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**(2016) 10 RAJ CK 0037**  
**RAJASTHAN HIGH COURT**  
**Case No:** Civil Writ (CW) No. 1868 of 1998

Pancha Ram

APPELLANT

Vs

Board of Revenue for Rajasthan

RESPONDENT

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**Date of Decision:** Oct. 4, 2016

**Citation:** (2017) RRD 91 : (2017) 1 WLN 36

**Hon'ble Judges:** Mr. Sangeet Lodha, J.

**Bench:** Single Bench

**Advocate:** Mr. Arvind Samdariya, Advocate, for the Respondent Nos. 4 to 7; Mr. O.P. Boob, Government Counsel, for the Respondent; Mr. Vineet R. Dave, Advocate, for the Petitioners

**Final Decision:** Dismissed

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**Judgement**

@JUDGMENTTAG-ORDER

**Mr. Sangeet Lodha, J.** -This petition is directed against the judgment and decree dated 19.2.98 passed by the Board of Revenue, whereby an appeal preferred by the petitioners against the judgment and decree dated 17.9.79 passed by the Revenue Appellate Authority (RAA), Jodhpur, in Appeal No. 55/79, reversing the judgment and decree dated 19.1.79 passed by the Assistant Collector, Bhinmal, stands dismissed.

2. The facts relevant are that the respondents no. 4 to 7 herein filed a revenue suit for declaration and possession in the court of Assistant Collector, Bhinmal, against the petitioners, in respect of the land measuring 39 bighas 15 biswas comprising khasra no.58, situated at village-Pur, District-Bhilwara, on the ground that the land in question was purchased by the plaintiffs from the defendant late Shri Gulab Singh in Samvat Year 2016 by way of registered sale deed executed on 4.9.61. The suit was contested by the defendants by filing a written statement thereto, taking the stand that the alleged sale deed was got executed by the plaintiffs when Shri Gulab Singh was in the state of intoxication. It was further averred that the sale deed was executed without any consideration and possession was never handed over to the

plaintiffs. It was further stated that later, the land in question was sold by Smt. Dharam Kanwar, widow of late Shri Gulab Singh to S/Shri Jodha and Pancha by way of registered sale deed.

3. On the basis of the pleadings of the parties, the trial court framed the issues and parties led their evidence. After due consideration of the evidence on record, the suit was dismissed by the trial court vide judgment and decree dated 19.1.79. Aggrieved thereby, the plaintiffs preferred an appeal before RAA, Jodhpur, which was allowed vide judgment and decree dated 17.9.79 and accordingly, while decreeing the suit, the plaintiffs were declared khatedar tenant of the disputed land and were held entitled for possession of the land from the defendants no. 3 & 4. Aggrieved by the judgment and decree passed by the RAA, Jodhpur as aforesaid, the defendants, the petitioners herein, preferred a second appeal before the Board of Revenue Rajasthan, which stood dismissed vide judgment and decree dated 24.9.86. The legality of the judgment and decree passed by the Board of Revenue was questioned by the defendants by way of writ petition being S.B.Civil Writ Petition No. 2384/86 before this court, which was allowed by a coordinate Bench of this court vide order dated 14.1.97 and the matter was remanded to the Board of Revenue. The operative portion of the order dated 14.1.97 passed by this court reads as under:

"Accordingly, this writ petition is allowed and the order passed by the Board of Revenue Ex.7 dated 24.9.1986 is set aside and the matter is remanded to the Board of Revenue to first decide the question of limitation and to give a definite finding whether the suit filed by the respondent no.4 to 7 was within the period of limitation or not. If it comes to the conclusion that suit was within the period of limitation then it may decide the matter on merits. The matter being an old one the Board of Revenue may try to decide the same before 30th June, 1977 till then the parties may maintain the status quo."

