

A

KISHORI LAL

v.

BIRDHI LAL &amp; ORS.

March 10, 1976

[A. N. RAY, C.J., M. H. BEG AND JASWANT SINGH, JJ.]

B

*Constitution of India. Art. 226—Concurrent decisions of Revenue authorities—Apparent error of law—Whether High Court's interference justified.*

*Rajasthan Tenancy Act, 1955, S. 5 (44), essential conditions, if satisfied—Rejection of alternative case under s. 180.*

C

The appellant brought a suit for possession of land against respondent Birdhi Lal, under Ss. 180 and 183 of the Rajasthan Tenancy Act, 1955. The Assistant Collector, Baran, dismissed the suit, but the Revenue Appellate Authority allowed his appeal and held that Birdhi Lal was a trespasser. A further appeal by Birdhi Lal was dismissed by the Board of Revenue, Rajasthan. Thereafter, his application made under Art. 226 was allowed by the High Court. The High Court held Birdhi Lal to be a tenant within the meaning of s. 5(43), and not a trespasser as conceived by s. 5(44). On appeal by special leave, the appellants contended before this Court that the High Court was not justified in exercising appellate jurisdiction and interfering with the concurrent opinions of the Revenue authorities. It was further contended that even if Birdhi Lal was held to be a tenant, he was liable to be ejected, as the original suit had been framed alternatively under s. 180 of the Act.

D

Dismissing the appeal, the court

HELD : (1) The material on record does not establish that Birdhi Lal took or retained possession of the land without authority. The essential conditions for holding Birdhi Lal to be a trespasser under s. 5(44) were manifestly not satisfied. The High Court was 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. [589F—H & 590A]

E

(2) The alternative case under s. 180 required necessary averments and proof of facts which were absent in the case. The plea therefore, cannot be entertained. [590 C—D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1436 of 1975.

F

Appeal by special leave from the Judgment and Order dated 10-3-1975 of the Rajasthan High Court in D. B. Civil Writ Petition No. 384 of 1968.

*Ahmed Bux, Beni Madhav Sharma, M/s. V. J. Francis & R. A. Gupta, Advocates for the appellants.*

*S. M. Jain & Sushil Kumar Jain, Advocates for respondent No. 1.*

The Judgment of the Court was delivered by—

G

JASWANT SINGH, J.—This appeal by special leave is directed against the judgment dated March 10, 1975 of the High Court of Rajasthan at Jodhpur passed in Civil Writ Petition No. 384 of 1968.

H

The facts leading to this appeal are : On July 1, 1961, Kishori Lal, the appellant herein, brought a suit in the court of the Assistant Collector, Baran, against Birdhi Lal, respondent No. 1, for possession of land comprised in khasra Nos. 513, 669 and 678 situate in village Balakhera of Anta Tehsil of Kota District under sections 180 and 183 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as the Act). By his judgment dated December 24, 1962, the

Assistant Collector dismissed the suit. The appellant thereupon preferred an appeal to the Revenue Appellate Authority who allowed the same by his judgment dated November 9, 1963, and reversing the judgment of the Assistant Collector decreed the suit holding that Birdhi Lal was a trespasser. Aggrieved by the judgment and decree of the Revenue Appellate Authority, Birdhi Lal took the matter in further appeal to the Board of Revenue, Rajasthan, but remained unsuccessful as the members of the Board affirmed the view taken by the Revenue Appellate Authority. Dissatisfied with the decisions of the Revenue Appellate Authority and the Board of Revenue, Rajasthan, Birdhi Lal approached the High Court of Rajasthan by means of a petition under Article 226 of the Constitution. The High Court by its aforesaid judgment and order dated March 10, 1975, allowed the petition and held that Birdhi Lal being a tenant within the meaning of section 5(43) of the Act and not a trespasser as conceived by section 5(44) of the Act, was not liable to be ejected from the land. Dissatisfied with this judgment, Kishori Lal has come up this Court.

The learned counsel for the appellant has, while supporting the appeal, vehemently tried to press upon us that as the High Court has exercised appellate jurisdiction and substituted its own opinion for the opinion of the Revenue authorities contrary to the well established principles of law, the impugned judgment cannot be sustained. Elaborating his submission, the learned counsel has submitted that since both the Revenue Appellate Authority and the Board of Revenue had concurrently held that Birdhi Lal was a trespasser and there was no error apparent on the face of the record, the High Court was not justified in interfering with the aforesaid decisions of the Revenue Appellate Authority and the Board of Revenue. The contention advanced on behalf of the appellant is, in our opinion, wholly untenable. The expression 'trespasser' is defined in section 5(44) of the Act as follows:—

“5(44). Trespasser shall mean a person who takes or retains possession of land without authority or who prevents another person from occupying land duly let out to him”.

The above definition makes it clear that in order to be able to succeed in his suit, Kishori Lal had to show that Birdhi Lal had taken or retained possession of the land without authority or that he had prevented him from occupying the land duly let out to him. In the instant case, there was no allegation by the appellant in his plaint that he was prevented by Birdhi Lal from occupying the land which had been let out to him. The only point that we are, therefore, left to determine is whether Birdhi Lal took possession or retained possession of the land without authority. The material on the record does not at all establish any of these elements. On the other hand, as rightly pointed out by the High Court, the Parcha Iagan, Exhibit A-3 and Pantinama, Exhibit A-4 clearly show that the land in question had been let out by the appellant to Birdhi Lal on payment of rent. As the essential conditions for holding Birdhi Lal to be a trespasser were manifestly not satisfied in the present case, the High

- A** 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.

- It was next urged that even if the respondent Birdhi Lal is held to be a tenant by reason of the Pantinama (Ex. A-4), he was liable to be ejected as the appellants Kishori Lal had framed his suit alternatively under section 180 of the Act. Reference to section 180 of the Act shows that it applies only to suits for "ejection of Khudkasht or Ghair-Khatedar tenants or sub-tenants". Khudkasht is defined in section 5, sub s. 23 as land "cultivated personally by an estate holder". It also includes "land recorded as Khudkasht, sir, havala, niji-jot, gharkhed in settlement records" at the commencement of the Act as well as "land allotted after such commencement as Khudkasht under any law". Similarly, the components of rights to sub-tenancy and gair khatedari tenancies are also determined by the provisions of the Act. The High Court had recorded the finding, on this part of the case: "It may be mentioned at the outset that although the suit was raised by respondent Kishori Lal under sections 180 and 183 of the Act as aforesaid, his claim was not upheld under section 180 so that the suit was decreed as one under section 183". In other words, findings of the Revenue Courts as well as the High Court repel the alternative case sought to be made out before us. It required necessary averments and proof of facts which were absent in the case. It was, therefore, a completely hopeless plea which we cannot entertain at this stage.
- B**
- C**
- D**

For the foregoing reasons, we do not find any merit in this appeal which is hereby dismissed with costs.

M. R.

*Appeal dismissed.*