**(2007) 01 RAJ CK 0124**

**In the Rajasthan High Court**

**Case No :** Civil Writ Petition No. 5402 of 1995

Bishanlal APPELLANT

Vs

Board of Revenue and Others RESPONDENT

**Date of Decision :** 04-01-2007

**Acts Referred:**

**Citation :** (2007) 2 WLN 380

**Hon'ble Judges :** Asok Parihar, J

**Bench :** Single Bench

## Judgement

Ashok Parihar, J.—The land originally belonged to one Devlal. After death of Devlal, the mutation was made in the name of three sons namely, Bhanwarlal, Kesrilal and Heeralal. All the three brothers alleged to had equal share in the entire land. Subsequently, Kesrilal died unmarried. Bhanwarlal had already died prior to the death of Kesrilal. After the death of Kesrilal his share of the land was mutated in the name of Heeralal in the year 1977.

2. Subsequently, a suit for declaration, possession and permanent injunction was filed by the petitioner Bishanlal son of Bhanwarlal alleging that since Heeralal had gone in adoption 50 years back, the petitioner should have been declared sole tenant of the share of the land belonged to Kesrilal. Accepting the plea of adoption, the trial Court decreed the suit vide order and decree dt. 01.03.1986 declaring the petitioner as the sole tenant of the land belonging to Kesrilal. The above order came to be challenged by legal heirs of Heeralal before the Revenue Appellate Authority. While allowing the appeal vide order dt. 24.09.1988, the Revenue Appellate Authority set a side the order and decree dt. 01.03.1986 passed by the trial Court. The order of the Revenue Appellate Authority further came to be affirmed by the Board of Revenue vide order dt. 07.02.1995. Hence the present writ petition.

3. After hearing learned Counsel for the parties, I have carefully gone through the material on record as also the orders passed by the Courts below.

 

4. The Revenue Appellate Authority as also the Board of Revenue has come to a finding that the petitioner has not been able to prove adoption of Heeralal. Since the whole suit was filed only on the plea of adoption, the decree passed by the trial Court was set aside by the Revenue Appellate Authority and further been affirmed by the Board of Revenue. The father of the petitioner had already died before the death of Kesrilal. There is also no dispute that all the brothers had equal shares and their names had duly been entered in the revenue record. Even as per Hindu Succession Act, the land belonging to Kesrilal would revert to his surviving brother Heeralal and accordingly the land had also been mutated in the name of Heeralal in the year 1977 itself. The petitioner, at the worst, could have filed a suit for partition so far as the land belonging to Kesrilal is concerned. Not having done so, even the alternative plea of half share cannot be accepted by this Court at this stage because the same can only be decided by a competent Court after taking evidence of the parties concerned.

5. In view of concurrent findings and proper discretion been used by the Revenue Appellate Authority as also the Board of Revenue, in the facts and circumstances, no further interference is called for by this Court under writ jurisdiction. The writ petition is dismissed accordingly as having no merits.