4. After due consideration of the rival submissions, the Board of Revenue arrived at a categorical finding that prior to filing of the suit, the disputed land was in cultivatory possession of the plaintiffs, the defendants did not acquire any adversary rights against the plaintiffs and the suit filed for possession is not barred by limitation. The Board observed that the disputed land was sold by late Shri Gulab Singh and during his lifetime, he never challenged the legality of the sale deed and there is no evidence adduced by the defendants to establish that sale deed was executed by Shri Gulab Singh in the state of intoxication. The court observed that even petitioner Bhanwar Singh on becoming major, did not challenge the sale deed dated 4.9.61 and he cannot be permitted to question the legality thereof by way of averments in the written statement in absence of any proof. The court further observed that the land having been already sold by late Shri Gulab Singh by registered sale deed, defendant-Smt. Dharam Kanwar had no right to sale the land

in dispute subsequently and therefore, no right is created in favour of Jodha and Pancha on the strength of the sale deed executed in their favour by Smt. Dharam Kanwar. Accordingly, the appeal preferred by the petitioners herein has been dismissed by the Board of Revenue. Hence, this petition.

5. Learned counsel appearing for the petitioners contended that the sale deed alleged to have been executed by late Shri Gulab Singh in favour of the plaintiffs was not proved. It is submitted that the plaintiffs were never in possession of the land in question and therefore, the suit for possession preferred by the petitioners after a lapse of about 18 years since execution of the sale deed in their favour was apparently barred by limitation. Learned counsel submitted that after execution of the alleged sale deed, the plaintiffs did not apply for mutation of the land in their favour, which is also indicative of the fact that the sale deed was a false document. Learned counsel urged that the plaintiffs were required to prove their own case by positive evidence and since they have failed to prove the execution of the sale deed and their cultivatory possession over the land in question, the suit must fail. Learned counsel urged that the fact that plaintiffs were in continuous possession of the land and were dispossessed only one month prior to filing of the suit, is also not proved by any cogent evidence and thus, the finding arrived at by the Board of Revenue regarding the suit filed being within limitation, is *ex facie* perverse. Learned counsel submitted that there was no challenge to the sale deed executed by Smt. Dharam Kanwar in favour of Jodha and Pancha and therefore, without setting aside the sale deed executed in their favour, the plaintiffs were not entitled to relief claimed. Learned counsel contended that as per provisions of Section 183 of the Rajasthan Tenancy Act, 1955 ( for short "the Act"), the suit for ejectment can be filed by a tenant against the trespasser but in the instant case, neither the tenancy of the plaintiffs was proved nor it was proved that the defendants are trespassers over the land in question and therefore, the suit preferred was liable to be dismissed.

6. On the other hand, learned counsel appearing for the respondents submitted that the concurrent findings of facts arrived at by the two revenue courts of competent jurisdiction, which are not perverse, does not warrant any interference by this court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India. In support of the contention, learned counsel has relied upon a decision of the Hon"ble Supreme Court in the matter of <i><ß>Vidhyadhar v. Mankikrao & Anr., JT 1999(2) SC 183</ß>/i>. Learned counsel submitted that the factum of sale deed being executed by Shri Gulab Singh in favour of the plaintiffs was not in dispute rather, the case of the petitioners was that the sale deed was got executed by the plaintiffs when Shri Gulab Singh was in the state of intoxication. Learned counsel submitted that there was no evidence led on behalf of the defendants to establish that the sale deed was executed by late Shri Gulab Singh in the state of intoxication. Learned counsel submitted that as a matter of fact, the execution of the sale deed has been duly proved on the basis of the evidence on record and therefore, the Board of Revenue was absolutely justified in holding that

the land having been sold by Shri Gulab Singh in favour of the plaintiffs vide registered sale deed in the year 1961, the subsequent sale deed executed by Smt. Dharam Kanwar widow of Shri Gulab Singh in favour of the defendants Jodha and Pancha does not create any right in their favour. Learned counsel submitted that the cultivatory possession of the plaintiffs over the land in question prior to filing of the suit also stands proved on the basis of oral and documentary evidence on record and thus, the finding arrived at by the Board of Revenue regarding the suit being within limitation, is also just and proper. Learned counsel submitted that the mutation proceedings are only fiscal proceedings which does not create or extinguish the title and therefore, nothing turns on the question that the land was not mutated in the names of the petitioners immediately after the sale deed executed in their favour. In support of the contention, learned counsel has relied upon a decision of the Hon'ble Supreme Court in the matter of *Smt. Sawarni v. Smt. Inder Kaur and others*, 1996 (7) JT S.C. 580.

