
(2016) 01 RAJ CK 0114

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4543 of 1996.

LRs. of Harbhaj Ram

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 14-01-2016

Acts Referred:

Rajasthan Land Revenue Act, 1956 — Section 125, 136
Rajasthan Tenancy Act, 1955 — Section 232

Citation : (2016) 2 DNJ 522 : (2016) RRD 382

Hon'ble Judges : Arun Bhansali, J.

Bench : Single Bench

Advocate : Pritam Solanki, Advocate, for the Appellant; A.R. Godara, Dy. G.C, for the Respondent

Final Decision : Allowed

Judgement

Arun Bhansali, J. - This writ petition has been filed by the petitioners aggrieved against the order dated 20.11.1995 passed by the Board of Revenue, Ajmer ("the Board"), whereby the reference made by the Collector, Bikaner under Section 232 of the Rajasthan Tenancy Act, 1955 ("the Tenancy Act") has been accepted and the judgment dated 12.05.1992 passed by the Assistant Colonization Commissioner, Kolayat has been set aside.

2. The petitioner Harbhaj Ram filed an application under Section 125 and 136 of the Rajasthan Land Revenue Act, 1956 ("the Revenue Act") before the Assistant Commissioner (Colonization), Kolayat ("the Assistant Commissioner"), inter alia, seeking correction in the revenue entries. It was claimed in the application that the petitioner was in cultivatory possession of land admeasuring 47 Bigha in Chak No. 5 PSM in different Murabba and Kila numbers since before Samvat Year 2012; during Chakbandi, instead of recording the land comprised in Murabba No. 162/55, 12 Bigha land in Murabba No. 162/63 has been recorded in the petitioner's name and, therefore, the same may be rectified and after deleting with the same from Murabba No. 162/63, the said land in Murabba No. 162/55

be recorded in petitioner's name as Gairkhatedar tenant.

3. The Tehsildar (Colonization), responded to the said application. It was, inter alia, indicated in the reply that the petitioner was recorded as Gairkhatedar tenant in respect of 47 Bighas of land in various Murabbas; qua the land comprised in Murabba No. 162/55, it was indicated that he had 7 Bigha land and in Murabba No. 162/63, he had 18 Bigha land. It was further indicated that the land comprised in Murabba No. 162/55 was reserved for special allotment under Section 13A of the Rajasthan Colonization Act and that in Kila Nos. 9 to 20 of Murabba No. 162/55, there was a Kund and Boundary Wall constructed.

4. On behalf of the petitioner, two witnesses viz. Ram Narayan and Kana Ram were examined. Where after, the Assistant Commissioner by his order dated 12.05.1992, accepted the application and directed rectification of the record as prayed by the petitioner and a decree was also framed.

5. No appeal was filed against the order dated 12.05.1992, however, the Collector made a reference under Section 232 of the Tenancy Act to the Board challenging the legality and validity of the order passed by the Assistant Commissioner.

6. After hearing the parties, the Board came to the conclusion that the Assistant Commissioner decided the application filed by the petitioner as a suit after taking oral evidence and decided the said application based on oral evidence only, which was against the law laid down in 1995 RRD 700 and consequently, accepted the reference and set aside the judgment dated 12.05.1992 passed by the Assistant Commissioner.

7. It is submitted by learned counsel for the petitioners that the Board was not justified in accepting the reference and set aside the judgment passed by the Assistant Commissioner. It is not in dispute that the petitioner had 47 Bigha of land in Chak No. 5 PSM, however the claim of the petitioner was that 12 Bighas of land was wrongly recorded in Murabba No. 162/63 instead of Murabba No. 162/55 and gave out the specific Kila numbers. It is submitted that the application was filed seeking the rectification in the record as the petitioner was in possession of the land in Murabba No. 162/55 only and that fact is clearly fortified from the response of the Tehsildar (Colonization), wherein it has been accepted that the petitioner was in possession of land comprised in Murabba No. 162/55 beyond what was shown in the record and, therefore, the Board fell in error in reversing the finding of the Assistant Commissioner. It was also submitted that the Board has reversed the judgment passed by the Assistant Commissioner only on account of lack of any documentary evidence based on a judgment of the Board, however, the Division Bench in Hari Ram and Anr. v. State of Rajasthan and Ors., 1996 DNJ (Raj.) 397, has laid down that a suit can be decreed on the basis of ocular evidence and it cannot be said that the ocular testimony of the witnesses cannot be relied upon. It was prayed that the order passed by the Board be set aside.

