udaipur	Civil Appeal No.11/2004 (73/03)-Radhey Shyam v. Secretary, Urban Improvement Trust, Udaipur

22.1. The Trial Court decided the suits vide judgment and decree dated 30.04.2008. The First Appellate Court decided the appeals vide judgment dated 19.04.2004.

22.2. Civil Suits were filed claiming that the land in question was leased out to the plaintiffs on 27.08.1985 (as is evident from

the judgment of the Trial Court). However, in the documents annexed with the I.A.No.148204 in C.A. No.8977 of 2012, the transaction is shown to be sale. Though no prayer was made in the suit seeking a declaration as owner of the land as it was simpliciter for permanent injunction still the Trial Court framed the issue 'whether the disputed plot is of the ownership and possession of the plaintiff'. The second issue frame was 'as to whether the plaintiff is entitled to permanent injunction'. Both the issues were taken up together. While discussing the Issue no.1, the court recorded the ownership part was not to be gone into as it was merely a suit for permanent injunction but still it was to be considered as to whether the possession was valid or not. In support of his plea the plaintiff/respondent placed on record the document dated 27.08.1985, the lease deed. However, the same was not proved. The court also considered about the right of the Gram Panchayat to lease out the land with reference to the Rules applicable therefor. Finally, the Trial Court came to the conclusion that no case was made out by the plaintiff/respondent. Hence, the suit for permanent injunction was dismissed by the Trial Court on 30.04.2003.

22.3. The judgment and decree in all the suits were challenged by filing appeals. The First Appellate Court without considering the fact as to whether the alleged lease deed Ext.E-1 was proved by the respondent-plaintiff in accordance with law, had shifted the burden on defendants to prove otherwise. The issue regarding competence of the Gram Panchayat to lease out the land was just brushed aside. The appeal was accepted and decree of permanent injunction was passed by the First Appellate Court against which the appeal(s) were filed by the present appellants before the High Court. The same was disposed of in terms of the impugned judgment, though the issues were not identical.

22.4. It is admitted by all the respondents/plaintiffs in the bunch of appeals that the individual lease deeds were issued in their favour on 27.08.1985 by the Gram Panchayat.

22.5. The stand of the appellants is that the lease deeds were executed in contravention of Rule 266 of the 1961 Rules, which provides that Panchayat may transfer any land by way

of private negotiation in case any person has a plausible claim of title and auction may not fetch reasonable price, where for reasons to be recorded in writing, the Panchayat thinks that auction would not be convenient mode for disposal or where such a course is regarded by the Panchayat for advancement of Scheduled Castes and Scheduled Tribes or other Backward Classes.

23. In Chapter XIII of the 1961 Rules, complete procedure has been provided for sale of abadi land.

23.1. Rule 255 defines 'abadi land' to mean nazul land lying within the inhabited areas of Panchayat circle.

23.2. Under Rule 256, a person desirous of purchasing the abadi land can file an application in writing along with requisite fee.

23.3. On receipt of application, in terms of Rule 257, a plan of the land in question is to be prepared specifying the boundaries of the land to be sold.

23.4. After the plan is ready, local inspection of the site is to be made by three nominated Panchs who will submit their opinion on the following issues:

(a) whether the sale applied for will affect the facilities for going and coming enjoyed by the villagers;

(b) whether such sale will affect the rights of easements owned by other persons;

(c) whether such sale will affect beauty and cleanliness of the locality; and

(d) such other matters as may appear to be relevant (Rule 258).

23.5. A provisional decision is to be taken by the Panchayat as to whether the proposed sale should or should not be made (Rule 259).

23.6. If the decision is to sell the land, public notice is to be issued on Form 'L' inviting objections to the proposed sale (Rule 260).

23.7. Objections, if any, received are to be dispose of after affording opportunity of hearing to the objector (Rule 261).

23.8. If no objections are received, the Panchayat shall pass a resolution and order for sale of the land by auction and date and time thereof shall be fixed (Rule 262).

23.9. The procedure for auction, deposit of earnest money, confirmation of sale have been provided in Rules 262 and 265.

23.10. Rule 266 provides for transfer of abadi land by private negotiations in certain specified situations, namely:

(a) where any person has a plausible claim of the title of the land and the auction may not fetch reasonable price;

(b) where for the reasons to be recorded in writing, the Panchayat opines that auction may not be convenient mode for disposal of land;

(c) where such a course is regarded by the Panchayat necessary for advancement of Scheduled Castes and Scheduled Tribes or other backward classes; and

(d) where the persons are in possession of abadi land for 20 years or more but less than 42 years.

24. In the aforesaid situation, the land can be transferred by passing a resolution by the Panchayat.

25. Relevant Rule 266 is extracted below:

> "266. Transfer of abadi land by private negotiation. – (1) The Panchayat may transfer any abadi land by way of sale by private negotiation in the following cases:-
>
> (a) Where any person has a plausible claim of title to the land and an auction may not fetch reasonable price;
>
> (b) where for reasons to be recorded in writing the Panchayat thinks that an auction would not be a convenient mode of disposal of the land;
>
> (c) where such course is regarded by the Panchayat necessary for the advancement of Scheduled Castes and Scheduled Tribes or other Backward Classes.
>
> (d) where the persons are in possession of the abadi land for 20 years or more but less than 42 years,

> one-third of the prevailing market price and in case of possession of over 40 years, one sixth of the prevailing market price shall be charged.
>
> (2) The Panchayat may, by resolution, transfer by way of sale without charging any price therefore, any abadi land of which the probable value does not exceed Rs. 200/- in favour of any institution for a public purpose."

