(2019) 08 RAJ CK 0268

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3980 Of 2019

Kunana Ram — APPELLANT

Vs

Board Of Revenue Ajmer And Ors — RESPONDENT

Date of Decision : 06-08-2019

Acts Referred:

Rajasthan Tenancy Act, 1955 — Section 53, 88, 209, 212
Code Of Civil Procedure, 1908 — Section 151, Order 7 Rule 11, Order 7 Rule 11(a), Order 7 Rule 11(d)

Citation : (2019) 08 RAJ CK 0268

Hon'ble Judges : Sangeet Lodha, J

Bench : Single Bench

Advocate : Trilok Joshi, Om Rajpurohit

Final Decision : Allowed

Judgement

1. This petition is directed against judgment dated 1.2.19 of the Board of Revenue, Rajasthan, whereby, the second appeal preferred by the petitioner herein against judgment and decree dated 9.6.17 passed by the Revenue Appellate Authority ('RAA'), Bikaner, affirming the judgment and decree dated 28.3.13 passed by the Sub Divisional Officer('SDO'), Ratangarh, in Revenue Suit No.103/11, allowing an application preferred by the respondents under Order 7 Rule 11 CPC, stands dismissed.

2. The relevant facts are that the petitioner filed a suit for declaration, correction of record, partition and permanent injunction under Section 88, 53, 209 and 212 of the Rajasthan Tenancy Act, 1955 (for short "the Act") against the respondents no.4 to 17 in respect of land comprising khasra no.61 measuring 5 bighas and 14 biswas and khasra no.68 measuring 21 bighas and 13 biswas situated at village Derajsar, Tehsil Ratangarh, District Churu. The respondents preferred an application under Order VII Rule 11 read with Section 151 CPC, seeking rejection of the plaint, stating that the petitioner herein was neither in cultivatory possession of the land nor he has any khatedari rights over the disputed land. It

was averred that the defendant no.1 to 4 have already sold the land falling in their share in favour of defendant no.5-Smt. Mohan Devi and thus, after the sale of the land, the suit is not maintainable before the revenue court. It was further averred that the disputed land had already been partitioned between the father of the plaintiff, the petitioner herein, and the father of respondents no.4 to 7-Shri Baluram and this fact is apparent from judgment and decree dated 29.12.89 passed by the SDO, Ratangarh in Revenue Suit No.251/86. Late Shri Motiram, the father of the petitioner, had already sold his share in the land in favour of Shri Dinesh Kumar, the respondent no.16 herein. Accordingly, it was prayed that the suit filed does not disclose any cause of action and being barred by law, deserves to be dismissed.

3. The application preferred by the respondents as aforesaid was allowed by the SDO, Ratangarh vide order dated 14.2.12 and the plaint was rejected. Aggrieved thereby, the petitioner preferred an appeal before the Revenue Appellate Authority (RAA), which was also dismissed vide order dated 9.6.17. The second appeal preferred by the petitioner stands rejected by the Board of Revenue by the order impugned. Hence, this petition.

4. Learned counsel appearing for the petitioner contended that the plaint can be rejected under Order VII Rule 11 CPC only in the circumstances where from the averments made in the plaint, it is clearly apparent that it does not disclose cause of action or where the suit appears from the statements in the plaint to be barred by law. Learned counsel submitted that a bare perusal of the orders impugned reveal that the plaint of the petitioner has been rejected on the basis of the facts sought to be brought on record by the respondents by way of application under Order VII Rule 11 CPC, without there being any material on record and thus, the order impugned passed by the Board of Revenue, affirming the judgment and decree passed by the RAA, Bikaner, deserves to be set aside.

5. On the other hand, the counsel appearing for the respondents submitted that the petitioner's father having sold his share in the disputed land, the suit filed does not disclose any cause of action and thus, the same has rightly been rejected by the Revenue Court. Learned counsel submitted that as a matter of fact, the dispute sought to be raised in respect of the land in question also stands adjudicated vide judgment and decree dated 29.12.89 passed by the Revenue Court of competent jurisdiction and necessary entries were also entered in the revenue record and thus, the suit filed was also liable to be dismissed as barred by law.

6. I have considered the rival submissions of the learned counsel and perused the material on record.

7. It is well settled that while deciding an application seeking rejection of the plaint under Order VII Rule 11(a)& (d), the court is not competent to go into correctness or otherwise of allegations contained in the plaint. The plaint can only be rejected if from bare perusal of the statement in the plaint without any

addition or subtraction it appears to be barred by law.

8. A perusal of the plaint reveals that the petitioner has sought declaration for his khatedari rights over the land measuring 21 bighas 13 biswas comprising khasra no.68 and also prayed that the land has been wrongly recorded in the names of defendant no.1 to 12 in the revenue record and therefore, the entries made deserve to be rectified. Apparently, the SDO has rejected the plaint on the basis of the facts sought to be brought on record by the defendants by way of application under Order VII Rule 11 CPC and not on the basis of the averments as contained in the plaint. It is always open for the defendants to question the maintainability of the suit on the ground that the dispute between the parties already stands settled by earlier judgment and decree passed by the court of competent jurisdiction, while filing the written statement, but these mixed question of law and facts could not have been decided by the Revenue Court on the basis of the facts set out in the application under Order VII Rule 11 CPC. It goes without saying that if any objection is raised by the petitioner regarding the suit filed being barred by law, an appropriate issue will be framed by the court below and the same shall be decided in accordance with law. But since, from the statement in the plaint, it cannot be said that it does not disclose cause of action or it is barred by law and thus, the order passed by the Revenue Court, rejecting the plaint under Order VII Rule 11 CPC, is not sustainable in the eyes of law.

9. In view of the discussion above, the order impugned passed by the Board of Revenue, dismissing the appeal preferred against the judgment and decree passed by the RAA, Bikaner, affirming the judgment and decree passed by the Sub Divisional Officer, Ratangarh, deserves to be set aside.

10. Accordingly, the petition is allowed. The judgment and decree dated 1.2.19 of the Board of Revenue, Rajasthan, the judgment and decree dated 9.6.17 passed by the Revenue Appellate Authority, Bikaner and the judgment and decree dated 28.3.13 passed by the Sub Divisional Officer('SDO'), Ratangarh, in Revenue Suit No.103/11, are set aside. The revenue suit shall stand restored to its original number. The parties shall appear before the Sub Divisional Officer, Ratangarh on 16.9.19.

No order as to costs.