2026 INSC 350

Non-Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No…………of 2026
(@Special Leave Petition (Civil) No.4664 of 2025)

Hari Ram

...Appellant

Versus

State of Rajasthan & Ors.

...Respondents

J U D G M E N T

K. VINOD CHANDRAN, J.

Leave granted.

2. The appellant sought declaration of his *'khatedari'* (tenant-occupant) on a land having a total extent of 158.3 bighas in Khasra numbers; more fully described in the plaint filed under Section 88 of the Rajasthan Tenancy Act, 1955[1] and also sought for recovery of half of the total land unlawfully encroached upon by the defendants. The *khatedari* was claimed as a succession from his deceased father whose name was mutated as on 26.11.1961 in the revenue records. It was alleged that the defendants, Keshi, Bhura Ram and his son, Bhiya

[1] For brevity 'Act of 1955'

Ram had fabricated a sale deed based on which the encroachment was carried out. The suit was decreed as early as on 16.08.1975, the 1st defendant, Keshi having appeared and contested the case but eventually declared *ex-parte* for non-appearance. An appeal by Keshi long after, in the year 2006, was rejected on the ground of gross delay. In the second appeal filed, the Board of Revenue remanded the matter to the original authority which was affirmed by the High Court confirmed in an intra-court appeal.

3. The Board of Revenue found that though the 1st defendant was present, her presence was not consistent and there were no signatures or thumb impressions recorded to confirm her attendance. It was held that the original authority had provided no opportunity to adduce evidence after the order dated 18.01.1972 and despite the summons having not been returned as 'served', the trial court proceeded *ex-parte* declining her reasonable opportunity to defend the case. It was observed that the trial court failed to summon the sale deed and ignored the mutation as on 12.07.1963 which recorded the 1st defendant as a tenant. It was further held that the plaintiff having not executed the decree, the defendant was not aware of the decree passed especially when the mutation as of 1963 was altered in the name of the plaintiff only on 30.06.2010. The High

Court found in favour of the defendant, especially noticing the fact that the 1st defendant was a widow who was also illiterate.

4. The learned Senior Counsel, Shri Vaibhav Gaggar appearing for the appellant took us through the proceedings before the trial court produced as Annexure P4 to argue that the 1st defendant had appeared before the trial court through a lawyer and was also present in person on many occasions when the matter was taken up. Defense evidence was led by examining two witnesses and later on, at the request of the Counsel appearing for the 1st defendant, summons was issued and after a period of two years it was specifically noticed that the 1st defendant appeared in person after which she was declared *ex-parte* and a decree passed. There was absolutely no satisfactory reason projected for the long delay in filing an appeal from the decree. It is argued that the contention taken up to substantiate the allegation of fraud was improved upon at every stage. At best, the contention before the Board of Revenue was that the plaintiff had manipulated the appearance of an Advocate and the 1st defendant had never appeared before court, which is belied by the proceedings of the trial court. Insofar as the possession is concerned, it is asserted that the appellant is in full possession of the entire extent of the property as of now and that is why there was no

execution filed after the decree was passed. At the worst, the appellant for the sake of arguments was willing to concede to the *status quo* on possession as of today; which is asserted to be fully in favour of the appellant.

5. The learned Senior Counsel, Shri Sadan Farasat appearing for the respondent, however, would point out that the sale deed was in the knowledge of the mother of the appellant who had initiated the suit on behalf of the appellant, who was a minor at that point. It was the mother who executed the sale deed. There was no attempt to seek a declaration against the sale deed, especially since it was a voidable document and not *void ab initio.* It is argued that Rule 143 of the General Rules (Civil) 1986 prescribes signatures of the parties to be affixed in the proceedings sheet, which has not been done, as is seen from the produced document. The respondents who are now contesting the proceedings have been settled with the property by the original 1st defendant, thus stepping into her shoes in their status as the assignees of the original defendant. There is clear allegation of fraud made in the appeal memorandum based on which the remand order has been passed; not liable to be interfered with.