8. Learned counsel for the respondents supported the order of the Board. It was submitted that proceedings were initiated by the petitioner after 25 years of the settlement operation and the prayer essentially was in the nature of exchange, which jurisdiction does not lie with the Assistant Commissioner. It was further submitted that the petitioner failed to produce any documentary evidence in support of his claim and the oral testimony only could be relied on for the purpose of grant of relief to the petitioner and, therefore, the order impugned does not call for any interference.

9. Reliance was placed on Gulam Rasul and Anr. v. State of Rajasthan , S.B. Civil Writ Petition No.352/2010, decided on 03.01.2014.

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

11. It is not in dispute that the petitioner owned 47 Bigha of land in Chak No.5 PSM. Dispute which was raised by the petitioner, pertained to alleged wrong recording of land in petitioner's name in Murabba No.162/63 admeasuring 12 Bigha instead of Murabba No.162/55. The petitioner specifically gave out the Kila numbers regarding, which he was claiming his possession from before Samvat Year 2012 and indicated that the mistake took place during the course of Chakbandi.

12. A response was given by the Tehsildar (Colonization), the Tehsildar indicated that the land comprised in Kila No.6, 15, 17 and 23 to 25 comprised in Murabba No. 162/55 was recorded in the name of petitioner and also indicated that in Kila No. 9 to 20 of the said Murabba No. 162/55, there were a Kund and Boundaries. The total Kilas based on the said assertion of the Tehsildar pertaining to Murabba No. 162/55, comes to 18 Bighas. The fact that assertion has been made that from Kila No. 9 to 20, the Kund and Boundaries existed and from the said Murabbas, admittedly, Kila No. 15 to 17 are recorded in name of the petitioner, clearly shows that the petitioner was in possession of land in excess of what was recorded during Chakbandi.

13. After the application was filed the petitioner and the response by way of reply by the Tehsildar was produced, where after, from the perusal of the order-sheets (Annex.-8), it appears that on most of the occasions, the Govt. Counsel did not appear; where after the Assistant Commissioner recorded the evidence on behalf of the petitioner and on account of absence of the Govt. Counsel, it appears that they were not cross-examined. Both the witnesses indicated that the petitioner was in possession of the land claimed by him. The Assistant Commissioner thereafter, based on the material available on record came to the conclusion that the claim made by the petitioner was justified and accepted the application.

14. The Board while dealing with the said aspect, essentially on account of the fact that the Assistant Commissioner, dealt with the application as a suit and passed a decree as well and as the decision was made based on oral evidence

only, set aside the order.

15. The fact that a summary proceeding has been dealt with elaborately as a suit, by itself cannot be a reason for setting aside the order. Further admittedly the Govt. Counsel was absent on most of the occasions before the Assistant Commissioner and despite the fact that the State was represented, if chose not to cross-examine the witnesses and lead the evidence, the State thereafter cannot claim any premium on its own negligent conduct. The response of the Tehsildar also supported the version of the petitioner.

16. So far as the finding that the order cannot be passed based on oral evidence only is concerned, the Division Bench in the case of Hari Ram (supra) has held that the suit can be decreed on the basis of ocular evidence and merely because documentary evidence has not been produced, it cannot be said that ocular testimony of the witnesses cannot be relied on and set aside the order passed by the Board, which had set aside the order on account of the same having been passed only on ocular testimony.

17. The judgment in the case of Gulam Rasul (supra) cited by the learned counsel for the respondents has no application as the said aspect in the said case has decided on its own merit.

18. In view of the above, both the grounds, on which the order has been passed by the Board cannot be sustained. Further on facts also, as discussed above, the order of the Assistant Commissioner cannot be faulted.

19. In view of the above discussion, the writ petition filed by the petitioner is allowed. The order passed by the Board dated 20.11.1995 (Annex.-7) is set aside.

20. No order as to costs.