

(2012) 04 RAJ CK 0127
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1585 of 2012

Deva and Others

APPELLANT

Vs

Board of Revenue for Rajasthan and Others

RESPONDENT

Date of Decision : 11-04-2012

Acts Referred:

Rajasthan Tenancy Act, 1955 — Section 188

Citation : (2012) 3 WLN 67

Hon'ble Judges : Krishan Vyas, J

Bench : Single Bench

Advocate : N.M. Lodha, with Mr. V.D. Dadhich, for the Appellant; Mukesh Rajpurohit, for the Respondent

Final Decision : Dismissed

Judgement

Gopal Krishan Vyas, J.—In this writ petition, the petitioner has prayed for quashing order passed by the Board of Revenue dt. 13.02.2012 (Annex.-10) passed in revision petition filed by respondent Idan Singh and prayed that order passed by the Sub Divisional Officer, Bali dt. 12.09.2011 (Annex.-8) and order dt. 22.12.2011 (Annex.-9) passed by the Revenue Appellate Authority may be restored. Brief facts of the case are that a suit for permanent injunction under Sec. 188 of the Rajasthan Tenancy Act was filed by respondent Idan Singh against the petitioners. An application for temporary injunction under Sec. 212 of the Rajasthan Tenancy Act was also filed along with the suit. In the suit for permanent injunction, it is prayed that land measuring 5.5 hectare in village Barwa Tehsil Bali (District Pali) is in the name of ancestor of petitioners No. 1 to 3 and respondent No. 4. Various persons have been shown as co-tenants of the said land.

2. Before the S.D.O., Bali it is submitted by respondent No. 4 that petitioner-defendants are raising permanent construction upon the land which is in joint khatedari. It has also been submitted that upon the said agriculture land plaintiff and defendants are jointly cultivating by turn; but, for last 5-6 years, respondent

No. 1 is not cultivating the land and petitioners No. 2 and 3 are sons of respondent No. 1. The temporary injunction application filed by Respondent No. 4 was dismissed vide order dt. 12.09.2011 by the Sub Divisional Officer, Bali (District Pali), against which, an appeal was preferred before the Revenue Appellate Authority, Pali under Sec. 225 of the Rajasthan Tenancy Act. The Revenue Appellate Authority, Pali dismissed the appeal vide judgment dt. 22.12.2011. Respondent No. 4 again preferred revision petition before the Board of Revenue, Ajmer under Sec. 230 of the Rajasthan Tenancy Act and Board of Revenue, Ajmer accepted the said revision petition vide order dt. 13.02.2012 and while quashing both the orders passed by the Sub Divisional Officer, Bali and Revenue Appellate Authority, Pali granted interim injunction in favour of respondent No. 4 whereby the Board of Revenue directed the petitioner-defendants that they shall not raise any permanent construction upon the land in question till decision of the suit.

3. Learned counsel for the petitioners while challenging the order dt. 13.02.2012 submits that there is complete error in the order passed by the Board of Revenue in the revision filed under Sec. 230 of the Rajasthan Tenancy Act because as per Section 230 of the Act there is limited scope for interference in the order passed by the trial Court as well as appellate Court, therefore, the order impugned deserves to be quashed because no error has been committed by the trial Court as well as Revenue Appellate Authority, Pali in rejecting the prayer of respondent No. 4 for granting temporary injunction.

4. Learned counsel for the petitioners further submits that as per oral partition made by all the share-holders the petitioners are entitled to raise permanent construction upon their land, in which, they have electricity connection but the respondent No. 4 is illegally raising voice that no permanent construction can be raised. Further, he is not accepting the oral partition which took place in between all the co-sharers of the land in question. It is also pointed out that both the Courts below gave positive finding with regard to existence of oral partition in between the parties, therefore, at the time of deciding the revision petition, the Board of Revenue ought to have considered this aspect of the matter; but, without considering the finding of fact with regard to oral partition, the Board of Revenue granted interim injunction which is totally contrary to the spirit of revisional jurisdiction vested in the Board of Revenue under Sec. 230 of the Rajasthan Tenancy Act.

5. Learned counsel for the petitioners invited attention of the Court towards judgment of the Hon''ble Supreme Court reported in D.L.F., Housing and Construction Company (P.) Ltd., New Delhi Vs. Sarup Singh and Others, In support of his contention, learned counsel for the petitioners also cited judgment of Hon''ble Supreme Court reported in 1966 SC 153, Panduran Dhondi Chougule & Others vs. Maruti Hari Jadhav & Others; and, submits that there was no jurisdictional error in both the orders passed by the subordinate Courts but the Board of Revenue illegally exercised jurisdiction which is contrary to the

judgments of Hon"ble Supreme Court rendered in the above-cited cases. Therefore, the order impugned dt. 13.02.2012 passed by the Board of Revenue in the revision petition may be quashed and set aside.

6. Per contra, learned counsel appearing for the respondents submits that there is no jurisdictional error in the order passed by the Board of Revenue upon the revision petition under Sec. 230 of the Rajasthan Tenancy Act. Learned counsel for the respondents argues that the contention of the petitioners' counsel that there is finding in the order of rejecting temporary injunction application that there is oral partition in existence cannot be accepted at this stage because no final finding can be given at the time of passing order upon temporary injunction application. The Board of Revenue while considering the fact that there is no partition in existence, therefore, without any partition and demarcation of individual share no permanent construction can be made by the petitioners. Therefore, there is no error in the order passed by the Board of Revenue for which any interference is required. The judgments cited by learned counsel for the petitioners are not applicable upon the present set of facts because there is complete jurisdictional error in the orders passed by the subordinate Court, therefore, learned Board of Revenue rightly exercised jurisdiction. Hence, this writ petition may be dismissed.

7. After hearing learned counsel for the parties, I have perused the order impugned and both the orders passed by the Sub Divisional Officer, Bali and Revenue Appellate Authority, Pali.

8. It is admitted position of the case that no written partition or any decree with regard to partition is in existence. The whole basis for the claim of the petitioner-defendants is that there was oral partition and, in that circumstance, they are entitled to raise permanent construction. In my opinion, if the property is ancestral property and if there is dispute with regard to existence of partition, then, obviously there must be valid partition in between the parties. Therefore, obviously without determination of individual share in the property, no co-sharer can be permitted to raise permanent construction. In the instant case, both trial Court as well as Revenue Appellate Authority committed jurisdictional error while holding that oral partition had taken place for which only assertion is made but there is no evidence on record, therefore, the judgments cited by learned counsel for the petitioners are not applicable in this case because as per Section 230 of the Rajasthan Tenancy Act there is power left with the Board of Revenue to call for record in a case in which no appeal lies under Sec. 239 of the Act. Section 230 of the Rajasthan Tenancy Act reads as under:

230. Power of the Board to call for cases.-The Board may call for the record of any case decided by any subordinate revenue Court in which no appeal lies either to the Board or to a civil Court under Sec. 239 and if such Court appears-

(a) to have exercised jurisdiction not vested in it by law; or

(b) to have failed to exercise jurisdiction so vested; or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity;

the Board may pass such orders in the case as it thinks fit.

9. Upon perusal of above provision and impugned order passed by the Board of Revenue, Ajmer, I am of the opinion that no illegality has been committed by the Board of Revenue because both trial Court and the Revenue Appellate Authority, Pali has wrongly accepted the contention of the petitioner that oral partition took place in between the parties, therefore, rejection of the temporary injunction application by the trial Court and Revenue Appellate Authority, Pali was illegal and erroneous. In view of the above there is no illegality in the order passed by the Board of Revenue, Ajmer. Consequently, this writ petition is dismissed.