6. In response, it is argued that the 1st defendant failed to produce the sale deed, which was not registered, relied on in the proceedings

as is noticed even by the Revenue Board. The plaint never disclosed the knowledge of the specific document but only made an allegation of an encroachment having been made on the basis of a fabricated document. The contesting respondents in the present proceedings are impleaded as legal representatives and if the assertion is of an assignee, the said deed of assignment has also not been produced. Reliance is placed on ***K.S. Shivappa v. K. Neelamma***[2] to contend that a voidable transaction can be repudiated by an unequivocal conduct even without instituting a suit. Reliance is also placed on ***Union of India v. Jahangir Byramji Jeejeebhoy***[3] to assail the delay condonation of 31 years carried out by the Revenue Board and affirmed by the High Court. ***Gurnam Singh v. Surjit Singh***[4] and ***Ajay Kumar D. Amin v. Air France***[5] are also relied on to advance the contention that the refusal to produce the best evidence results in an adverse inference being drawn.

7. We have perused the records and having given our anxious consideration also to the arguments addressed, we are unable to sustain the impugned orders. The plaint is filed by the mother of the

---

[2] 2025 SCC OnLine SC 2149
[3] 2024 SCC OnLine SC 489
[4] (1975) 4 SCC 404
[5] (2016) 12 SCC 566

appellant, a minor at that time, on his behalf, produced as Annexure P1. The course of action pleaded is an illegal encroachment carried out by the defendants on the strength of a fraudulently executed 'fake sale deed' by the defendants in favour of defendant No.1 for half of the lands more fully described in the plaint. This is not an admission of execution as claimed by the learned Senior Counsel for the respondent. The plaintiff clearly speaks of his deceased father being the '*khatedari*' of the total extent of 158 Bighas and 3 Biswas, which he inherited after the death of the father.

8. The 1st defendant filed a written statement, produced as Annexure P2, wherein mutually destructive contentions were taken. One that the plaintiff voluntary sold the entire lands comprised in the specified khasra numbers along with half portion of khasra Nos.454 and 455 to the 1st defendant on 05.04.1963. Then, it was stated that the deceased husband of the 1st defendant, who was the brother of the plaintiff's father, had possession and cultivation of these lands since long time. But it was admitted that the rent receipts and other records were in the name of the father of the plaintiff, who was the head of the family. The defense asserted however was of purchase and not of a co-sharer.

9. The proceedings of the trial court produced as Annexure P4 indicate that after summons was issued first on 05.05.1965, the 1st defendant appeared through counsel and on many occasions was present personally before the Court constituted under the Act of 1955. The vakalatnama filed by the 1st defendant is also produced as Annexure P3. On 11.04.1972, both the counsel for the plaintiff and the defendant were present and the latter prayed that summons be re-issued to the defendant; presumably due to instructions having not been received. The matter was then prolonged and on 26.02.1974 after the summons were re-issued, it was recorded that the 1st defendant was present in Court. On 21.05.1974, the defendant was set *ex-parte* and the matter was kept for final hearing based on which the order was passed on 16.08.1975 as per Annexure P5.

10. The learned Senior Counsel for the respondent had challenged the presence of the 1st defendant before the Court relying upon Rule 143 of the General Rules (Civil), 1986, which was brought in long after the order of 1975. This contention has been specifically taken up, on the basis of the signature of the plaintiff, found in the proceedings on 05.02.1974. Rule 143, in any event, is not mandatory and is clearly directory, going by the words employed of *'so far as possible'*. Even if we take the signature of the plaintiff having been obtained on

05.02.1974, on that date the defendant was not present and nowhere else in the proceedings such a signature of the party or the counsel is seen affixed. The proceedings of the Court specifically recording the presence of the 1st defendant, especially when there is appearance through an Advocate cannot be belied by a bland pleading, without any substantiation.

