

(1983) WLN 395

Rajasthan High Court

Case No: Civil Special Appeal No. 204 of 1983

Mohan Singh and
Others

APPELLANT

Vs

Dalpat Singh and
Others

RESPONDENT

Date of Decision: Sept. 9, 1983

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 104
- Constitution of India, 1950 - Article 136, 226

Citation: (1983) WLN 395

Hon'ble Judges: S.K. Mal Lodha, J; K. Bhatnagar, J

Bench: Division Bench

Final Decision: Allowed

Judgement

S.K. Mal Lodha, J.

This appeal u/s 18 of the Rajasthan High Court Ordinance, 1949 aims at over-setting the order dated May 4, 1983 of the learned Single Judge, by which the appellants' writ petition under Article 226 of the Constitution, was dismissed.

2. The appellants (plaintiffs in the revenue suit) instituted revenue suit No. 94/82 in the court of Section D.O., Kapasan, district Chittorgarh against the respondents No. 1 to 3 (defendants in the revenue suit) for declaration in respect of certain agricultural lands situated in village Saumi, Tehsil Rashmi, district Chittorgarh and also for grant of permanent prohibitory injunction restraining respondent No. 1 to 3 from interfering in any manner with their possession over the aforesaid land and also from alienating the same. The S.D.O. issued an ex-parte interlocutory injunction on December 10, 1982 restraining respondents No. 1 to 3 from interfering with the possession of the appellants. He ordered for the issuance of the notices to respondents No. 1 to 3 for final disposal of the appellants' application for grant of temporary injunction. Respondent No. 1 Dalpat Singh

appeared on Jan. 17, 1983 but the case was adjourned on that day, as the other two respondents No. 2 and 3 were not served. Respondent No. 1 did not file any reply on January 17, 1983. On that day, the S.D.O. was also out of station on tour on account of "Rajaswa Abhiyan". The case was adjourned to March 4, 1983 as agreed to by the parties. Respondents No. 1 to 3 submitted an application before the Board of Revenue for Rajasthan, Ajmer (for short "the Board") u/s 233 of the Rajasthan Tenancy Act (No. III of 1955) (hereinafter referred to as "the Act") on January 27, 1983 for transferring Revenue Suit No. 94 of 1982 pending in the court of SDO, Kapasan to any other revenue Court situated outside the area of jurisdiction of Revenue Appellate Authority, Udaipur. At that time Shri Narpat Singh was posted as Revenue Appellate Authority, Udaipur. It was stated in the application that Shri Narpatsingh was interested in the suit and he was exercising undue influence over the SDO, Kapasan in favour of the appellant. Notice of the transfer application was issued by the Board to the appellants. The appellants filed reply to the transfer application on February 17, 1983. In support of that, affidavit of appellant No. I Mohansingh was also filed. The transfer application was resisted on various grounds. The Board directed the SDO, Kapasan to send his comments on the transfer application. The SDO, Kapasan sent his comments on the transfer application vide Ex. 3 dated February 14/16, 1983. The SDO controverted the allegations relating to undue influence having been exercised by Shri Narpatsingh, the Revenue Appellate Authority, Udaipur on him. The Board, by its order Ex. 4 dated March 22, 1982 transferred Revenue Suit No. 94 of 1982, pending in the court of SDO, Kapasan to the court of SDO, Ajmer. The appellants filed the writ petition in this Court for quashing the order Ex.4 dated March 22, 1983 of the Board. The learned single Judge dismissed the writ petition by his order dated May 4, 1983. Hence this appeal by the appellants.

3. The stay petition was fixed for final orders on September 8, 1983.

4. Learned Counsel for the parties stated that the appeal may be finally disposed of at the orders stage.

5. It was submitted that for the final disposal of the special appeal, service on the Board (respondent No. 4) is not necessary as the Board has passed the order Ex. 4 and show cause notice of the appeal has already been served and it has not chosen to appear.

