

DEVI SINGH

v.

BOARD OF REVENUE FOR RAJASTHAN AND ORS.

OCTOBER 12, 1993

[M.M. PUNCHHI AND N.P. SINGH, JJ.]

Rajasthan Zamindari and Biswedari Abolition Act, 1959: Section 5(4)—Suit—Claim for land as Khatedars—Evidence in support of claim—Revenue Record of Jamabandi—Gap in Revenue Record—Oral evidence in support of gap—Whether could be adduced.—Possessory matters—Appreciation of evidence in.

Rajasthan Tenancy Act, 1955: Sections 221-229 Board of Revenue – Confirmation of decree in exercise of appellate powers—Decree impugned in ancillary proceedings—Whether Board could invoke general power of superintendence to set aside decree.

Doctrine of Merger – Applicability of.

The appellants filed five suits against the State of Rajasthan seeking declaration that by virtue of Section 5(4) of the Rajasthan Zamindari and Biswedari Abolition Act, 1959 they had become Khatedars as they were owners in actual possession of the lands in question on the crucial date. For establishing possession they produced revenue records of jamabandis. However, the jamabandi record closest to the date on which the Zamindari and Biswedari was abolished was not produced but oral evidence was adduced in lieu of that. The Assistant Collector allowed the suits. Appeals filed by the State were dismissed by the Revenue Appellate Authority. State's second appeals to the Board of Revenue were also dismissed. Subsequently some outsiders filed an appeal before the First Appellate Authority against the judgment and decree of Assistant Collector which was dismissed on the ground of locus standi. However, on appeal, the Board of Revenue held that though oral evidence might be useful for establishing possession it did not meet the requirements of Section 5(4) for which jamabandi record is relevant. Exercising its power of general superintendence under section 221 of the Rajasthan Tenancy Act, 1955 the Board set aside the decrees passed by the Assistant Collector and directed him to re-hear the suits after summoning the relevant jamabandi. The

- A** appellants filed writ petitions before the High Court which were dismissed. Against the order of the High Court, appeals were filed in this court.

Allowing the appeals and setting aside the orders of the High Court, this Court,

- B** HELD: 1. The Board of Revenue misapplied Section 221 in setting aside a confirmed order of the Trial Court. It could not have exercised power of general superintendence under Section 221 for it had beforehand in exercise of its appellate powers confirmed the decree of the Assistant Collector. By doctrine of merger, the judgment and decree of the first Court got merged in that of the first appellate court and sequely on second appeal that of the Board of Revenue. The order was reviewable subject to its falling under section 229 of the Rajasthan Tenancy Act. Section 221 being not applicable, section 229 did not come in the picture, it having not been invoked. In the circumstances, the Board assumed jurisdiction which it did not have to upset its own final judgment. Sequelly, the High Court too erred in approving the same when the jurisdiction error was glaring on the face of it. [225-C-F]

- E** 2. The salutary principle of appreciation of evidence in possessory matters is that when a state of affairs is shown to have existed for a long course of time but a gap therein puts to doubt its continuity prudence requires to lean in favour of the continuity of things especially when some plausible explanation of the gap is forthcoming. The trial court seems to have gone on that basis to decree in favour of the appellant, and so did the First Appellate Authority as also the Board of Revenue in second appeal. It was thus too late for the Board in ancilliary proceedings to find fault in the reasoning of the Trial Court. The High Court erred in not upsetting it. [226-A-B]

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3039 of 1981.

From the Judgment and order dated 28.7.81 of the Rajasthan High Court in D.B. Civil Writ Petition No. 165/1977.

With

H Civil Appeal No. 3209 of 1983.

With

Civil Appeal No. 3210 of 1983.

Suman Kapoor and Ms. Suma Rao, for the Appellant.

B.D. Sharma, (N.P.) for the Respondents.

The following Order of the Court was delivered:

These appeals are directed against a common order dated 28.7.81 made by the High Court of Rajasthan, Jaipur Bench in Civil Writ Petition Nos. 164 to 168 of 1977.

The cause for these appeals is a direction issued by the Board of Revenue, Rajasthan, a functionary established under the Rajasthan Tenancy Act, 1955 empowered, in the regular course, to hear second appeals. Five suits were filed by the respective appellants in these appeals against the State of Rajasthan in the Court of the Assistant Collector, Bharatpur seeking declaration that by virtue of Section 5(4) of the Rajasthan Zamin-dari and Biswedari Abolition Act, 1959 they had become Khatedars for they were owners in actual cultivation over the said area on the crucial date. The suits were contested by the State of Rajasthan. In support of their claim the appellants, the plaintiffs therein, produced revenue records such as jamabandis of the Samvat 2002, 2006, 2018 and 2026 showing consistent actual possession over the lands claimed by them. It appears that jamabandi for the Samvat 2015 was not produced by either party and this jamabandi could have been the closest to the date on which the zami-dari and biswedari under the Act was abolished. The gap therein was filled by the plaintiffs appellants by production of oral evidence which the trial court believed. The only witness examined by the State being the patwari of the village could be of no assistance to defend the suit. As a result the suits were decreed. The first appeal filed by the State of Rajasthan before the Revenue Appellate Authority were dismissed. The Second appeals by the State to the Board of Revenue too were dismissed. The orders of the lower courts and the decrees passed by them thus got merged in the judgments and decrees of the Board of Revenue.

