**(2015) 11 RAJ CK 0005**

**In the Rajasthan High Court**

**Case No :** Civil Writ Petition No. 1182 of 2004

Chhotu and Others APPELLANT

Vs

Board of Revenue and Others RESPONDENT

**Date of Decision :** 18-11-2015

**Acts Referred:**

Constitution of India, 1950 — Article 227
Rajasthan Tenancy Act, 1955 — Section 19
Specific Relief Act, 1963 — Section 34

**Citation :** (2015) 11 RAJ CK 0005

**Hon'ble Judges :** Kanwaljit Singh Ahluwalia, J.

**Bench :** Single Bench

**Advocate :** N.K. Maloo, Senior Counsel assisted by V.K. Tamoliya, Counsel, for the Appellant; Rajeev Surana and R.B. Sharma, Counsel, for the Respondent

**Final Decision :** Disposed Off

## Judgement

Kanwaljit Singh Ahluwalia, J.—Instant petition has been preferred under Article 227 of the Constitution of India praying inter alia that the order dated 05.08.1999 passed by Revenue Appellate Authority, whereby a well reasoned judgment & decree rendered by Sub Divisional Officer dated 28.08.1976 was reversed, be set aside, along with order dated 12.01.2004 passed by Board of Revenue for Rajasthan, Ajmer.

2. Succinctly stated facts of the case are that, one Heera Lal, respondent No. 4/ plaintiff instituted a suit for redemption of mortgage and possession against Nathu, praying inter alia that Nathu be evicted from the suit land and possession thereof be vested in the plaintiff/respondent No. 4 and furthermore, plaintiff - Heera Lal, respondent No. 4 to the present petition, be conferred khatedari rights over the suit property.

3. In the suit, it was specifically pleaded that respondent No. 4/plaintiff - Heera Lal was adopted by Bhura. It was stated therein that Radhakrishan, father of plaintiff - Heera Lal was real brother of Bhura and he was taken into adoption

 

after necessary ceremonies were performed. It was further averred in the suit that Bhura had mortgaged the land with petitioner/defendant - Nathu for Rs. 325/- and the plaintiff/respondent No. 4 be permitted to redeem the mortgage and thereafter possession be handed over to him.

4. In other words, two prayers were made in the suit, firstly, the land was mortgaged with Nathu and after redemption possession thereof be handed over to Heera Lal and secondly, khatedari rights be not conferred upon Nathu and same be granted in favour of plaintiff. For both the prayers made, it was averred that Heera Lal is an adopted son of Bhura.

5. In the reply filed to the suit, adoption of Heera Lal by Bhura was denied. It was further admitted that the land was never mortgaged with Nathu, rather Nathu made an averment that from last fifteen/fourteen years, he was sub-tenant of Bhura. Nathu admitted an ownership of Bhura, but claimed sub-tenancy.

6. Sub Divisional Officer, vide its judgment dated 28.08.1976, dismissed the suit by holding that neither Heera Lal was an adopted son of Bhura nor the land was mortgaged.

7. Aggrieved against the same, Heera Lal preferred an appeal before Revenue Appellate Authority. Revenue Appellate Authority reversed the judgment rendered by Sub Divisional Officer, Malpura and came to a conclusion that registration of adoption is not required and by leading oral evidence, Heera Lal has proved his adoption. The Court further came to a conclusion that Heera Lal was entitled to redeem the land, which was mortgaged in favour of Nathu.

8. Against the decision rendered by Revenue Appellate Authority, the appeal was filed by the legal heirs of Nathu.

9. Board of Revenue for Rajasthan, Ajmer on Issue No. 1 held that Heera Lal was an adopted son of Bhura. However, Issue No. 2 regarding mortgage of land and its redemption was decided against Heera Lal. After accepting that Heera Lal was an adopted son, the Court came to a conclusion that Heera Lal, being legal heir, is entitled to take possession of the land.

10. It will be pertinent to mention here that in the suit following issues were formulated:-

11. Shri N.K. Maloo, the learned Senior Counsel appearing for the petitioners, has submitted that issue regarding adoption of Heera Lal could not be determined by the Revenue Court and since adoption determine the legal character within purview of Section 34 of the Specific Relief Act, 1963 as per the judgment rendered by the Hon''ble Apex Court in case of Ramchandra Dagdu Sonavane (Dead) by L.Rs. and Others Vs. Vithu Hira Mahar (Dead) by LRs. and Others, , only Civil Court was competent to determine this issue.

12. Mr. Rajeev Surana & Mr. R.B. Sharma, the learned counsels appearing for the respondents, have contended that the matter regarding adoption stood

 

adjudicated earlier upto the Board of Revenue for Rajasthan, Ajmer and in a revision preferred by Nathu way back on 03.08.1971, it was held that the Khatedari is not a proprietary right under Section 239 of the Rajasthan Revenue Act and, therefore, issue of adoption is not required to be determined. Counsels further contended that in the reply filed, Nathu took a plea that he is a sub-tenant of Bhura and, therefore, Khatedari rights vested in him.

