

(1978) 08 RAJ CK 0019
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1428 of 1978

Bhagwandas

APPELLANT

Vs

The Board of Revenue and Others

RESPONDENT

Date of Decision : 14-08-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 2
Constitution of India, 1950 — Article 226

Citation : (1978) WLN 255

Hon'ble Judges : M.L. Joshi, J;M.C. Jain, J

Bench : Division Bench

Judgement

M.L. Joshi, J.—This is a petition under Article 226 of the Constitution of India wherein the petitioner seeks to quash the judgment of the Board of Revenue dated 7-8 1972.

2. The facts giving rise to this petition are as under. The petitioner filed a suit on 29th of June, 1966, in the court of the Assistant Collector Deedwana for perpetual injunction praying that respondents Nos. 2 and 3 be restrained from dispossessing the petitioner. The defendants in their written statement contested the claim of the plaintiff-petitioner. On the pleadings of the parties the learned Assistant Collector framed the following three issues:

1. Whether the field khasra No. 76 area 89 bighas 4 biswas situated in village Giroda Khara is in possession of the plaintiff.

2. Whether the plaintiff is entitled for the grant of perpetual injunctions against the defendant.

3. Relief?

3. The learned Assistant Collector after recording the evidence produced on behalf of both the sides dismissed the plaintiff's suit by his judgment dated 31st of December, 1970. The plaintiff having felt aggrieved from the said judgment

preferred first appeal under the Rajasthan Tenancy Act before the Revenue Appellate Authority Bikaner. The Revenue Appellate Authority in its turn by its decision set aside the judgment and decree passed by the Assistant Collector, remanded the case back to the court of the learned Assistant Collector after framing three mere issues and directed it to give an opportunity of leading documentary as well as oral evidence to both the parties and then decide the case afresh on merits. The learned Revenue Appellate Authority in its decision simultaneously passed an order appointing Receiver on the disputed land.

4. The plaintiff-petitioner felt aggrieved by this order & so went in second appeal before the Board of Revenue challenging the order of remand as well as to the order of appointment of Receiver. The Board of Revenue registered the appeal and disposed it on the preliminary point that the same was not competent as it was not accompanied by a decree sheet. It consequently dismissed the second appeal by its impugned Ex. 2 dated 7-8-2.

5. The learned Counsel for the petitioner has urged before us that the Board has failed to exercise jurisdiction which was vested in it by law in not entertaining the appeal. It has been urged that the order of the Revenue Appellate Authority dated 30-6-71 did not amount to a decree at all and therefore it was not obligatory on the petitioner to have submitted the decree-sheet along with the memo of appeal. It has been submitted by the learned Counsel for the petitioner that the Revenue Appellate Authority had passed a composite order, a portion of the order related to remand of the main suit back to the trial court and the other related to the appointment of Receiver suo moto. Both the orders obviously according to the learned Counsel do not fall under the definition of decree.

6. We have heard the learned Counsel for the parties at some length and perused the judgment of the Revenue Board as well as of the Revenue Appellate Authority. The Revenue Appellate Authority had passed the order of remand after framing certain issues. It has not at all decided any matter in controversy. When the Revenue Appellate Authority while remanding these has not decided any matter in controversy conclusively and had simply passed an order of retrial by way of remand, such a decision, in our opinion, cannot amount to a decree within meaning of Section 2(2) of the Code of Civil Procedure. In this connection we are fortified in our view by a Division Bench decision of this Court reported as *Manaklal v. Madardal* 1955 RLW 150. The Division Bench case placed reliance on *Permanand Kumar and Others Vs. Bhon Lohar and Others*, . In that case it was held that a decision u/s 151 is appealable only when it amounts to a decree. In that case it was further laid down that where the order of remand merely sets aside a decree of the trial court and does not itself decide any of the points raised for determination nor does it determine the rights of the parties relating to any matter in controversy in the suit, it cannot amount to a decree and must be treated as an order. Their Lordships further went on to say that the mere fact that the order reversed decree of the trial court and deprived the plaintiff of the valuable rights acquired there under could not make the order of

remand a decree unless that order itself determines any of the points arising for determination in regard to the matter in controversy in the suit. This proposition was approved by the Division Bench saying that it was the correct position of law. Looking to the judgment of the Revenue Board in the light of the position of law enunciated above, we have no hesitation to say that the order of remand passed by the Revenue Appellate Authority in no way could come within the meaning of decree as envisaged u/s 2(2) of the Code of Civil Procedure. The learned Board of Revenue therefore had committed a jurisdictional mistake in not entertaining and hearing the appeal on merits on the assumption that the order of remand amounts to a decree. The judgment of the Revenue Board, therefore, deserves to be quashed.

7. The other portion of the order of the Revenue Appellate Authority relates to the appointment of Receiver suo moto. The order of appointment of Receiver cannot in any sense Orem within the definition of "decree" and, therefore, such order could be challenged without submitting the decree-sheet. The decision of the appointment of the Receiver could certainly be challenged by submitting the appeal accompanied by the certified copy of the order. In our view the Revenue Board has therefore failed to exercise its jurisdiction when it refused to hear the appeal simply on the ground that the appeal was not accompanied by the certified copy of the decree. The judgment of the Revenue Board therefore deserves to be quashed.

8. We accordingly accept this petition, set aside the judgment of the Board of Revenue and send the case back to it for deciding the same on merits. In the facts and circumstances of the case we keep the costs easy.