
(2010) 03 RAJ CK 0061
In the Rajasthan High Court

Jagdish Prasad

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 30-03-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10

Rajasthan Land Revenue Act, 1956 — Section 188, 53, 75, 84, 88

Citation : (2010) 2 WLN 555

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajay Rastogi, J.—Instant petition has been filed assailing order dt. 14/12/2009 (Ann.5) whereby application filed by petitioner u/s 10, CPC was rejected - against which revision petition was preferred u/s 84 of Rajasthan Land Revenue Act, 1955 which had also met the same fate on being dismissed by Board of Revenue vide order dt. 03/03/2010 (Ann.6).

2. It appears from the material on record that respondent-3 (Barji Devi alias Gangadevi) on whose behalf caveat has been filed in the instant petition, had filed an appeal u/s 75 of Rajasthan Land Revenue Act before SDM Amer against cancellation of mutation entry No. 33 dt. 17/09/1977 Gram Panchayat Akhepura Tehsil Amer (district Jaipur) while impleading petitioner & other respondents herein.

3. At the same time, respondent-3 (Barji devi) filed a partition suit u/s 53, 88, 89, 90A & 188 of Rajasthan Tenancy Act, 1955 impleading petitioner and other respondents and the same is pending before SDM Amer.

4. After hearing the parties, appeal preferred by respondent-3 was allowed and while cancelling mutation entry No. 33/ dt. 17/09/1977, the matter was remanded by SDM Amer vide order dt. 06/10/2009 (Ann.3) to the Tehsildar Amer who is competent to open mutation after hearing the parties in accordance

with law.

5. However present petitioner filed application u/s 10, CPC (Ann.4) before Tehsildar Amer on the premise that subject matter of the suit pending before him relating to mutation of agricultural land in question is one and the same as in the suit filed by respondent-3 (Barjidevi) seeking partition and in such circumstances, if mutation is allowed to be carried out, it would cause prejudice inasmuch as the prayer having been made in the suit pending before the Tehsildar for recording the mutation being almost the same to what has been prayed for by respondent in partition suit and the disputed property is common in both the matters, proceedings before Tehsildar Amer may be kept in abeyance till disposal of partition suit pending before SDM Amer (Jaipur). However, while taking note of material on record and in fact endorsing note of the suit pending before him and so also partition suit, the Tehsildar did not consider it appropriate to stay proceedings and accordingly application u/s 10 CPC was rejected and obviously on rejection, he was supposed to proceed with in accordance with law. The Board of Revenue has also examined the dispute having been raised in two different forums and finally found no justification to entertain revision petition which too was rejected vide order dt.03/03/10 (Ann.6).

6. Main thrust of Counsel for petitioner is that when the dispute in respect of mutation is pending before Tehsildar Amer and since property in partition suit & proceedings before Tehsildar is substantially the same to be examined in both the pending suits, learned Tehsildar has committed serious error of law in rejecting application of petitioner u/s 10 CPC and same error has been committed by Board of Revenue while rejecting revision- petition against order impugned.

7. Counsel for respondent-3 on whose behalf caveat has been entered, while supporting the orders impugned submits that Section 10, CPC has no application in the facts of instant case.

8. This Court has considered rival contention of Counsel for parties and with their assistance, examined material on record. After the appeal filed by respondent-3 u/s 75 of Land Revenue Act was allowed vide order dt. 06/10/ 2009 (Ann.3) and while setting aside mutation entry No. 33 dt. 17/09/1977, matter has been remitted back to consider afresh by Tehsildar who obviously has to proceed in terms of direction & observation made in accordance with law.

9. As regards suit for partition, the parties may be common but it is in no manner inter-related to the dispute to be examined and resolved in regard to mutation entry No. 33/dt. 17/09/77, which the trial Court has taken note of while rejecting application u/s 10, CPC. In the opinion of this Court, Section 10, CPC has no application in the facts of instant case since the dispute in regard to mutation entry and so also suit for partition has no co-inter-relationship, and cannot be said that the issue is substantially one and the same.

10. After having gone through the orders impugned, this Court finds no manifest

error being committed by Courts below and there is no substance to entertain this petition.

11. Consequently, writ petition fails and is hereby dismissed.