(1986) 09 RAJ CK 0013

In the Rajasthan High Court

Case No : Civil Writ Petition No. 156 of 1979

Gurujant Ram APPELLANT

Vs

State of Rajasthan and Another RESPONDENT

Date of Decision : 05-09-1986

Acts Referred:

Rajasthan Tenancy Act, 1955 — Section 175

Citation : (1987) WLN 399

Hon'ble Judges : A.K. Mathur, J

Bench : Single Bench

Judgement

Ashok Kumar Mathur, J.—This writ Petition is directed against the judgment of the Assistant Collector dated 31-5-1976 (Annex. D). and the judgment of the Revenue Appellate Authority dated 16-11-1976 (Annex. E) and the judgment of the Board of Revenue dated 22-1-1979 (Annex. F).

2. The Petitioner who is a Jat Sikh was given in adoption on 19-2-1974, to one Shri Suraja Ram Meghwal who is a Scheduled Caste, by his father Karmail Singh according to the custom and provisions of the Hindu Adoption and Maintenance Act. The Petitioner submits that after adoption he became member of the Scheduled Caste Meghwal of his adoptive father being the adopted son of Suraja Ram. The Petitioner purchased agricultural land measuring 15 bighas and 2 biswas from one Nanda Naik belonging to Scheduled caste on payment of Rs. 25,500/- on 1-6-1974, after his adoption. The Petitioner obtained a Khatedari Patta from non-petitioner No. 5. A report was made against the petitioner u/s 175 of the Rajasthan Tenancy Act for cancelling the sale deed of the disputed land in petitioner''s favour on the ground that the transfer being against the express provisions of Section 42 of the Rajasthan Tenancy Act. On this complaint, the Assistant Collector vide judgment dated 31-5-1976 (Annexure D), held that the adoption of the Petitioner was not valid and he set aside the sale. Aggrieved against that judgment, the Petitioner preferred an appeal before the Revenue Appellate Authority and the Revenue Appellate Authority affirmed the

findings of the Assistant Collector vide judgment dated 16-11-1976 Annx. E). Thereafter, the Petitioner preferred a second appeal before the Board of Revenue and the Board of Revenue also affirmed the judgments of the both the Revenue courts. However, the Board of Revenue observed that if the original registered adoption deed had been presented by Gurnjant Singh alias Gurujant Ram in the course of the trial of the suit, then revenue courts would have been bound to accept that document as a valid piece of evidence supporting the contention that Gurujant Singh had, indeed been adopted by Surja Ram, but in the absence of the original document, as stated above, the revenue courts cannot be deemed to be bound to accept this fact.

3. Mr. Lodha, learned Counsel for the Petitioners submits that once the Board of Revenue has come to the conclusion that in the absence of original registered adoption deed being placed on record it was not necessary for the Board of Revenue to affirm the finding of both the revenue courts. Both the courts below have recorded that the adoption of the Petitioner was not valid. Learned Counsel submits that one course is open to the revenue courts either to dispose of the matter on the basis of the validity of the adoption deed or the matter should have been referred to the civil court for its adjudication. If the matter is to be decided on the basis of the original evidence being not placed and secondary evidence was not placed and secondary evidence was not admissible in view of the original documents being availble with them there was no occasion for the courts below and the Board of Revenue to have gone into the question of adoption. I think, the submission of Mr. Lodha appears to be correct. When the question of adoption is not within the jurisidiction of the revenue courts there was no occasion for the Assistant Collector and the Revenue Appellate Authority to have gone into the question of validity of the adoption. The observations made by the Revenue Appellate Authority and the Assistant Collector, having no bearing on the question of adoption of the petitioner.

4. But, I am not inclined to agree with the findings of the Board of Revenue that the original adoption deed was available the same might have been filed by the petitioner before the trial court or in the appellate court and in second appellate court. The same has not been filed, therefore, the Board of Revenue is justified in affirming the finding that in the absence of proof of adoption, the adoption cannot be accepted, and as much the transfer of land by Scheduled caste to a non-Scheduled caste is bad as it is in violation of the provisions of Section 43(b) of the Rajasthan Tenancy Act.

5. Thus, in this view of the matter, I do not find any merit in this Writ Petition and the same is dismissed.

6. The parties are to bear their own costs.