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(2016) 07 RAJ CK 0019

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5197 of 2003

LRs of Duni Ram APPELLANT

Vs

LRs of Shyo Nand RESPONDENT

Date of Decision : 04-07-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1, Order 23 Rule 3A

Citation : (2016) 3 DNJ 1280

Hon'ble Judges : Mr. Sangeet Lodha, J.

Bench : Single Bench

Advocate : Mr. Gopal Acharya, Advocate, for the Appellant; Mr. S.G. Ojha, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Sangeet Lodha, J.—This writ petition is directed against the order dated 13.8.2003 of the Board of Revenue Rajasthan, Ajmer, whereby the revision petition preferred by the private respondents herein, questioning the legality of order dated 20.7.2001 passed by the Assistant Collector, Bhadra in Revenue Suit No. 168/1993, permitting the withdrawal of the application seeking decision of the suit in terms of compromise arrived at between the parties, has been allowed.

2. The relevant facts are that the petitioner filed a suit for declaration and division of holding in the Court of Assistant Collector, Bhadra on 12.7.1993, in respect of land measuring 13.16 bighas comprising Chak No. 1 BRW. The petitioner claimed that the land was allotted-to his deceased father Ramjilal and Ganpat, the real brothers, and thus, each were having ? share in the land, however, Ganpat executed a Will in favour of the petitioner and got it registered. After death of Ganpat, respondents No. 1 to 5 herein, got the entire land mutated in their names. The petitioner claimed that he alone was entitled to get the land mutated in his name.

3. During the pendency of the suit, a compromise entered into between the

parties was placed on record and it was prayed that the suit may be decreed in terms of the compromise. The compromise was attested but the suit was not decreed in terms of the compromise arrived at and it remained pending. Later, the petitioner filed an application on 18.10.1995, seeking leave to withdraw the application seeking decision of the suit in terms of compromise arrived at, stating that the compromise was got executed by the respondents herein, by misrepresentation and committing fraud. The application was allowed by the Assistant Collector, Bhadra, vide order dated 20.7.2001 and the application seeking decision of the matter in terms of the compromise was rejected.

4. Aggrieved by the order dated 20.7.2001 passed by the Assistant Collector, Bhadra as aforesaid, the respondents No. 1 to 3 & 5 herein, preferred a revision petition before the Board of Revenue Rajasthan, Ajmer, which has been allowed by the order impugned and accordingly, the order dated 20.7.2001 passed by the Assistant Collector, Bhadra, has been set aside, observing that if the compromise was entered into on account of mis-representation or fraud on the part of the respondents herein, the petitioner should have availed the remedy before the Civil Court and the Revenue Court had no jurisdiction to cancel the compromise already attested.

5. Learned Counsel appearing for the petitioner contended that a decree passed on the basis of the compromise can be challenged before the same Court if the compromise is entered into on account of misrepresentation or fraud on the part of the parties to the compromise. In support of the contention, learned Counsel has relied upon a decision of this Court in the matter of Gopal Lal v. Babu Lal and others, RLW 1996 (1) Raj. 30.

6. On the other hand, learned Counsel appearing for the respondent has supported the order passed by the Board of Revenue.

7. I have considered the rival submissions and perused the material on record.

8. It is to be noticed that Order 23, Rule 3A C.P.C. specifically bars the suit to set aside a decree on the ground that the compromise on the basis of which decree is passed is not lawful. As a matter of fact in view of proviso read with explanation, the Court which had entertained the petition of compromise has to examine whether the compromise was void or voidable under the Indian Contract Act.

9. In this view of the matter, the Board of Revenue has seriously erred in holding that if the compromise is alleged to be void or voidable on account of mis-representation or fraud, the petitioner was required to avail the remedy of civil suit before the Civil Court of competent jurisdiction. Moreover, in the instant case, on the basis of the compromise arrived at between the parties, no decree was passed by the Court of Assistant Collector, Bhadra and the application preferred seeking decision of the suit in terms of the compromise remain pending. Thus, the order passed by the Assistant Collector, Bhadra, allowing the application preferred by the petitioner, seeking leave to withdraw the application

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praying for decision of the suit in terms of the compromise was absolutely just and proper.

10. In view of the discussion above, the order impugned passed by the Board of Revenue is not sustainable in the eyes of law.

11. In the result, the petition succeeds, it is hereby allowed. The order impugned dated 13.8.2003 passed by the Board of Revenue is set aside. The revision petition preferred by the respondents No. 1 to 3 and 5, against the order dated 20.7.2001 passed by the Assistant Collector, Bhadra in Revenue Suit No. 168/1997 before the Board of Revenue Rajasthan, shall stand dismissed. No order as to costs.

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