(2014) 05 RAJ CK 0085

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 806/2014

Mahaveer and Others APPELLANT

Vs

Board of Revenue and Others RESPONDENT

Date of Decision : 16-05-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, 151 — Criminal Procedure Code, 1973 (CrPC) - Section 161, 164 — Evidence Act, 1872 - Section 73 — Rajasthan Tenancy Act, 1955 - Section 88

Citation : (2014) 05 RAJ CK 0085

Hon'ble Judges : Ajay Rastogi, J;J.K. Ranka, J.

Bench : Division Bench

Advocate : R.P. Garg, for the Appellant; G.K. Garg, Senior Counsel assisted by Yash Sharma, for the Respondent

Final Decision : Dismissed

Judgement

1. Instant intra-court appeal has filed against order of the ld. Single Judge Dt. 07.04.2014 reversing order of the ld. Board of Revenue Dt. 18.04.2013 and restoring order of the ld. Sub-Divisional Officer, Fatehpur Shekhawati, District Sikar Dt. 26.12.2002 passed on application filed by the respondents u/O. 9 R. 13 r/w S. 151 CPC setting aside the alleged judgment and decree Dt. 28.07.1998 and liberty was granted to the respondents of filing written statement to the revenue suit No. 27/1998 being restored with a further direction to the revenue authority (SDO) to decide the matter in accordance with law.

2. The salient facts which may be relevant for consideration of the present special appeal, as alleged, are that late Shri Jhuntha Ram was holding agricultural land at village Lavanda and Dhani Lavanda, Tehsil Fatehpur Shekhawati, District Sikar admeasuring 103 bighas 19 biswas. He had four sons namely Tansukh Ram, Gordhan Das, Balchand & Jaidev. It has been alleged that one of his son Jaidev went in adoption leaving behind three other sons claiming their rights over the subject land in question. A revenue suit u/S. 88 of the

Rajasthan Tenancy Act, 1955 came to be filed by late Shri Tansukh, one of the son of late Shri Jhuntha Ram & father of present respondents No. 3-8 in the year 1998 seeking declaration of khatedari rights in respect of agricultural land in his name inter-alia on the ground that late Shri Jhuntha Ram apart from agricultural properties indicated in the revenue suit, filed before the competent court of jurisdiction, had other properties in village Nichlaul, District Maharajganj (UP) which is equal to half of total holdings and Shri Gordhan Das & Balchand are permanent residents of village Nichlaul, District Maharajganj (UP) from their childhood, where they are taking care of Shri Jhuntha Ram. Shri Gordhan Das died in UP and his sons also settled there, taking care of the properties which originally belong to Shri Jhuntha Ram along with Balchand. It may be relevant to notice that despite this fact was in the knowledge of the respondents No. 3-8 in the original revenue suit and plaintiff before the revenue court, still in the cause title, all the legal heirs of other co-sharers of properties, originally belonging to late Shri Jhuntha Ram, as they are residing and settled in village Nichlaul, District Maharajganj (UP), were shown as residents of village Lavanda, Tehsil Fatehpur Shekhawati, District Sikar. The notice of revenue suit came to be issued on 30.03.1998 and the Process Server made its report Dt. 01.04.1998 on the notices that defendants do not reside on the said address.

3. Indisputably, the notices were not served on either of the defendants before the revenue court, however, Shri Anil Mishra, Advocate appeared on behalf of such of the defendants who are not even served and filed vakalatnama on 07.04.1998 and a written statement was filed on behalf of such of the defendants on 21.04.1998 and the so-called alleged family settlement was prepared by the plaintiffs with signatures of defendants through Anil Mishra, Advocate came to be filed before the ld. Revenue Court on 27.05.1998 and on the basis of the so-called alleged family settlement, the court of ld. Sub-Divisional Officer passed the decree on 28.07.1998.

