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MADAN LAL

v.

THE STATE OF RAJASTHAN & ORS.

(Civil Appeal No. 6975 of 2019)

B

AUGUST 27, 2019

[DEEPAK GUPTA AND ANIRUDDHA BOSE, JJ.]

Rajasthan Irrigation and Drainage Act, 1954: s.53 – Dispute with regard to water and its distribution to the fields of contesting parties – Appellant approached the Authorities under the 1954 Act but was unsuccessful – He filed suit before the trial court challenging the order of Appellate Authority which was also dismissed – First appellate court allowed the appeal of appellant which was, however, set aside by High Court on the ground that the civil court could not entertain or deal with such disputes – On appeal, held: Under s.53, if there is a difference between two or more persons with regard to rights and liabilities in respect of the use, construction or maintenance of a water courses, then the dispute has to be first referred to the Divisional Irrigation Officer, who enquires the matter and pass an order – He can also transfer the matter to the Collector who may enquire into the matter and dispose it of – The appeal against the order of the Divisional Irrigation Officer lies to the Superintending Irrigation Officer – s.53 (2) is absolutely clear that the order passed by the Authorities under the Act would be final for any crop sown or growing when such order is made and shall remain in force until set aside by the decree of a Civil Court – This clearly implies that the Civil Court has jurisdiction to entertain and decide such a dispute – The only caveat is that the Civil Court shall not pass any order in respect of crops sown or growing in the land at the time of passing of the order – High Court fell in error while holding that the Civil Court could not have set aside the suit – Judgment of the High Court set aside – Matter remitted to the High Court to decide the dispute on merits – Water disputes – Jurisdiction of civil court.

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6975 of 2019 A

From the Judgment and Order dated 12.01.2015 of the High Court of Judicature of Judicature for Rajasthan at Jodhpur in S.B. Civil Second Appeal No.317 of 2008.

Pushpinder Singh, Amrit Singh, Merusagar Samantaray, Advs. for the Appellant. B

Dr. Manish Singhvi, Sr. Adv., Satyendra Kumar, Shailja Nanda Mishra, Harsha Vinoy, Milind Kumar, Sunil Kr. Sharma, Niraj Sharma, Advs. for the Respondents.

The following Order of the Court was passed : C

ORDER

1. Leave granted.

2. This appeal is directed against the judgment and order dated 12.01.2015 passed by the High Court of Rajasthan in S.B. Civil Second Appeal No. 317 of 2008. D

3. Briefly stated, the facts of the case are:

4. There was a dispute between the parties with regard to water and how it is to be given to the field of contesting parties. This dispute was taken to the Authorities under the Rajasthan Irrigation and Drainage Act, 1954 (for short 'the Act'). The appellant lost before the said Authority. E

5. The appellant, thereafter, filed a suit before the Trial Court challenging the order of the Appellate Authority which was dismissed. Aggrieved by the order of the Trial Court, the appellant filed an appeal before the First Appellate Court, which was allowed. The private respondents filed a Second Appeal in the High Court and the High Court set aside the judgment of the First Appellate Court and upheld the judgment of the Trial Court holding that the Civil Court could not entertain or deal such disputes. F

6. The High Court did not take into consideration Section 53 of the Act which reads as follows:- G

“53. Settlement of reference as to mutual rights and liabilities of persons interested in water course.-(1) Whenever a difference arises between two or more persons in regard to their mutual rights or liabilities in respect of the use, construction or maintenance H

- A of a water course, any such person may apply in writing to the Divisional Irrigation Officer stating the matter in dispute; and such officer shall thereupon give notice to the other persons interested that, on a day to be named in such notice, he will proceed to enquire into the said matter and, after such enquiry, he shall pass his order thereon unless he transfers (as he is hereby empowered to do) the matter to the Collector who shall thereupon enquire into and pass his order on the said matter.
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(2) Such order shall be final as to the use or distribution of water for any crop sown or growing at the time when such order is made and shall thereafter remain in force until set aside by the decree in a Civil Court.”

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7. A bare perusal of Section 53 shows that if there is a difference between two or more persons with regard to rights and liabilities in respect of the use, construction or maintenance of a water courses, then the dispute has to be first referred to the Divisional Irrigation Officer, who after giving notice shall enquire the matter and pass an order. He can also transfer the matter to the Collector who may enquire into the matter and dispose it of. The appeal against the order of the Divisional Irrigation Officer lies to the Superintending Irrigation Officer.
- D

8. Section 53 (2) is absolutely clear that the order passed by the Authorities under the Act would be final for any crop sown or growing when such order is made and shall remain in force until set aside by the decree of a Civil Court. This clearly implies that the Civil Court has jurisdiction to entertain and decide such a dispute. The only caveat is that the Civil Court shall not pass any order in respect of crops sown or growing in the land at the time of passing of the order.
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9. The High Court fell in error while holding that the Civil Court could not have set aside the suit. On this ground, we feel that the judgment of the High Court requires to be set aside. We order accordingly and remand the matter to the High Court to decide the dispute on merits. We further direct that the Second Appeal shall be treated to have been filed in the year 2008 and shall be given priority accordingly.
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10. The civil appeal is allowed.

11. Pending application, if any, stands disposed of.