7. I have considered the rival submissions and perused the material on record.

8. Indisputably, the sale deed was executed by late Shri Gulab Singh in favour of the respondents No. 4 to 7 herein, on 4.9.61. It is also not in dispute that in the sale deed executed, it is clearly indicated that the possession of the land was handed over to the purchasers. The petitioners' father who had sold the land in dispute to the plaintiffs did not challenge the same during his life time. Though the respondents had taken the stand that the sale deed was executed by late Shri Gulab Singh in the state of intoxication, no evidence was adduced on their behalf to prove the said fact. The specific case of the plaintiffs was that prior to filing the suit, a month ago, the defendants dispossessed the plaintiffs. The defendants to prove their possession over the land in question got examined Smt. Dharam Kanwar, who stated that after the death of Gulab Singh, she was in possession over the land and was cultivating the same. She also stated that on her behalf, the land was also being cultivated by Jodha and Pancha. But, at the same time, in her cross-examination, she stated that being a "Parda Nashin" lady, she did not go to the field and the entire affairs with regard to cultivation etc. over the land were managed by her maternal father-in-law. Suffice it to say that she did not claim any personal knowledge about the cultivation over the disputed land and her maternal father-in-law was not produced in evidence. After due examination of the evidence on record, the Board of Revenue has arrived at categorical finding that in Samvat Year 2027 to 2028, the land in question was cultivated by Shikmi Kashtkar Uda on behalf of the plaintiffs and in the Samvat Year 2029 to 2030 the land was cultivated on behalf of the plaintiffs by Shikmi Kashtkar Dhoka. The Board of Revenue found that the deposition of the neighbours of the disputed field only proves that Jodha and Pancha were in cultivatory possession of the land in Samvat Year 2032. Thus, the finding arrived at by the Board of Revenue after appreciation of the evidence on record that the plaintiffs were put into possession of the land in question and were dispossessed only just prior to filing of the suit, cannot be said to be capricious or

perverse and thus the Board has committed no error in holding that the suit filed by the plaintiffs was not barred by limitation.

9. Coming to the mutation proceedings, it is well settled that the mutation proceedings are summary proceedings which are fiscal in nature and the same does not create or extinguish title nor it has presumptive value on title and therefore, nothing turns on the question that the land was not mutated in the names of the plaintiffs for number of years after their purchasing the same by way of registered sale deed in the year 1961 and on the strength of the sale deed executed in their favour by the khatedar of the land Shri Gulab Singh, they were well within their rights to file suit for declaration and possession.

10. Coming to the subsequent sale made by Smt. Dharam Kanwar in favour of Pancha and Jodha, it is to be noticed that the execution of the sale deed by late Shri Gulab Singh in favour of the plaintiffs was not in dispute and therefore, the plaintiffs were not required to prove the execution thereof. But, a perusal of the order passed by the RAA, Jodhpur reveals that the execution of the sale deed, a registered document, was proved by the plaintiffs by producing document writer Amarnath and the attesting witness Chunnilal in evidence and therefore, there was no reason to disbelieve the execution of the sale deed. As noticed herein above, no evidence was produced by the defendants to prove that the sale deed was executed by Shri Gulab Singh in the state of intoxication. In this view of the matter, the land having already been transferred by Shri Gulab Singh in favour of the plaintiffs by way of registered sale deed and they having acquired khatedari rights over the land in question, the subsequent sale deed executed by Smt. Dharam Kanwar in favour of Jodha and Pancha, the petitioners herein, does not create any right in their favour and the plaintiffs were not required to challenge the legality thereof.

11. In view of the discussion above, in the considered opinion of this Court, the impugned judgment and decree passed by the Board of Revenue affirming the judgment and decree passed by the RAA, Jodhpur, does not suffer from any irregularity, illegality or jurisdictional error warranting interference by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India.

12. In the result, the petition fails, it is hereby dismissed. No order as to costs.