4. Defendants before the ld. Revenue Court were completely unaware regarding the proceedings, if any, being initiated against them by the plaintiffs. However, the aforesaid decree Dt. 28.07.1998, as alleged, came to their notice only when they approached Halka Patwari to obtain copy of jamabandi on 04.04.2000 and at that stage they came to know that some revenue suit was filed against them by the plaintiffs on which notices were issued and on the basis of alleged family settlement, decree Dt. 28.07.1998 came to be passed by the court of ld. Sub-Divisional Officer and without any loss of time, the defendants filed application u/ O.9 R.13 CPC before the court on 07.04.2000 and the plaintiffs filed reply to the said application and evidence was also recorded including one of the alleged attesting witness to the family settlement Shri Dudaram S/o. Chatruram Meghwal, who disputed his signatures and refuted that neither he was attesting witness to the document (family settlement) nor such compromise was ever signed by him. He has also filed his affidavit deposing that he is the only person named Dudaram, residing in Village Lavanda and the alleged family settlement was never arrived at between the parties and he has never signed the document

(family settlement) as attesting witness which was made the basis for passing a decree by the ld. Revenue Court.

5. Apart from all other facts in seriatim, it was also took note of by the ld. Revenue Court that all the defendants were residents of village Nichlaul, District Maharajganj (UP) and still they were shown in the cause title of the suit to be residents of village Lavanda, Tehsil Fatehpur Shekhawati, District Sikar and indisputably the notices were never served on either of them and filing of vakalatnama and so also the written statement by their lawyer engaged - Shri Anil Mishra followed with family settlement, the seriatim of facts which came on record appear to be completely doubtful apart from the attesting witness to the family settlement, who has also disputed his signatures on the document which is the basis for passing of a decree by the ld. Revenue Court Dt. 28.07.1998. In this perspective, the ld. Sub-Divisional Officer was of the view that mere filing of vakalatnama and so also written statement, in the facts & circumstances, filing of an application u/O. 9 R. 13 r/w S. 151 CPC was maintainable treating it to be an ex-parte order against them and accordingly it was observed that indisputably there was violation of principles of natural justice and a reasonable opportunity of hearing, which was expected for the defendants, has not been afforded to them and that being so, the judgment & decree Dt. 28.07.1998, based on the written family settlement was quashed and set aside and while restoring the revenue suit No. 27/1998, liberty was granted to the defendants of filing written statement and further the revenue court was directed to decide the suit in accordance with law.

6. Against order of the ld. Sub-Divisional Officer Dt. 26.12.2002, revision petition came to be filed by the present appellants and the ld. Board of Revenue while taking note of the submissions made was of the view that since the Advocate, who was one of the important witness who filed vakalatnama and through whom the written statement was filed, had not been examined and the facts could only be in his best knowledge as to which of the defendant asked him of filing vakalatnama before ld. Revenue Court and observed to initiate criminal proceedings, if any fraud has been committed and partly accepted the revision petition and set aside order of the ld. Revenue Court Dt. 26.12.2002 vide order Dt. 18.04.2013 and the ld. Revenue Court was directed to examine the Advocate, who filed vakalatnama on behalf of the defendants and also to look into the matter and initiate criminal proceedings against the person, who, as alleged, has committed criminal offence by submitting forged documents in the court proceedings and the order Dt. 18.04.2013 passed by the ld. Board of Revenue was subject matter of challenge by filing writ petition before the ld. Single Judge.

7. It is not disputed that as regards the revenue suit originally filed before the court is concerned, that has not at all been examined on merits and the matter from 2000, the day application u/O.9 R.13 CPC was filed, traveled from the court of Sub-Divisional Officer to the ld. Board of Revenue and thereafter to this court and yet to be examined on merits.

8. As regards seriatim of facts which came on record and remained in disputed by the original plaintiffs/appellants in the instant proceedings are that the defendants were residing in UP and the cause title indicated them as residents of Lavanda, Tehsil Fatehpur Shekhawati, District Sikar and the notices were issued by the ld. Revenue Court only on 30.03.1998 and the Process Server made its report Dt. 01.04.1998 that defendants do not reside on the aforesaid address, thus, there was no knowledge to the defendants regarding a revenue suit being filed by the plaintiffs and how it was possible of a vakalatnama being filed by Shri Anil Mishra, Advocate on 07.04.1998 followed by written statement on their behalf on 21.04.1998 and filing of family settlement, as alleged, on their behalf on 27.05.1998 before the court by the defendants who are indisputably residing in UP and a decree came to be passed on the basis of so-called family settlement on 28.07.1998.