13. On behalf of the respondents, learned Counsels have submitted that the Rajasthan Tenancy Act came into operation in year 1955 and Bhura died in 1950, therefore, after the death of Bhura in 1950, Heera Lal, plaintiff/respondent No. 4, being a legal heir became Khatedar in the land and, therefore, once land vested in Bhura in year 1950, Nathu cannot claim Khatedari rights over the land. Counsels further submitted that since at the time of death of Bhura, Heera Lal was less than of twenty-five years of age, no sub-tenancy could be executed by him in terms of Section 19 Sub-Clause (1) of the Rajasthan Tenancy Act.

14. On behalf of the respondents, it is argued by Mr. Surana that Nathu, as per provisions of the Rajasthan Tenancy Act, could not claim Khatedari rights, being a sub-tenant. Lastly, it is argued that the order whereby sub-tenancy of Nathu was recognized is void-ab-initio.

15. Shri Surana, ld. Counsel appearing for the respondents, has submitted that even if for sake of arguments, it is admitted that Heera Lal, respondent No. 4/ plaintiff to the suit is not an adopted son of Bhura then being nephew, he is entitled to the estate of Bhura, as it has come in the evidence that Bhura was unmarried and had died issueless.

16. Having heard the learned counsel appearing for the parties, this Court is of the view that specific issue was drawn by the Court of Sub Divisional Officer, Malpura to the effect that whether Heera Lal was an adopted son of Bhura or not. On this issue, Sub Divisional Officer, being trial Court, had given a finding against respondent No. 4/plaintiff to the suit. The said finding was reversed by Revenue Appellate Authority and same was upheld by Board of Revenue for Rajasthan, Ajmer.

17. There is a merit in the contention raised by Shri N.K. Maloo, ld. Senior Counsel that issue regarding adoption could not be determined by the Revenue Court.

18. In Ramchandra Dagdu Sonavane (Dead) by LRS. & Ors. (supra), it was held that since adoption determine the legal character, same could not be decided by the revenue Court.

19. It will be apposite here to reproduce Para-41 of the said judgment as under:-

"41. As regards whether there is valid adoption or not, that question pertains to the status and legal character of an individual, which falls within the purview of Section 34 of the Specific Relief Act, 1963, and a suit for declaration before a civil court is maintainable. Therefore, the question whether a particular person has been given in adoption or not is different from whether a person has hereditary interest or rights in respect of a watan property. If this distinction is drawn, there is no exclusion of civil courts jurisdiction under the Act. When a person claims on the basis of adoption, such an adoption cannot be decided by the Collector as the same involves legal status/character of a person which can only be decided by the civil court. Whether Vithu is an adopted son or not is concluded and decided in O.S. No. 104 of 1953. A specific issue had been framed and a finding was recorded though it was a suit for injunction and the findings on this issue has been confirmed by the Appellate Court and by the High Court in Regular Second Appeal."

20. It will be apposite here to further notice that the Hon''ble Apex Court in the above said judgment has also held that validity of adoption will not fall within the jurisdiction of revenue court.

21. Para-49 of the said judgment reads as under:-

"49. In the subsequent proceedings before the Sub-Divisional Officer, the issue was whether Vithu was the adopted son of deceased Watandar and, therefore, having hereditary interest in any inferior village watan under Watan Abolition Act, 1958. To decide this issue, the Sub-Divisional Officer firstly has to decide the issue, whether Vithu is the adopted son of deceased Watandar. This issue is one which does not fall within the jurisdiction of the revenue court but falls within the exclusive jurisdiction of the civil court. Since the issue of adoption was already decided between the same parties by a competent civil court, the Sub-Divisional Officer cannot decide that issue and without giving any decision on that issue could not have allowed the claim of the respondent Vithu. Therefore, in our opinion, the Principles of Res-judicata would apply to the proceedings before the Sub-Divisional Officer."

22. In view of emphatic pronouncement of the Hon''ble Apex Court in the case of Ramchandra Dagdu Sonavane (Dead) by LRS. & Ors. (supra), this Court is of the view that issue of adoption could not be determined by the Revenue Court alone. Therefore, Heera Lal, plaintiff to the suit is relegated to the Civil Court to file a suit for declaration to this effect that he is an adopted son of Bhura. In alternative that he may seek declaration that he is only legal heir of Bhura to claim his right over the estate of Bhura. In case, such a suit is instituted within a period of three months, same shall be decided by the Civil Court within a period of two years. After determination by the Civil Court, the Board of Revenue for Rajasthan, Ajmer shall pass a fresh order regarding remaining issues, after hearing all concerned regarding confirmation of Khatedari rights. Till then, status-quo, as it exists today, shall be maintained by both the parties.

23. In view of the directions issued above, present writ petition is disposed of.

 