(2013) 04 RAJ CK 0114

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 1637 of 2012 in Civil Writ Petition No. 15659 of 2012

Jagdish and Others — APPELLANT

Vs

Board of Revenue and Others — RESPONDENT

Date of Decision : 16-04-2013

Acts Referred:

Citation : (2013) 4 WLN 43

Hon'ble Judges : Narendra Kumar Jain, J;Meena V. Gomber, J

Bench : Division Bench

Advocate : A.S. Khangarot, for the Appellant;

Final Decision : Dismissed

Judgement

Narendra Kumar Jain, J.—Heard learned counsel for the appellants. This intra Court appeal is directed against the order of the learned Single Bench, whereby the writ petition filed by the writ petitioners/appellants, against the order of Revenue Board has been dismissed.

2. Briefly stated, the facts of the case are that the land in dispute was mutated in favour of the respondents No. 2 to 7 Sita Ram & others by Naib Tehsildar, Kalwar, District Jaipur vide order dt. 6.10.1998 (Annexure 1 to the writ petition). The petitioners filed an appeal against mutation order before District Collector, which was allowed vide order dt. 18.12.2001. The order dt. 6.10.1998 was set aside and status quo in respect of mutation proceeding was ordered to be maintained, during the pendency of the regular suit between the parties. The order of District Collector was upheld by the Divisional Commissioner vide order dt. 15.12.2008. However, the Revenue Board vide its order dt. 14.9.2012 set aside the order of the District Collector as well as the Divisional Commissioner and it was directed that mutation entry will remain as it is, till the disposal of the suit. Being aggrieved with the order of Revenue Board, the petitioners filed S.B. Civil Writ Petition No. 15659/2012 which has been dismissed by the Single Bench vide order dt. 8.10.2012, which is under challenge in this intra Court appeal.

3. Submission of the learned counsel for the appellants is that the District Collector as well as the Divisional Commissioner, both had rightly stayed the mutation entry, till the disposal of the regular suit between the parties, but the Revenue Board as well as the Single Bench, both committed an illegality in setting aside the orders passed by the District Collector and the Divisional Commissioner. He submitted that in case the mutation entry is allowed to exist, then there is an apprehension that the opposite party may alienate the property. Therefore, the order passed by the District Collector upheld by the Divisional Commissioner, be restored.

4. We have considered the submission of the learned counsel for the appellants and examined the impugned order of Single Bench and other orders of the revenue Courts. There is no dispute that the petitioners/appellants have filed the regular suit for cancellation of registered Will, on the basis of which, the mutation entry was opened on 6.10.1998. The learned counsel for the appellants also submitted that the opposite party has also filed a suit for injunction. The mutation proceedings are only fiscal proceedings and the same are subject to final decision of the regular suit between the parties. So far as the apprehension of the petitioners that the opposite party may sell the land in dispute is concerned, the learned Single Bench has already granted liberty to the appellants to file an application for injunction in the regular suit for restraining the opposite party from alienating the land in dispute during the pendency of the regular suit Since liberty has already been granted to the appellants for filing an application in the regular suit, therefore, we find no fault in the order passed by the learned Single Bench. It is needless to mention that in case the appellants file an application for injunction in regular suit, then the same will be considered and decided by the concerned Court, in accordance with law.

5. With the aforesaid observations, the special appeal is dismissed. The Stay Application No. 16528/2012 also stands dismissed.