(2017) 01 RAJ CK 0112

In the Rajasthan High Court

Case No : 9179 of 2016

Ladulal & Ors. APPELLANT

Vs

Bheru & Anr. RESPONDENT

Date of Decision : 03-01-2017

Acts Referred:

Rajasthan Tenancy Act, 1955, Section 88, Section 89, Section 188, Section 92A

Citation : (2017) 01 RAJ CK 0112

Hon'ble Judges : Sangeet Lodha

Bench : SINGLE BENCH

Advocate : Rakesh Arora

Judgement

1. This petition is directed against judgment dated 10.5.16 of the Board of Revenue Rajasthan, Ajmer, whereby the second appeal preferred by the petitioners against the judgment and decree dated 3.9.08 passed by the Revenue Appellate Authority (RAA), Bhilwara, stands dismissed.

2. The relevant facts are that the first respondent preferred a suit for declaration of khatedari rights and permanent injunction under Section 88, 89, 92A and 188 of Rajasthan Tenancy Act, 1955 in the court of Sub Divisional Officer, Jahajpur, against the petitioners in respect of land 18 measuring bighas 13 biswas comprising Arazi No.2125, 2127/2, 2138, 2139, 2142, 2143, 2144 situated in village Bisania, Tehsil Kotari, District Bhilwara, which was entered in the revenue record in the name of the petitioner no.1 & the respondent and the land measuring 15 bighas 19 biswas comprising Arazi No.137, 138, 139, 140, 141, 142 situated in village Kesarpura, Patwar Halka Dhanwara, Tehsil Kotari, District Bhilwara, which was entered in the revenue record in the name of the petitioners and the respondent.

3. Precisely, the case of the respondent was that the land in question before the settlement was entered in the revenue record as khatedari land of his father Goru, who expired during the settlement operation. At the time of death of his

father, the respondent was minor and taking advantage of the situation in collusion with the revenue authorities, the father of the petitioners herein got entered one half share in the disputed land in his name in the revenue record. The respondent claimed that he is in cultivatory possession of the entire land.

4. The suit was contested by the petitioners by filing a written statement thereto, claiming that the disputed land is a joint khatedari of the petitioners and the respondent and they are in joint cultivatory possession thereof. The petitioners claimed that their father had one half share in the land in question and therefore, the land was entered in the revenue record accordingly, with the consent of mother of the respondent Smt. Kesar. The petitioners claimed that their father Barju was in cultivatory possession of the land even prior to the year 1962.

5. On the basis of the pleading of the parties, the revenue court framed the issues and the parties led their evidence. After due consideration of the evidence on record, the SDO arrived at the finding that the disputed land was khatedari land of Goru, who expired after coming into force of Hindu Succession Act, 1956 and therefore, by inheritance the land was required to be entered in the name of the respondent herein. The court observed that on the basis of the mutation, the petitioners herein cannot claim any right over the ancestral land of the respondent. Accordingly, the suit preferred by the respondent was decreed by the SDO, Jahajpur, vide judgment and decree dated 28.3.08.

6. Aggrieved by the judgment and decree dated 28.3.08 passed by the SDO, Jahajpur, as aforesaid, the petitioners preferred an appeal, which stood dismissed by the RAA, Bhilwara, vide judgment and decree dated 3.9.08. The second appeal preferred by the petitioners also stands dismissed by the Board of Revenue by the impugned judgment. Hence, this petition.

7. Learned counsel appearing for the petitioners submitted that the petitioners'' father Barju was adopted son of Goru and the respondent was born after the adoption of the petitioners'' father. Learned counsel submitted that after death of Goru, the land was got entered in the revenue record in the name of the respondent and the petitioners'' father Barju with the consent of the respondent''s mother Smt. Kesar. Learned counsel submitted that the fact that the petitioners are in joint cultivatory possession of the land in question prior to the year 1962, has altogether been ignored by the revenue courts, which has resulted in an erroneous finding being arrived at.

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

9. It is to be noticed that it was not the case set out by the petitioners herein in the written statement filed that Barju was adopted son of Goru rather, the petitioners claimed the right on the basis of joint cultivatory possession and the mutation effected in the year 1962 in their name, allegedly with the consent of the respondent''s mother Smt. Kesar. It is pertinent to note that while effecting the mutation no. 252 dated 14.6.62, it was specifically recorded that Goru has

died, who is survived by his son Bheru and widow Kesar and Goru''s brother Barju is also in possession of the land and accordingly, the mutation was sanctioned determining one half share of Barju and one half share of Bheru s/o Goru and Kesar widow of Goru in the land in question. Apparently, after death of Goru, respondent and his mother were entitled to inherit the land in question and therefore, the same was required to be entered in the revenue record in their name. On the basis of alleged cultivatory possession over the land in question, the mutation could not have been effected in the name of Barju. There was no evidence brought on record to establish that Barju was adopted son of Goru or he had otherwise any right over the land in question.

10. In the considered opinion of this court, the concurrent findings arrived at by revenue courts after due consideration of evidence on record, cannot be said to be capricious or perverse so as to warrant interference by this court in exercise of its extra ordinary jurisdiction.

11. In the result, the petition fails, it is hereby dismissed in limine.