26. The allotment to all the allottees was on the same day i.e. 27.08.1985. Along with I.A. No. 148204 of 2023 in C.A. No. 8977 of 2012, a copy of the register of sale deeds of populated land on Form No. 49 has been annexed as Annexure R-6. The sale deeds of land in favour of the respondents are shown at Sr. Nos. 104 to 109. With reference to Sr. Nos. 104 to 106, 108 and 109, the same are annexed as Annexures R-1 to R-5, whereas the sale deed executed in favour of Sanjay Kumar son of Radheshyam (Sr. No. 107) is not available. In the appeals being considered by this Court, the matter pertaining to Sanjay Kumar son of Radheshyam is not under consideration.

27. The following table will show the area leased out to the family members of the same persons on the same date:

Sr. No.	Name	Serial No./ Settlement No.	Area in Sq.ft.
1.	Radheshyam S/o Bhagwati Prasad R/o Manva Kheda	104	6120
2.	Sumitra Devi W/o Radheshyam R/o Manva Kheda	105	7645
3.	Vipin Kumar S/o Radheyshyam Tripathi R/o Manva Kheda	106	4500
4.	Sumitra Devi W/o Radheshyam R/o Manva Kheda	108	6104
5.	Radheshyam s/o Bhagwati Prasad R/o Manva Kheda	109	6097

28. In Civil Appeal No. 8977 of 2012, originally the suit was filed by the respondent only for permanent injunction in the year 2002 with the pleading that on 09.02.2002, an employee of the Town Improvement Trust visited the spot and threatened the respondent for forcible dispossession. Gram Panchayat, Village Kaladwas was not even

impleaded as party. No declaration was sought that the respondent was owner in possession of the plot, hence she could claim injunction. The only evidence led was in the form of copy of lease deed dated 27.08.1985 where the plaintiff appeared as PW1.

29. As recorded by the Trial Court, the respondents/plaintiffs had not been able to prove the document on the basis of which they were claiming a right of possession of the property in question. Even if the aforesaid document is considered, the sale was clearly violative of Rule 266 of the 1961 Rules, under which aforesaid alleged lease deed/sale deed has been issued in favour of the respondents/plaintiffs. In terms of Rule 266 of the 1961 Rules, only in certain specified situation, the land could be transferred by way of sale on private negotiation, namely, where any person has a plausible claim of title to the land and auction may not fetch reasonable price or it may not be the convenient mode for disposal of land or where such a course is regarded by the Panchayat necessary for advancement of Scheduled Castes and Scheduled Tribes or other Backward Classes. Another situation envisaged is where the person is in possession of land for more than 20 years but less than 42 years. Nothing was produced on record to show that the due process required for leasing out/sale of the land in favour of the respondents/plaintiffs by private negotiation was followed. Gram Panchayat from whom the land was taken was not impleaded as party to admit or deny the allegations made by the respondents/plaintiffs in the plaint.

30. For the reasons, mentioned above, we find merit in the present appeals. The same are accordingly allowed. The impugned judgments of the High Court as well as the First Appellate Court are set aside and that of the Trial Court is restored. Resultantly, the suits are dismissed.

31. Before parting with the order, we are pained to note certain facts which show total casualness on the part of the appellants. As has been noticed above, in the bunch of five appeals bearing C.A.No(s).8977/2012, 468/2013, 524/2013, 467/2013 and Civil Appeal arising out of S.L.P.(C)No.25200/2013, challenge was to the order passed by the High Court in five different second appeals. Five different suits were filed by five persons of the family which were assigned different numbers though decided on the same day by separate judgments. Five different appeals were filed before the

First Appellate Court and when the matter was taken to the High Court, five different appeals were filed. The same were disposed of on 18.04.2012.

32. When five different suits were filed by different persons while filing the documents with the paper book filed in this Court, it was incumbent upon the appellants to place on record correct copies of the judgments of the Trial Court as well as the First Appellate Court for each of the case. However, it is evident from the paper books of the aforesaid five appeals that in all the appeals the Trial Court judgment placed on record was passed in Case No.60/2002 titled as Smt. Sumitra Devi w/o Radheshyam Tripathi dated 30.04.2003 and the judgment of the First Appellate Court placed on record in all the appeals is Misc. Civil Appeal No.01 of 2004 titled as Radheshyam son of Bhagwati Prasad Tripathi dated 19.04.2004. The related judgments of the individual cases before the Trial Court and the lower Appellate Court have not been placed on record in the respective appeals. With great deal of effort to join the loose ends, we could find out the details from the title of the impugned judgment of the High Court as the same mentioned the civil suit number as well as the appeal number in the First Appellate Court which was different in all five cases. It is evident from the table enumerated in para 19.1 of the judgment. We can only observe that the parties need to be more careful while filing the pleadings in this Court and so the Registry of this Court as any error therein may be disastrous for any of the parties.

Headnotes prepared by: Ankit Gyan

Result of the case:
Appeals disposed of.