

(2018) 01 RAJ CK 0042
In the Rajasthan High Court
Case No : 4799 of 2016

Dataram	Vs	APPELLANT
Prabhu Lal & Anr		RESPONDENT

Date of Decision : 23-01-2018

Acts Referred:

Citation : (2018) 01 RAJ CK 0042

Hon'ble Judges : M.N.Bhandari

Bench : Single Bench

Advocate : RP Garg, Tarun Jain

Final Decision : Dismissed

Judgement

1. By this writ petition, a challenge is made to the order dated 29th September, 2004 passed by the ACM Court, Sawai Madhopur and the order dated 20th March, 2006 passed by the Revenue Appellate Authority so as the order dated 14th March, 2016 passed by the Board of Revenue.
2. It is a case where a suit for declaration and possession has been filed by the non-petitioner for different khasra numbers. The entries in the revenue record were existing in their name but changed during the course of settlement proceedings. The suit was decreed. The petitioner preferred an appeal before the Revenue Appellate Authority, but, it was dismissed followed by dismissal of second appeal by the Board of Revenue.
3. Learned counsel for the petitioner submits that the non-petitioner in fact filed a suit for declaration, possession and partition. The ACM Court was under an obligation to first pass a preliminary decree in the suit for partition followed by a final decree. In the instant case, preliminary decree

was not drawn thus all the impugned orders deserve to be set aside with remand of the case to ACM Court to first pass a preliminary decree.

4. Learned counsel for the petitioner further submitted that land of Khasra No.186 (new number) is in possession of the petitioner, whereas,

khasra No.184 is in possession of the nonpetitioner. In view of the possession of the petitioner on Khasra No.186, declaration of khatedari rights

in favour of the nonpetitioner could not have been made. It is moreso when, he is in possession of khasra No.184 having no claim for it.

5. A reference of FIR lodged by the non-petitioner has also been given where he claimed his possession on khasra No.184. The prayer is

accordingly to set aside the impugned orders.

6. I have considered the submissions made by learned counsel for the petitioner and perused the record.

7. The copy of the suit preferred by the non-petitioner has been enclosed along with the reply. It is to show that suit was only for declaration and

possession and not for partition. The petitioner has tried to confuse the court in reference to the title of suit where the word ""partition"" has also

been mentioned but inadvertently. The prayer in the suit is not of partition but to declare plaintiff khatedar of all the khasras mentioned therein. The

relief granted by the ACM is also for not partition of land but declaring the nonpetitioner to be khatedar of the khasras claimed by him with

possession. The Revenue Appellate Authority and Board of Revenue have upheld the order passed by the ACM thus there exists concurrent

finding of fact of three courts. The petitioner has possessed khasra No.186, though, belong to the non-petitioner pursuant to a settlement entered

between the then khatedars. Accordingly, all the issues were decided in favour of the nonpetitioner with concurrent finding of facts. I do not find

any perversity or illegality in the orders passed by three revenue courts. They entries in revenue record could not have been changed in settlement

in absence of an order.

8. The issue pertaining to passing of preliminary decree could have been accepted if the prayer in the suit would have been to the partition of the

land. It cannot be guided by the cause title of the suit where the word ""partition"" has erroneously been shown. It is to be guided by the prayer

made in the suit. In view of the above, the judgment referred by the petitioner in

the case of Badri Prasad Vs. L.Rs of Ram Lal reported in RRD

1990 665 has no application. The judgment aforesaid applies only when a suit for partition is filed and not in a case where the suit was for

declaration and possession.

9. So far as the FIR lodged by the non-petitioner is concerned, it cannot determine nature of the suit. If the nonpetitioner is in possession of khasra

No.184, having no authority, rather, belongs to the petitioner, appropriate steps can be taken by the petitioner, but based on it, rights of the non-

petitioner in khasra No.186 cannot be taken away.

10. Accordingly, the writ petition is dismissed finding no merit therein.