11. Further, it is to be noticed that Annexure A4, additional document produced as per I.A. No.103563/2026 is the translated copy of the application for condonation of delay filed before the First Appellate Authority. The ground stated therein is that the information about the decree was received from her lawyer on 15.02.2006; which in terms is an admission of knowledge coupled with engagement of a lawyer. Be that as it may, then, there is only a bland allegation that the decree and order was obtained with unclean hands by hiding the facts through fraud. The ground was improved upon in the second appeal filed before the Revenue Board, which is produced as additional document Annexure A5, wherein it was contended that no notice was served on the 1st defendant nor was any Attorney appointed by the 1st defendant. It was also contended that the plaintiff manipulated the signature in the vakalatnama, especially when the 1st defendant was an illiterate woman who only uses thumb print. The

aforesaid contention was not raised at the first stage when an appeal was filed before the First Appellate Authority in 2006 numbered as Appeal No.75/2007, renumbered as Appeal/Decree/ Jodhpur/155 of 2008 and rejected on the ground of gross delay of 31 years. The 1st appellate order produced as Annexure P7, clearly noticed the appearance of the 1st defendant through an Advocate and evidence having been led through two witnesses Shivdan and Bhika Ram, as seen from the records of the trial court.

12. It is pertinent that the order of the trial court specifically referred to DW1 Bhika Ram, who testified that the 1st defendant came to the village 25 years ago and had been cultivating half of the disputed land but admitted in cross-examination that the 1st defendant had only cultivated the land with defendant Nos.2 and 3 for one or two years. DW2 Shivdan, similarly, though spoke of 1st defendant having cultivated the land, admitted in cross-examination that for the past 4 years the 1st defendant was cultivating the land along with Bhura Ram and Bhiya Ram, the defendant Nos.2 and 3. It was also held that the 1st defendant had not produced the sale agreement nor proved her possession, by any document other than a mutation entry made in her name, which was of the year 1963, the sole evidence produced before us also, as Annexure R1 along with

the counter affidavit. No evidence as to any cultivation having been carried out or land tax having been paid is produced before the Revenue Court or before the higher forums.

13. In fact, Annexure P4 is an application said to have been filed by the 1st defendant seeking production of certain documents, which included the original sale deed in favour of the defendant, executed by Smt. Jimni, the mother of the plaintiff, on his behalf. This further belies the contention of the 1st defendant being unaware of the proceedings. Despite the application made to produce documents, the 1st defendant failed to produce the sale deed before Court. ***Gurnam Singh***[4] and ***Ajay Kumar D. Amin***[5] relied on by the appellant is relevant, insofar as the best evidence having not been produced before the trial court. ***Gurnam Singh***[4] was a case in which the plaintiffs filed a pre-emption suit on the ground of the plaintiffs being co-sharers by virtue of a sale deed registered of 19.03.1958, a portion of which acquisition was admittedly sold in 1969. The subsequent document of the admitted sale having not been produced before Court; the claim of retention of certain properties was found to have been not established. ***Ajay Kumar D. Amin***[5] relied on Sections 140(g) and 103 of the Evidence Act, 1872 to hold that when a party in possession of the best evidence, which throws light on the issue in

controversy, withholds it, the Court is entitled to draw an adverse inference and there is no responsibility on the Court to call upon the party to produce the document.

14. In this context we have to examine the contention raised by the respondents that the suit filed in 1965 by the mother of the appellant on his behalf never sought for declaration or cancellation of the sale deed dated 08.04.1963. We have already found that the plaint only raises an apprehension that the encroachment was made by the defendants on the strength of a fabricated sale deed created by them. Though a defense was set up with respect to the sale deed, it was not produced in which event there was no reason why the plaintiff should seek a declaration of nullity, especially when the same was not even a registered document available in the public domain. Apposite would be reference to ***K.S. Shivappa*[2]*,*** wherein this Court categorically found that the repudiation of a voidable transaction need not necessarily be in a suit instituted to set it aside and could as well be, by way of an unequivocal conduct. Here, the appellant claimed his '*khatedari*' rights based on the mutation entries in his father's favour and the decree obtained thereat would be an effective repudiation of the document.