6. We heard Mr. S.C. Bhandari, learned Counsel for the appellants and Mr. B.S. Shekhawat for respondents No. 1 to 3.

7. Mr. S.C. Bhandari, learned Counsel for the appellants pressed that approach of the Board as well as of the learned single Judge that the SDO, Kapasan is subordinate to the Revenue Appellate Authority, Udaipur, is erroneous. The SDO, Kapasan according to the learned Counsel for the appellants, is not subordinate to the Revenue Appellate Authority, Udaipur. In this connection, he referred to Section 221 of the Act, which, inter alia, provides that the SDO is subordinate to the Collector. Learned Counsel for the appellants, therefore, contended that the ground that the SDO, Kapasan would be influenced by the

Revenue Appellate Authority, is not right. We do not consider it necessary to make a further probe in the matter, for Section 221 deals with subordination of revenue courts whereas u/s 223, an appeal from the original decree of the SDO lies to the Revenue Appellate Authority and an appeal u/s 225 to the Act from the final order passed on an application of the nature specified in the third Schedule and from such other orders as are mentioned in Section 2(2) of the Act and in Section 104 CPC lie to the Revenue Appellate Authority if such order is passed by a SDO.

8. Mr. S.C Bhandari, earned Counsel for the appellants contended that the learned single Judge was not right in dismissing the writ petition inter alia, observing that "when the case has been transferred for one reason or the other and Chittorgarh district and Ajmer District are not so far where the petitioners (appellants) cannot take redress specially when there is a grievance against the Revenue Appellate Authority Shri Narpat Singh, who is holding the post in the very region then the Revenue Board was justified in transferring the case to the other region." He submitted that no "sufficient cause" was shown to the Board, by which the suit could be transferred from the court of SDO, Kapasan to SDO, Ajmer, It is, thus, submitted that as the order of transfer is illegal, it should have been quashed by the learned single Judge.

9. Mr. B.S. Shekhawat, on the other hand, submitted that as there was apprehension that the respondent would not get (sic) ice in the case at the hands of the SDO, Kapasan as the revenue suit was instituted on the advice of Shri Narpatsingh, Revenue Appellate Authority, Udaipur, who is also the appellate authority in respect of the orders passed by the SDO. He also contended that this Court should not interfere with the order of the learned single Judge in appeal as the learned single Judge has refused to set aside the order Ex. 4 of the Board in exercise of his extraordinary jurisdiction under Article 226 of the Constitution.

10. In order to appreciate the rival contentions of the earned Counsel for the parties we consider it necessary to read the relevant part of the order (Ex. 4) dated March 22, 1983:

It is abundantly clear from the plaint presented before the learned Sub-Divisional Officer, Kapasan, and arguments advanced before me that the parties are unlikely to be satisfied with the decision of the learned Sub-Divisional Officer, whatever it may be. It is therefore, reasonable to presume that the party dissatisfied with the Judgment of the learned Sub-Divisional Officer will file an appeal. In view of the fact that the plaint makes a specific reference to the advice tendered by the Revenue Appellate Authority Udaipur will not be in a position to hear the appeal against the order of the learned Sub Divisional Officer. With a view to avoid this situation and keeping in view the salutary principle that the justice should not only be done but must appear to have been done as well the balance of convenience would lie in transferring the case pending before the learned Sub-Divisional Officer, Kapasan to any other court outside the Appellate jurisdiction of the Revenue Appellate Authority,

The only ground mentioned by the Board is that Shri Narpat Singh, Revenue Appellate Authority, Udaipur has some connection with the suit and since appeal from the final judgment and decree in the suit lies to the Revenue Appellate Authority, Udaipur, he will not be in a position to hear it, when filed after the decision of the suit. The learned single Judge has observed in the order under appeal that there is very apprehension that justice may not be done in the suit pending before the Sub-Divisional Officer, Kapasan as the suit itself appears to have been instituted on account of certain advice tendered by Shri Narpat Singh, Revenue Appellate Authority, Udaipur. No reference to any material whatsoever has been made by the learned single Judge for coming to the confusion that respondents No. 1 to 3 have reasonable apprehension that they will not get justice from the SDO, Kapasan. There is no finding whatsoever that the SDO, Kapasan is biased or likely to be biased in favour of the appellants.

11. Section 233 of the Act reads as under:

233. Transfer of cases by Revenue Board: The Board may, on sufficient cause being shown, transfer any suit, proceeding application appeal or class of suits, proceedings, applications or appeals from any revenue court to any other revenue court competent to deal therewith.

