(1987) 01 RAJ CK 0076

In the Rajasthan High Court

Case No : Civil Writ Petition No. 121 of 1979

Karni Singh and Others APPELLANT

Vs

Board of Revenue and Others RESPONDENT

Date of Decision : 05-01-1987

Acts Referred:

Citation : (1987) WLN 223

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

Bench : Single Bench

Final Decision : Allowed

Judgement

Ashok Kumar Mathur, J.—This writ petition is directed against the order of the Board of Revenue (Annx. 4) dated 27-6-1978.

2 Briefly stated the facts are that Khivsingh was the father of petitioners No. 1, 2, 4, 5 and 6 and husband of petitioner No. 3. He was holding the land, which was ancestral as he bad inherited the same from his forefathers. The petitioners and late Shri Khivsingh were members of the Joint Hindu Family. Proceedings under Chapter III-B of the Rajasthan Tenancy Act, 1955 (here in after referred to as ''the old ceiling law'') were initiated against Shri Khivsingh. The Sub Divisional Officer by his order dated 5-11-1973 held that only petitioners No. 1 and 2 who were sons of Khivsingh were entitled to hold 69 bighas of land and he declared 382 bighas, 13 biswas of land as surplus. Against the aforesaid judgment of the learned Sub-Divisional Officer, the petitioners preferred an appeal before the Revenue Appellate Authority. The Revenue Appellate Authority accepted the appeal filed by the petitioners and by its order dated 30-8-1974 held that the heirs of deceased Khivsingh namely petitioners No. 1 to 6 were each entitled to hold 69 bighas of land i.e. petitioners No. 1 to 6 were entitled to hold in all 414 bighas of command land or its equivalent i.e. 828 bighas of Barani land. He remanded the case back to the Sub-Divisional Officer for determination of surplus land if any with the petitioners. The Sub-Divisional Officer instead of complying with the order of the Revenue Appellate Authority held that deceased

Khiv Singh and his two sons Karnisingh and Nathusingh were entitled to hold 3 units. Thus, they were entitled to hold 207 bighas of land in all, each unit holding 69 bighas and declared rest of the land as surplus. Since, this order was in direct defiance of the order of the Revenue Appellate Authority, the petitioners filed an appeal again before the Revenue Appellate Authority. But the Revenue Appellate Authority by its order dated 22-10-1975 dismissed the appeal. Thereafter, the petitioner No. 4 Uchhab Kanwar filed a writ petition before this Court which wes registered as S.B. Civil Writ Petition No. 1767 of 1975 challenging the order of the Sub-Divisional Officer dated 18-10-1975 and the Revenue Appellate Authority dated 22-iO-1975. This Court by its order dated 25-1-1977 accepted the writ petition filed by the petitioner Uchhab Kanwar and quashed the order of the Sub-Divisional Officer dated 18-10-1975 and that of the Revenue Appellate Authority dated 22-0-1975 and held that the order of the Sub Divisional Officer and the Revenue Appellate Authority were bad as subordinate authority is bound to abide by the order of the higher court. Thereafter, the State Government filed a revision petition after the expiry of the period of 3 years, against the order of the Revenue Appellate Authority dated 30-8-1974. The Board of Revenue by its order dated 27-6-1978 accepted the revision petition filed by the State Government and set aside the order of the Revenue Appellate Authority dated 30-8-1974 which is on record as Ex. 4. It is against this order of the Board of Revenue dated 27-6-1978 the petitioners have preferred this writ petition before this Court.

3. Mr. Parekh, learned Counsel for the petitioners has very briefly submitted that the order of the Board of Revenue is ex facie illegal because the learned Member of the Board of Revenue has relied upon a Full Bench judgment of the Board of Revenue reported in State of Raj. v. Shivdansingh 1977 RRD 233 where in it has been held that the children during the lifetime of his father cannot file a suit for partition. This judgment has not been accepted by this Court in Shivdan Singh & Ors v. Board of Revenue & Ors (S.B. Civil Writ Petition No. 416 of 1977 decided on 22-11-1984) where in it has been held that in a Mitakshra school of Hindu Law it is settled law that in ancestral property with the birth of a son, he becomes a coparcener in the Hindu undivided family. Whether the property is agricultural or non-agricultural does not make any difference. Mr. Parekh, learned Counsel for the petitioners submitted that the learned Member of the Board of Revenue has relied upon the full bench judgment of Shivdansingh and decided the matter. Since, the judgment has been specifically overruled and the agricultural land in question is an ancestral holding, therefore, the judgment of the learned Member of the Board of Revenue is erroneous and deserves to be set aside.

4. I think that the contention of Mr. Parekh appears to be correct. It is a fact that the present land in question is ancestral agricultural holding and in that each coparcener has a right according to the Mitakshra school of the Hindu Law. In the present case, the learned Member of the Board of Revenue has proceeded on the basis of the judgment in Shiv Dan Singh''s. case 1977 RRD 233 which has been overruled by this Court, Therefore, I think the judgment of the Board of Revenue

deserves to be quashed and the case may be remanded back to the Board of Revenue to decide the matter in accordance with law as laid down in Shiv Dan Singh and Ors''s case by this Court.

5. In the result, the writ petition is allowed. The order Annx. 4 dated 27-6-1978 is set aside and the case is remanded back to the Board of Revenue to decide the matter afresh in the light of the observations made above.