9. The conspicuous facts, in seriatim, which came on record in itself sufficient to arrive at least at a prima facie conclusion that opportunity of hearing was not afforded to the defendants by the ld. Revenue Court. In addition to the facts, it has also come on record that the attesting witness to the document (family settlement) Shri Dudaram, in his affidavit has also stated that there is no person named Dudaram, other than him who is residing in village Lavanda and he has not signed the document as witness and his signatures have also been forged over the document which was made a basis for passing of the alleged decree by the ld. Revenue Court Dt. 28.07.1998. Apart from it, the other salient facts which came on record were also considered by the ld. Revenue Court while accepting the application filed u/O.9 R.13 r/w S. 151 CPC vide order Dt. 26.12.2002.

10. The ld. Single Judge of this court, after taking into consideration the material which came on record, also expressed his view regarding the process adopted in sending notices to the defendants and the report of Process Server that the defendants do not reside on the addresses, as indicated in the cause title of the revenue suit and upheld the view of the ld. court of Sub-Divisional Officer. In this context, the ld. Single Judge also took note of S. 73 of the Indian Evidence Act and in the facts & circumstances, when there is a direct allegation of signatures being forged, a bare look can always be considered by the Presiding Officer without taking recourse of being sent to expert for his opinion and arrived at a conclusion that in the given facts & circumstances calling upon an Advocate for recording his statement as to who authorized him to file vakalatnama and written statement at a given point of time in regard to the process initiated in 1998 in the changed facts & circumstances may not be advisable and also may not be in the interest of justice and while setting aside the order of ld. Board of Revenue, upheld the order of ld. Sub-Divisional Officer Dt. 26.12.2002 and the parties were at liberty to address before the ld. Revenue Court on merits.

11. The main thrust of submission of counsel for appellants Mr. R.P. Garg, Advocate is that once vakalatnama was filed on behalf of the defendants followed by written statement and family settlement, which alleged to have been arrived

at between the parties and which is the basis of passing the judgment & decree by the ld. Revenue Court on 28.07.1998, at least the application filed by the defendants u/O.9 R.13 CPC was not maintainable and further submits that the finding arrived at by the ld. Revenue Court regarding signatures of defendants on vakalatnama filed by Shri Anil Mishra, Advocate on 07.04.1998 in the absence of the lawyer being called upon to record his statement or taking expert opinion, is in violation of S. 73 of the Indian Evidence Act and in support of his submission, he placed reliance on the judgment passed by Apex Court in Ajay Kumar Parmar Vs. State of Rajasthan, .

12. Mr. G.K. Garg, Senior Counsel appearing on behalf of the respondents who were original defendants before the ld. Revenue Court while supporting order of the ld. Single Judge submits that in the series of facts which has come on record, the proceedings against defendants from Day-One remained ex-parte and their application u/O.9 R.13 CPC was maintainable and while supporting order of the ld. court of Sub-Divisional Officer submits that the ld. Single Judge examined the material in detail which does not call for any interference in the intra-court appeal.

