
(2011) 09 RAJ CK 0104

In the Rajasthan High Court

Case No : Civil Review Petition No. 66 of 2011

Kamal Kishore Baheti HUF and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 05-09-2011

Acts Referred:

Constitution of India, 1950 — Article 227
Rajasthan Land Revenue (Land Records) Rules, 1957 — Rule 62
Rajasthan Tenancy Act, 1955 — Section 53

Citation : (2011) 09 RAJ CK 0104

Hon'ble Judges : Dinesh Maheshwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dinesh Maheshwari, J.—After having heard the learned Counsel for the Petitioners and having perused the material placed on record, this Court is unable to find any reason to entertain this review petition in relation to the order dated 28.07.2011 as passed in S.B. Civil Writ Petition No. 6700/2011.

2. The writ petition aforesaid, filed by the Petitioners against the order dated 19.07.2011 as passed by the Board of Revenue in Revision Petition No. TA/1698/2011/Jodhpur, was considered on the submissions made on behalf of the Petitioners and was dismissed with observations by the order dated 28.07.2011 when this Court found no case of jurisdictional error so as to call for interference in the writ jurisdiction.

3. The matter essentially relates to the prayer for temporary injunction as made by the Petitioners who have filed a revenue suit for partition and injunction against the Respondent No. 3 claiming the rights in the land in question as being the co-sharers. The Sub-Divisional Officer, Jodhpur ("the SDO") considered and rejected the prayer for temporary injunction so made by the Petitioners essentially with the observation that the disputed araji had been recorded in the revenue records separately in relation to the parties with separate accounts, i.e.,

the land in relation to the Petitioners was recorded as Khasra No. 1036/740 and that in relation to the Respondent No. 3 was recorded as Khasra No. 1842/1036. The order so passed by the SDO was confirmed by the Revenue Appellate Authority, Jodhpur in appeal; and the revision petition filed by the Petitioners was also dismissed by the Board of Revenue. Aggrieved, the Petitioners filed the writ petition aforesaid.

4. The writ petition aforesaid was considered by this Court on 28.07.2011 and, after hearing the learned Counsel for the Petitioners and perusing the material placed on record, this Court found no case of jurisdictional error in the orders concurrently passed by the subordinate revenue authorities. This Court particularly noticed the position of the existing revenue record where separate Khasra numbers were found assigned to the land said to be belonging to the predecessors of the Petitioners and that belonging to the Respondent No. 3. During the course of submissions in the writ petition, a question was also posed to the learned Counsel for the Petitioners if the Respondent No. 3 was in any manner raising the construction beyond the extent of 3 bighas and 19 biswas of land purchased by him to which, the only answer was that raising of any construction on the land in question would be interfering with the rights of the co-sharers. This Court found that the jointness as alleged by the Petitioners was in serious doubt and the existing record was to the contrary. Thus, after finding no case of jurisdictional error, this Court declined to interfere in the writ jurisdiction. However, in the interest of justice, it was made clear that the observations, whether made by this Court or by the subordinate revenue authorities in the orders impugned, shall remain confined to the purpose of considering the question of grant or refusal of temporary injunction and shall not otherwise have bearing on the merits of the case of either of the parties.

5. This review petition is sought to be maintained on the submissions essentially to the effect that this Court has proceeded to hold against the Petitioners only on the premise of separate khasras numbers having been allotted to the land held by the Petitioners measuring 4.1 bighas in Khasra No. 1036/740 and that held by the Respondent No. 3 measuring 3.19 bighas in Khasra No. 1842/1036 but then, according to the Petitioners, assignment of separate Khasra numbers where one single portion of the land is sold to two different persons is done mechanically per Rule 62 of the Rajasthan Land Revenue (Land Record) Rules, 1957 and does not in any way mean that a formal partition, by metes and bounds, had taken place. It is submitted that formal division of the land could take place only in accordance with Section 53 of the Rajasthan Tenancy Act, 1955 and not otherwise. Thus, according to the Petitioners, the relevant provisions have not been considered leading to an error apparent on the face of the record. Yet another submission on behalf of the Petitioners is that the Patwari in his report dated 02.08.2011 as prepared after the decision of this Court (copy whereof has been placed on record of this review petition as Annexure-1) conveys that specific shares are not determined at the site and only because of two different sale-deeds, different Khasra numbers have been assigned with reference to Rule

62 ibid; and else, there being no site plan available, separate parcels of land cannot be determined. The submissions hardly make out a case for review of the order dated 28.07.2011.

