(2015) 06 RAJ CK 0010

In the Rajasthan High Court

Case No : Civil Writ Petition No. 6317/15

Baldev Singh and Others — APPELLANT

Vs

The State of Rajasthan and Others — RESPONDENT

Date of Decision : 29-06-2015

Acts Referred:

Constitution of India, 1950 — Article 227
Rajasthan Land Revenue Act, 1956 — Section 136
Rajasthan Tenancy Act, 1955 — Section 88

Citation : (2015) 06 RAJ CK 0010

Hon'ble Judges : Sangeet Lodha, J

Bench : Single Bench

Advocate : R.C. Joshi, for the Appellant; B.S. Sandhu, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sangeet Lodha, J.

1. This writ petition has been filed by the petitioners questioning the legality of judgment and order dated 18.5.15, passed by the Board of Revenue Rajasthan, affirming the judgment and decree dated 1.8.06 passed by the Revenue Appellate Authority (RAA), Hanumangarh. By judgment and decree dated 1.8.06 passed by the RAA, the appeal preferred by the plaintiff-Smt. Sukhi, against the judgment and decree dated 14.3.05 passed by the Sub Divisional Officer (SDO), Tibbi, has been allowed and accordingly, the suit preferred by her for declaration and correction of entries stands decreed, as prayed for.

2. The relevant facts are that the plaintiff-Smt. Sukhi (since deceased), the mother of tenth respondent herein, filed a suit under Section 88 of Rajasthan Tenancy Act, 1955 and Section 136 of Rajasthan Land Revenue Act, 1956, for declaration and correction of entries in respect of the land ad measuring 10 bighas, comprising stone No. 234/304 (actual No. 234/303), Murabba No. 98, kila No. 16 to 18, 23 to 25 and stone No. 235/303, Murabba No. 99, kila No. 11,

20 to 22 in chak No. 1-GGR. The suit was contested by the petitioners-defendants by filing a written statement thereto, taking the stand that 3/4th share in the land in question stands entered in the name of the defendants and their brother Gurmukh Singh and 1/4th share is entered in the name of the plaintiff. According to the defendants, the land measuring 2 bighas and 10 biswas is in cultivatory possession of the plaintiff and the remaining 7 bighas and 10 biswas land is in cultivatory possession of the defendants as khatedar tenant. The defendants claimed to be in continuous possession of the land measuring 7 bighas and 10 biswas, comprising stone No. 234/303, kila No. 16 to 18, 23 to 25 and stone No. 235/303, kila No. 20 (10 biswas) and 21, since Samvat 2003.

3. A rejoinder to the written statement was filed on behalf of the plaintiff taking the stand that the defendants have not clarified as to on what basis they are claiming 3/4th share in the land in question and how the same came to be entered in the revenue record in their name inasmuch as, neither the land was allotted in their favour by the competent authority nor they had purchased the land from khatedar-biswedar thereof. According to the plaintiff, the land in question was given to her under family partition by her father-in-law Manphool, who was khatedar tenant of the land in question. It was further clarified that the land measuring 5.12 bighas purchased by the defendants from the plaintiff''s father-in-law Manphool, is the land comprising khasra No. 1032/466, 1072/406, 1033/466 ad measuring 1.08 bigha, 1.16 bigha and 2.12 bighas respectively, which stands entered in their name vide mutation entry No. 322 dated 20.2.58. It was averred that since on the basis of mutation entry No. 322, the names of the defendants was entered in parcha khatoni of Manphool on account of inadvertent error on the part of the revenue officials, the land in question was entered in their name and the mistake committed was repeated by making the entries subsequent thereto.

4. 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 material on record and the rival submissions, the suit preferred was dismissed by the trial court vide judgment and decree dated 14.3.05. Aggrieved thereby, the plaintiff-Smt. Sukhi preferred an appeal before the RAA, Hanumangarh. The appeal was allowed by the RAA vide judgment and decree dated 1.8.06 and the suit preferred by the plaintiff-Smt. Sukhi was decreed as prayed for. Aggrieved thereby, the second appeal preferred by the petitioners/defendants, stands dismissed by the Board of Revenue by impugned judgment and order dated 18.5.15. Hence, this petition.

5. Learned counsel for the petitioners contended that the petitioners are in possession of the land in question since Samvat 2003 and the land stands entered in the revenue record in their name and therefore, they cannot be dispossessed from the land in question. Learned counsel submitted that no partition deed was placed on record by the plaintiff, showing that the land in question had fallen in her share under the family settlement. Learned counsel submitted that the plaintiff having failed to establish her khatedari rights over

the land in question, the suit was rightly dismissed by the trial court. Learned counsel submitted that the findings recorded by the RAA, affirmed by the Board of Revenue without appreciating the evidence on record in correct perspective, are ex facie capricious and perverse.

6. On the other hand, the counsel appearing for the respondent-caveator submitted that while passing the order impugned, affirming the judgment and decree passed by the RAA, the Board of Revenue has taken into consideration the entire evidence on record objectively and the findings arrived at cannot be said to be capricious or perverse so as to warrant interference by this court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India. Learned counsel submitted that the findings arrived at by the RAA, affirmed by the Board of Revenue regarding the khatedari right of the plaintiff over the land in question is based on documentary evidence on record. Learned counsel submitted that no document whatsoever was produced on behalf of the defendants before the trial court showing that the land in question was ever transferred in their favour by the khatedar tenant of the land and thus, the defendants having failed to establish their khatedari right over the land in question by producing any cogent evidence on record, the Board of Revenue has committed no error in affirming the judgment and decree passed by the RAA, decreeing the suit preferred by the plaintiff.

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

8. Indisputably, late Shri Manphool Singh, the father-in-law of the plaintiff-Smt. Sukhi was the original khatedar of the land in question. It is not in dispute that the petitioners/defendants had purchased the land comprising khasra No. 1032/466, 1072/406, 1033/466, ad measuring 1.08 bigha, 1.16 bigha and 2.12 bighas respectively, total 5.12 bighas land, altogether a different land, from late Shri Manphool and the same stands entered in their name in the revenue record vide mutation entry No. 322 dated 20.2.58. It is also a matter of record that the plaintiff''s husband Jiwan Ram had expired prior to Shri Manphool Singh and therefore, his share was entered by inheritance in the name of the plaintiff vide mutation entry No. 314 dated 1.11.57. It was not even the case of the defendants that the land in question was ever allotted to them by the competent authority or the same has been purchased by them from its khatedar tenant-Manphool. It is a matter of record that the land measuring 10 bighas comprising khasra No. 1281/803 and land measuring 2 bighas 17 biswas comprising khasra No. 1275/463 was recorded in the name of plaintiff-Smt. Sukhi and it is only on account of inadvertent error on the part of the revenue officials that the land was subsequently entered in the name of the defendants. In this view of the matter, in absence of any evidence on record, establishing khatedari rights of the defendants over the land in question, the findings arrived at by the RAA, affirmed by the Board of Revenue, after examination of the evidence on record in its entirety and objectivity, cannot be faulted with.

9. In the considered opinion of this court, the concurrent findings arrived at by

the RAA and the Board of Revenue as aforesaid, after due examination of the evidence on record, remain findings of facts, which cannot be said to be capricious or perverse so as to warrant interference by this court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India.

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