
(2015) 04 RAJ CK 0191

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 4129 and 4133 of 1998

Khinya Ram and Others

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:

Rajasthan Land Revenue Act, 1956 — Section 75, 76

Citation : (2015) 3 WLN 550

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : C.R. Jakhar, for the Appellant; O.P. Boob, Government Counsel, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Arun Bhansali, J.

1. This writ petition is directed against the judgment dated 24.6.1998 passed by the Board of Revenue ("Board"), whereby the revision petitions filed by Madan Lal as adopted son of Ramdayal has been accepted and mutation No. 543 and 544 dated 23.2.1994 sanctioned by the Naib Tehsildar, Osian, order dated 31.3.1995 passed by the Additional Collector, Jodhpur and judgment dated 4.1.1996 passed by the Additional Divisional Commissioner, Jodhpur have been set-aside and the matter has been remanded back to the Naib Tehsildar, Osian to decide the mutation proceedings afresh after giving opportunity of hearing to the parties.

2. By two registered sale deeds dated 17.2.1994 land out of 27 Bigha 17 Biswa comprising Khasara No. 132 was transferred by Amani W/o Ramdayal to petitioner - Khinya Ram (in SBCWP No. 4129/1998) and petitioner-Chunni Lal (in SBCWP No. 4133/1998) and pursuant to the said sale deeds, the lands were mutated vide mutation No. 543 and 544 in favour of the petitioners. The respondent-Madan Lal claiming himself to be an adopted son of deceased

Ramdayal filed appeal under Section 75 of the Rajasthan Land Revenue Act, 1956 ("the Act") against the mutation entries.

3. An objection was raised by the petitioners regarding maintainability of the appeals as the appeals were filed by Bhagwana Ram claiming himself to be a power of attorney holder of Smt. Amani, the transferor of the land in question and defendant No. 2 in the suit. Bhagwana Ram, in-fact, is a natural father of Madan Lal.

4. The Additional District Collector by its order dated 31.3.1995 came to the conclusion that the cause of action was not disclosed in the appeals and appeals for lack of proper presentation were not maintainable and consequently dismissed the same.

5. Feeling aggrieved, second appeals under Section 76 of the Act were filed by Madan Lal. The Additional Divisional Commissioner, Jodhpur by its judgment dated 4.1.1996 upheld the dismissal of the appeals inter-alia holding that though Madan Lal was adopted by Smt. Amani by registered adoption deed, however, as Madan Lal was minor and as the sale has taken place for maintenance of herself and Madan Lal, she was entitled to sale the same and it was not necessary for her to seek consent and also found that the appeals were not properly presented and consequently dismissed the second appeals.

6. Madan Lal filed revision petitions before the Board, the Board by its judgment dated 24.6.1998, inter-alia came to the conclusion that as appellant-Madan Lal was adopted prior to execution of the sale deed, Smt. Amani could not have transferred the land and the said aspect has not been examined by two courts below and passed the order setting aside the mutation entry and the orders passed by both the appellate forums and remanded back the matter to the Naib Tehsildar.

7. It is submitted by learned counsel for the petitioners that the appeals filed by Bhagwana Ram as power of attorney holder of Smt. Amani were prima facie not maintainable and therefore, the Additional Collector as well as Additional Divisional Commissioner were justified in dismissing the appeals; the Board without even considering the said aspect of the matter has allowed the revision petitions, this order cannot be sustained. It is submitted that the suit for declaration filed by Madan Lal is pending consideration before the competent Revenue Court and the mutation proceedings being summary in nature, the validity of the sale deeds could not be examined while hearing the appeal/revision from mutation proceedings. It is further submitted that the Board was not justified in setting aside the mutation even if it came to the conclusion that the matter requires consideration by the Additional District Collector and therefore, the order passed on revisions cannot be sustained.