6. All said and done, the fact of the matter remains that the existing revenue record, which had been taken into consideration by the subordinate revenue authorities and so also by this Court, show two different Khasra numbers and different parcels of land from out of the land of Khasra No. 1036/740. As has been noticed and reproduced in the order dated 28.07.2011, in the relevant jamabandi, from out of the land of Khasra No. 1036/740, 3 bighas and 19 biswas of land as comprised in Khasra No. 1842/1036 has been recorded in the name of Respondent No. 3 with lagan of 0.63 whereas 4 bighas and 1 biswa of land as comprised in Khasra No. 1036/740 has been recorded in the name of the alleged predecessors of the Petitioners with lagan 0.65. The separate measurements of land in two different Khasra numbers are in conformity with the separate sale-deeds said to have been executed by the original khatedar. As to what shall be the effect of such entries and what shall ultimately be the rights of the parties are the matters that shall be for the learned Trial Court to adjudicate and determine in the suit concerned; and hence, it does not appear appropriate to make any further comment in this matter. Suffice is to say for the present purpose that the prayer for temporary injunction was declined concurrently by the subordinate revenue authorities on the relevant considerations and on the basis of the existing record. On the facts and in the circumstances of this case, no case for grant of temporary injunction is made out on the basis of the submissions regarding Rule 62 ibid and the Patwari's report (Annex.1). Thus, there appears no ground for review of the order dated 28.07.2011.

7. The learned Counsel submits that Petitioners intend to place the relevant documents before the learned Trial Court for consideration. This Court would not like to make any comment in that regard, as it is always open for the parties to take recourse to the appropriate remedies in accordance with law.

8. The learned counsel for the Petitioners has referred to paragraphs 89 and 90 in the decision of the Hon'ble Supreme Court in Board of Control for Cricket in India Vs. Netaji Cricket Club and Others, on the scope of review that read as under:

89. Order 47 Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and

circumstances of the case. The words "sufficient reason" in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an advocate. An application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit."

9. There is no and there cannot be any other opinion on the propositions as laid down and explained by the Hon"ble Supreme Court in the decision aforesaid but, noticeable it is that in the said decision, the Hon"ble Supreme Court has pointed out that as to what constitutes sufficient cause for review would depend on the facts and circumstances of each case. In the present case, as noticed above, there is hardly any cause what to say of "sufficient cause" for review. There is neither any error apparent on the face of record nor there has been anything of misconception. The so-called new document is only a status report prepared by the Patwari concerned and the said document cannot be said to be of any material piece of evidence so far the subject matter of the writ petition and this review petition is concerned. In this regard it is also noteworthy that the matter had essentially been considered in the writ petition under Article 227 of the Constitution of India whereunder, the scope of interference is even otherwise very narrow and limited, as laid down by the Hon"ble Supreme Court in the case of *Sadhana Lodh Vs. National Insurance Company Ltd. and Another*, in the following passage: -

7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or re-weigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision."

10. Even in the narrow scope aforesaid, of considering only the jurisdictional error to the extent that the authorities proceed within their parameters, this Court examined the submissions as made on behalf of the Petitioners in the said order dated 28.07.2011 and found no case for interference in the concurrent findings of the three revenue authorities. There is no scope for review of the order so passed on 28.07.2011 in CWP No. 6700/2011.

11. The review petition is, therefore, rejected.