15. Admittedly, there is gross delay of 31 years in challenging the decree passed on 16.08.1975 which was challenged in the year 2006 after 31 years. The contention that no execution was filed to evict the respondents is only to be noticed to be rejected. Especially reckoning the assertion of the appellant that he is in possession of the entire lands as of now and in any event a claim for execution at this stage based on the decree would also stand barred. The declaratory decree in favour of the appellant cannot be set aside merely on the ground that the appellant did not seek for execution since there is no presumption that the possession remained with the defendants after the passing of the decree; which continued possession had also not been substantiated.

16. We cannot but notice that the delay is gross and the grounds on which it was set aside by the Revenue Court, are all belied by the proceedings in the suit produced as Annexure P4. Besides, the ground of fraud taken at the 1st instance was not supported by any pleading on facts and those taken at the second instance referred only to the presence of the defendant having been manipulated by the plaintiff. We have already found based on the proceedings in the suit; the appearance of the counsel, the filing of an application to

produce documents, which were never produced and the examination of two witnesses, to be a deliberate falsehood.

17. We also have to notice that if there was a manipulation, there was no reason for the suit to be kept pending from 1965 to 1975, a period of ten years, when repeatedly summons were issued and opportunity afforded to the defendant to adduce evidence. As has been found in ***Jahangir Byramji Jeejeebhoy***[3] and the various decisions referred to therein, delay condonation cannot be an act of generosity defeating the cause of substantial justice and causing prejudice to the opposite party. The delay in challenging the decree is gross and in any event the findings on the basis of the '*khatedari*' and its succession, are unimpeachable. Though a claim of ancestral property was raised, it was never pressed and the defense was set up solely on the basis of the sale deed, which was never produced.

18. In this context we have to notice the sale deed produced as Annexure A1 along with the I.A. No.30504/2026. It specifically speaks of the vendor being a minor of 12 years of age, in which event there ought to have been permission obtained from the Court, failing which it is hit by Section 8(2) of the Hindu Minority and Guardianship Act, 1956. The respondents now impleaded also claimed on the basis of a sale deed dated 25.07.2005 executed by the 1st defendant as per

Annexure A3. Annexure A3 does not contain a recital as to the title of the 1st defendant; the vendor in that document. We again notice ***K.S. Shivappa***[2] wherein also, there was a transfer of rights of a minor without permission from the Court by a sale deed dated 13.12.1971. The purchaser transferred the property by another sale deed dated 17.02.1993 to a third party. The minors on the other hand along with their mother sold the property to Shivappa on their attaining majority. Shivappa clubbed it with another property, built a house therein and was residing thereat. Two suits filed by the subsequent purchasers reached this Court wherein this Court found that the third party who purchased one of the properties by the deed of 1993 produced no proof of verification of the title of the vendor, which recitals were also found to be absent in the deed of 1993. Annexure A3, the deed dated 25.07.2005 produced herein, does not trace the title of the vendor and there is no recital to that end, putting to peril the contention of a *bona fide* purchase having been made in 2005.

19. On the above reasoning, we find the order as affirmed by the learned Single Judge and Division Bench of the High Court to be illegal, since there was no question of a remand after a period of 31 years especially when the defendant had contested the suit and had even adduced evidence by way of examining witnesses, but refused

to mount the box herself and produce the deed on which the defense was set up. We set aside the aforesaid orders and restore the order of the Revenue Court under the Act of 1955 in Revenue Case No.94/1970 dated 16.08.1975.

20. The appeal stands allowed.

21. Pending applications, if any, shall also stand disposed of.

.... J.
(SANJAY KUMAR)

.... J.
(K. VINOD CHANDRAN)

NEW DELHI;
APRIL 10, 2026.