
(2007) 10 RAJ CK 0086

In the Rajasthan High Court

Case No : Civil Writ Petition No. 6815 of 2006

Gavra Devi (Smt.) and Others

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 11-10-2007

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2008) 1 WLN 274

Hon'ble Judges : Govind Mathur, J

Bench : Single Bench

Judgement

Govind Mathur, J.—By this petition for writ, a challenge is given to the order dt. 18.10.2005 passed by the Board of Revenue, Rajasthan, Ajmer accepting a revision petition preferred by respondent Shri Ghanshyam giving challenge to validity, propriety and correctness of the order passed by the Sub Divisional Officer (North), Bikaner in Revenue Appeal No. 37/2000 as affirmed by the Additional Divisional Commissioner, Bikaner by order dt.19.09.2001.

2. In brief, facts of the case are that the Tehsildar made mutation in favour of respondent Shri Ghanshyam S/o Shri Nathmal on basis of a Will said to be executed by his father Shri Nathmal. The present petitioners being aggrieved by the same, preferred an appeal before the Sub Divisional Officer (North), Bikaner and that came to be accepted by the order dt. 16.05.2001 with a finding that the Tehsildar (Revenue), Bikaner erred while entering mutation in favour of respondent Shri Ghanshyam without hearing other legal representatives of Shri Nathmal. The Sub Divisional Magistrate, accordingly, remanded the matter to Tehsildar (Revenue), Bikaner to decide the issue afresh after affording an opportunity of hearing to all the legal representatives of Shri Nathmal. An appeal preferred by the respondent Shri Ghanshyam before the Additional Divisional Commissioner, Bikaner under Section 76 of the Land Revenue Act, 1986 also stood rejected by the order dt. 19.09.2001, however, the Board of Revenue accepted the revision petition preferred giving challenge to the order aforesaid

on the count that the proceedings for mutation is of a summary nature, thus, there was no need to hear other legal representatives of Shri Nathmal and also for the reason that entries of mutation does not vest title with any body.

3. While assailing validity of the order dt. 18.10.2005 passed by the Board of Revenue, contention of counsel for the petitioner is that there was no occasion for the Board of Revenue to interfere with the concurrent finding given by the Sub Divisional Officer (North) Bikaner as well as by the Additional Divisional Commissioner, Bikaner. It is also asserted that though the mutation does not vest any title of the property in persons, however, it certainly creates a civil right with regard to cultivation of the land with a person in whose favour the mutation is entered.

4. In reply to the writ petition, stand of the respondent is that under Article 227 of the Constitution of India, this Court is not required to interfere with the order passed by the Board of Revenue as there is no error touching the jurisdiction.

5. Having considered the arguments advanced, I found merit in the contention that the Board of Revenue while exercising its revisional power, should be slow in interfering with the orders, those are based on findings of fact. As a matter of fact in the instant matter, the order passed by the Sub Divisional Officer is quite fair as before making mutation on basis of a will, no opportunity of hearing was given to other legal representatives of late Shri Nathmal and they while adjudicating the appeal u/s 75 of the Land Revenue Act disputed the said Will of Shri Nathmal. The appropriate course, therefore, was to examine version of other persons also. The Sub Divisional Magistrate, thus, rightly remanded the matter for its fresh adjudication by the Tehsildar (Revenue). The Board of Revenue without just and valid reason in its revisional jurisdiction interfered with the fair and just order.

6. Accordingly, this petition for writ is allowed. The order passed by the Board of Revenue dt. 18.10.2005 in revision/LR/113/2001/Bikaner Shri Ghanshyam v. Smt. Gavri Devi and Ors. is quashed, consequent thereto the order passed by the Sub Divisional Officer (North) Bikaner dt. 16.05.2001 as affirmed by the Additional Divisional Magistrate, Bikaner by the order dt.19.09.2001 stands restored.

7. No order to cost.