13. As regards submissions made by counsel for appellant regarding non-maintainability of application filed u/O.9 R.13 CPC, suffices it to say that ordinarily after the service being effected and in a regular course, vakalatnama is filed and parties are represented by their respective counsel, there might be a situation where contention advanced by the appellants may bear some substance regarding maintainability of application u/O.9 R.13 CPC but in the facts of the instant case, which are brought to our notice where the defendants indisputably were residing at village Nichlaul, District Maharajganj (UP) and still in the cause title of revenue suit, filed by the plaintiffs-appellants, they were shown to be the residents of village Lavanda, Tehsil Fatehpur Shekhawati, District Sikar and the notices were issued on 30.03.1998 and the Process Server made its report on 01.04.1998 that defendants do not reside on the aforesaid address, there was no iota of tangible evidence which could indicate that filing of revenue suit at the behest of the plaintiffs u/S. 88 of the Rajasthan Tenancy Act, 1955 was in the knowledge of defendants and within a period of six days after the Process Server made its report on 01.04.1998, Shri Anil Mishra, Advocate filed vakalatnama on behalf of such of the defendants on 07.04.1998 followed by written statement on their behalf on 21.04.1998 and the alleged family settlement on 28.07.1998 and the further fact which came on record where the attesting witness to the document (family settlement) Shri Dudaram filed his own affidavit at the stage when proceedings u/O.9 R.13 CPC were initiated by the defendants, that his signatures have been forged as attesting witness on the document (family settlement) which is the basis for passing decree Dt. 28.07.1998 and other salient facts which came on record noticed by the ld. Revenue Court and also by the ld. Single Judge, in our considered view, the proceedings, at least against the present defendants remain ex-parte and their application filed u/O.9 R.13 CPC was maintainable and this what the ld. Revenue Court also considered in its

order Dt. 26.12.2012 while setting aside the judgment & decree and afforded opportunity of filing written statement to the defendants and to decide the revenue suit on merits.

14. As regards further submissions made in respect of S. 73 of the Indian Evidence Act, suffice it to say that there is no legal bar which prevent the court from comparing the signatures or hand writing and apply its own observations but its equally true that court is not supposed to become an expert and ordinarily refrain playing the role of an expert to express it opinion or arrive to any conclusion of its own opinion. The judgment on which counsel for appellant placed reliance in the case of Ajay Kumar Parmar (supra) is of any assistance to the appellants for the reason that it was a case where Prosecutrix herself lodged a criminal complaint and apart from her statement recorded u/S. 161 Cr.P.C., there was also her statement recorded u/S. 164 of the Code and at that point of time, some dispute arose regarding signatures of prosecutrix which were made on the application filed before the Chief Judicial Magistrate for recording her statement u/S. 164 Cr.P.C. and also the signatures on the statement alleged to have been recorded u/S. 164 Cr.P.C. and when doubt was raised, the ld. competent court expressed opinion taking assistance of S. 73 of the Indian Evidence Act. Under those facts & circumstances, the Apex Court observed, as a caution, that there may not be any legal bar from comparing signatures or handwriting, as contemplated u/S. 73 of the Indian Evidence Act but it will not appropriate for the court to become an expert in this regard and ordinarily refrain from playing the role of an expert since such of the opinion of Court may not be conclusion. However, in the instant case, the facts in seriatim which has come on record are so conspicuous where the ld. Revenue Court taking assistance of S. 73 of the Indian Evidence Act, in our considered view, has not committed any error in recording its finding and this what the ld. Single Judge also approved in its order impugned before us in the instant proceedings.

15. As regards order of the ld. Board of Revenue is concerned, apart from what has been observed by the ld. Single Judge, we are also of the view that calling upon the Advocate for recording his statement would be immaterial but at the same time, it is a matter of our concern and requires to be inquired upon as to who, as alleged, forged the signatures on vakalatnama, filed at the behest of defendants through Shri Anil Mishra, Advocate in the court proceedings before the ld. Revenue Court on 07.04.1998 and a written statement filed on their behalf of on 21.04.1998 so also the so-called alleged family settlement on 27.05.1998, that can certainly be a subject matter of inquiry and initiation of criminal proceedings against the offender who committed criminal offence.

16. We do not find any substance in the instant intra-court appeal and accordingly the same is dismissed. However, we may observe that a separate criminal proceedings be initiated in regard to filing of vakalatnama at the behest of defendants through their Advocate on 07.04.1998, written statement on 21.04.1998 followed by the so-called alleged family settlement on 27.05.1998

against the offenders and whosoever found guilty, appropriate action may be initiated against him, as provided under the law.

17. The parties are directed to appear before the court of ld. Sub-Divisional Officer, Fatehpur Shekhawati, District Sikar on 14.07.2014 at 11:00 AM and the defendants may be permitted to file their written statement and the proceedings be expedited and be decided within the time frame after affording opportunity, in accordance with law.