Some outsiders, interested in disestablishing the rights of the plaintiffs-appellants, filed an appeal before the First Appellate Authority against

A the judgment and decree of the Assistant Collector. The First Appellate Authority spurned the attempt holding those persons having no locus standi. Further attempt by them in the second appeal before the Board of Revenue met the same fate. However, it seems that those persons were able to create a dent in the minds of the members of the Board of Revenue and thus it made the following observations:

B "It apparently did not occur to the Assistant Collector that infact the Jamaabandi is the settlement record brought upto date and it is this annual register (Khatanui) which has to be seen while applying Section 5(4) of the Zamindari and Biswedari Abolition Act. Oral evidence may be useful for establishing possession but such evidence does not meet the requirements of the Section. The Khudkash has to be recorded as such is the jamabandi prior to the date of vesting. For the benefit of the trial court it is stated that an entry of "maqbooza malkan merely indicates that the land is biswedari and is not to be read as showing khudkasht. It is not possible for us to set aside the orders of the trial court in the appellate proceedings because those orders are not under challenge on merits. However, since a blatant illegality has come to notice the Board cannot ignore it. We deem it proper to invoke the power of general superintendence under Section 221 of the Tenancy Act and set aside the decrees of the trial court in these six (five) cases. The Assistant Collector, Bharatpur will re-hear these suits and decide the khatedari rights of the plaintiff, if claimed, under the 1959 Act strictly in accordance with Section 5(4) of that Act keeping in view the observations made above after summoning the relevant jamabandi. The relief sought will naturally be granted only if khatedari is established and if such relief is permissible under law."

G The aggrieved appellants thereafter approached the High Court in writ petitions seeking upsetting of the view of the Board of Revenue, but to no avail.

H Having heard learned counsel for the appellants, since he alone is here to assist us, and no one is appearing on behalf of State of Rajasthan, we view it with surprise the approach of the Board of Revenue. Section 221 of the Rajasthan Tenancy Act provides vesting a general power of

superintendence and control in the Board over all revenue courts and all such courts as are subordinate thereto. Besides that provision there are provisions beginning with Section 222 upto Section 228 which provide for appeals and the manner in which they need be presented in the fora given therein and the Board of Revenue is one such. Section 229, inter alia, thereafter provides that subject to the provisions of the Code of Civil Procedure, 1908 the Board of its own motion or on the application of a party to a suit or proceeding may review and may rescind, alter or confirm any decree or order made by itself or by any of its member. In the face of these provisions it is ununderstandable under Section 221 of the Act for it had beforehand in exercise of its appellate powers confirmed the decree of the trial court i.e. of the Assistant Collector's Court. By the doctrine of merger, the judgment and decree of the first Court got merged in that of the first appellate court and sequely on second appeal that of the Board of Revenue. The order, if at all, was reviewable, subject to its falling within the scope of Section 229 of the Rajasthan Tenancy Act. It is worth noting that two sets of appeals, one after the other, had been preferred by the State of Rajasthan and on their dismissal were not put to further challenge by it in the High Court. The State seems to have rested content with the result. Later when some other elements chose to intervene and sought stalling of these orders and their effort in that regard was negatived by the Board of Revenue, it misapplied Section 221 in setting aside a confirmed order of the trial court. That provision being not applicable Section 229 did not come in the picture it having been not invoked. It is patently clear in these circumstances that the Board of Revenue assumed jurisdiction which it did not have to upset its own final judgment, arrived may be wrong on facts, in the manner it has done. Sequely, the High Court too was in error in approving the same when the jurisdictional error was glaring on the face of it.

In a matter like this we too would have proceeded hesitatingly in interfering unless we are otherwise satisfied on facts that the relief was due to the appellants. The Board of Revenue has observed that in order to invoke Section 5(4) of the Zamindari and Biswedari Abolition Act, entries of the revenue record of the date conceived therein would settle the position. That may be true to begin with. But here there are entries of the revenue records preceding that date and then after that date, which the trial court has relied upon with the aid of oral evidence to conclude continuous exclusive possession of the appellants over their respective

- A lands in khatedari rights. The salutary principle of appreciation of evidence in possessory matters is that when a state of affairs is shown to have existed for a long course of time but a gap therein puts to doubt its continuity prudence requires to lean in favour of the continuity of thing especially when some plausible explanation of the gap is forthcoming. The trial court seems to have gone on that basis to decree in favour of the appellants, and
- B so did the First Appellate Authority as also the Board of Revenue in second appeal. It was thus too late in the day for the Board to have woken up in ancillary proceedings to find fault in the reasoning of the trial court. The High Court was obviously in error in not upsetting it.

- C For the for-going reasons we allow these appeals and set aside the judgment and order of the High Court settling the matter in favour of the appellants. Since there is no opposition, there shall be no order as to costs.

T.N.A.

Appeals allowed.