The aforesaid section, inter alia, empowers the Board to transfer the suit from a revenue court to another revenue court competent to deal with the same. "Sufficient cause" has to be shown for the transfer of the case and if the reason on the basis of which the transfer has been ordered is found to be illegal and not sufficient, the order of transfer cannot be sustained. Section 127(1) of the Income tax Act, 1961, which deals with the transfer of the case file to another area was examined in *Ajanta Industries v. Central Board, Direct Taxes* AIR 1976 SC 427. Goswami, J. speaking for the Court, has expressed himself in the following words:

It is manifest that once an order is passed transferring the case file of an assessee to another area the order has to be communicated. Communication of the order is an absolute essential requirement since the assessee is then immediately made aware of the reasons which impelled the authorities to pass the order of transfer. It is apparent that if a case file is transferred from the usual place of residence or office where ordinarily assessments are made to a distant area, a great deal of inconvenience and even monetary loss is involved. That is the reason why before making an order of transfer the legislature has ordinarily imposed the requirement of a show cause notice and also recording of reasons.

It was further observed;

The reason for recording of reasons in the order of making is to enable an opportunity to the assessee to approach the High Court under its writ jurisdiction under Article 226 of the Constitution or even this Court under Article 136 of the Constitution in an appropriate

case for challenging the order, inter alia, either on the ground that it is malafide or arbitrary or that it is based on irrelevant and extraneous considerations. Whether such a writ or special leave application ultimately fails is not relevant for a decision of the question.

It was also held that if a case file is transferred from the usual place to a distant place, a great deal of inconvenience and even monetary loss is caused to the party and that is why transfer of cases can be made only on sufficient cause. In that case the orders of transfer were quashed. The Board can order transfer of the suit only if any sufficient cause is shown. The onus of making out sufficient cause for transfer lies heavily upon the person who wants to obtain the order of transfer. It is also well settled that the plaintiff is arbiter litis. He has a right to select his own forum and that right should not be taken away except on very strong grounds. Mr. S.C. Bhmdari submitted that the Court of SDO, Ajmer is at the distance of about 220 kms. from Kapasan and 250 kms from village Saumi, where the parties reside and the appellants will be put to inconvenience and huge expenses if the order of transfer is maintained.

12. The appellants have sought a writ of certiorari for quashing the order Ex. 4 of the Board. A writ of certiorari can be issued when there is patent error of law on the face of the record, which has resulted in manifest injustice.

13. It was observed in [Banka Nayako and Others Vs. State of Orissa](#), as under:

As the essential conditions for holding Birdhi Lal to be a trespasser were manifestly not satisfied in the present case, the High Court was perfectly right in rectifying the error of law apparent on the face of the record and quashing the judgments of the Appellate Revenue Authority and the Board of Revenue.

In this case, the Board was influenced by irrelevant considerations that the suit should be transferred from the SDO, Kapasan to the SOO, Ajmer as Shri Narpatsiog (Revenue Appellate Authority, Udaipur) will not be able to hear the appeal against the judgment, decree or order of the SOO, Kapasan. In our opinion, this cannot be any cause much less sufficient cause. The reason given by the Board may constitute sufficient cause for transferring the appeal, if and when filed against judgment, decrees or order passed in the suit before Shri Narpat Singh while exercising the powers of a Revenue Appellate Authority, Udaipur, but in our considered opinion this is no ground for transferring the suit from the court of SDO, Kapasan to that of SDO, Ajmer. The Board can only exercise its jurisdiction of transferring the suits, appeals, applications or proceedings from any revenue court to any other revenue court competent to deal there with on sufficient cause being shown. Sufficient cause is a *sine qua non*. In these circumstances, by transferring the suit from the SDO, Kapasan to the SDO, Ajmer u/s 233 of the Act, the Board has committed patent illegality and that illegality has resulted in manifest injustice to the appellants. The learned single Judge was not justified in refusing to quash the order Ex. 4 of the Board of Revenue, for there was no sufficient cause for transferring the revenue

suit. We would normally be reluctant to interfere with the order of the learned single Judge, but in this case the discretion was not properly, reasonably and judiciously exercised. As sufficient cause is a condition precedent for transferring the case from the S.D. O, Kapasan to the S.D.O. Ajmer and it was not fulfilled, we consider this to be a strong reason to justify the interference with the order under appeal. It is a fit case where writ of certiorari for quashing the order u/s 233 of the Act should have been issued.

14. No other point survives for our consideration.

15. The appeal is allowed and the order dated March 4, 1983 of the learned single Judge is set aside. As a result of that the order (Ex. 4) dated March 22, 1983 of the Board is quashed.

16. In the circumstances of case, the parties shall bear their own costs.