8. Learned counsel for the respondents supported the orders passed by the Board. It was submitted that the adoption by Smt. Amani of Madan Lal is no more in dispute, inasmuch as, suit filed by Smt. Amani has been dismissed and

the same has been upheld by this Court upto the second appellate stage.

9. It is further submitted that admittedly, the adoption took place before the transfer had taken place and therefore, Madan Lal had equal share in the property and the same could not have been transferred by Smt. Amani or by herself and therefore, the Board was justified in setting aside the mutation itself.

10. It is submitted that merely because the revenue suit filed by Madan Lal is pending cannot itself make the appeals filed against the mutation not maintainable; respondent-Madan Lal has in any case attained majority now and is in a position to prosecute the litigation on his own and therefore, the order passed by the Board deserves to be sustained.

11. I have considered the rival submissions made by learned counsel for the parties and have perused the material available on record.

12. It is not in dispute that vide registered sale deeds dated 17.2.1994, the land in dispute was transferred by Smt. Amani W/o Ramdayal and on the said date, after death of Ramdayal, the land stood in the name of Smt. Amani alone. Smt. Amani had also filed a suit seeking cancellation of registered adoption deed, whereby Madan Lal was adopted as son. In those circumstances, filing of the appeals before the Additional District Collector under Section 75 of the Act by Bhagwana Ram as power of attorney holder of Smt. Amani in a proceeding in the name of Madan Lal, in which Smt. Amani herself was a respondent, which proceedings questioned the right of Smt. Amani to transfer the land vide sale deeds dated 17.2.1994, could not have been presented.

13. The Additional District Collector and Additional Divisional Commissioner were apparently justified in coming to the conclusion that the appeals were not properly presented.

14. However, in the present circumstances, Bhagwana Ram as natural father of Madan Lal could very well have filed the appeals as a next friend and the said proceedings in those circumstances would have been maintainable. The forum of appeal and/or presentation essentially is not within the control of the parties, as such a decision is required to be taken by counsel representing the party keeping in view the facts and circumstances of the case and for an incorrect/defective presentation, a party cannot be punished and the Additional District Collector/Additional Divisional Commissioner in those circumstances should have granted opportunity to amend the proceedings and bring the same within the parameters, whereby the appeals filed by Bhagwana Ram could have been treated as in his capacity as a next friend.

15. The Board, instead of reversing and/or taking a view different from the Additional District Collector/Additional Divisional Commissioner has chosen to decide the lis on merits, which action on part of the Board while exercising power of revision cannot be sustained. If in the opinion of the Board, the appeals filed by Bhagwana Ram, which were dismissed for lack of proper presentation were

maintainable and were required to be decided on merits, the only course open for the Board was to restore back the appeals filed by Madan Lal through Bhagwana Ram and not to disturb the mutation entries as a revisional court.

16. Irrespective of the status of filing of appeals by Bhagwana Ram as power of attorney of Smt. Amani, which should have been filed by him as a next friend, now in the change circumstances when Madan Lal himself has attained majority during the pendency of these proceedings, the appeals filed under Section 75 of the Act before the Additional District Collector could be prosecuted by him now in his own right without any aid or assistance of his natural father Bhagwana Ram.

17. In view of the above discussion, the writ petitions filed by the petitioners are partly allowed. The judgments dated 24.6.1998 passed by the Board are set-aside to the extent that mutation No. 543 and 544 dated 23.2.1994 sanctioned by the Naib Tehsildar, Osian have been set-aside, however, judgments to the extent of setting aside of order dated 31.3.1995 passed by the Additional District Collector, Jodhpur and judgments dated 4.1.1996 passed by the Additional Divisional Commissioner, Jodhpur are maintained and the matters are remanded back to the Additional District Collector, Jodhpur to hear and deal with the appeals filed by Madan Lal on merits.

18. However, it is made clear that any observation made by the Board and/or by this Court shall not affect the outcome of the appeals before the Additional District Collector and the petitioners would be entitled to raise all the issues including the issue that the appeals may not be finally decided on account of the pendency of the revenue suit.