
(2008) 01 RAJ CK 0040

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3122 of 2003

Mahi Devi (Smt.)

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 17-01-2008

Acts Referred:

Rajasthan Tenancy Act, 1955 — Section 232

Citation : (2008) 1 WLN 440

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Judgement

Vineet Kothari, J.—Heard learned Counsel for the parties.

2. This petition has been filed by the petitioners challenging the order of the Board of Revenue dt. 13.02.2003 in a reference u/s 232 of the Rajasthan Tenancy Act, 1955 whereby the Board of Revenue has set aside the decree passed by the trial Court in favour of the petitioner declaring their Gair Khatedari right over the land in dispute situated in village Charanwala bearing Khasra No. 1020 in District Jaisalmer.

3. The said decree was passed in favour of the petitioner on 14.05.1992 in suit No. 108/1992. The aforesaid reference was filed u/s 232 of the Act somewhere in the year 2000 as it appear from reference No. TA/49/2000/Bikaner-State of Rajasthan v. Smt. Mahi Devi W/o Hukma Ram and Ors.

4. The learned Counsel for the petitioner Mr. Gaur relying on the judgment of this Court in the case of State of Rajasthan v. Teja and Ors. reported in 2005 (4) RDD 921 (Raj), Hari Ram and Anr. v. State of Rajasthan and Ors. reported in 1996 DNJ (Raj.) 397 and Mammi Khan v. State of Rajasthan and Ors. reported in 2005 (7) RDD 2418 (Raj) submitted that reference filed after a gape of 9 years and 13 years in these cases was held to be barred by limitation. He submitted that though no limitation is prescribed u/s 232 of the Act, if such reference is filed after such a huge period of over 8 to 9 years, the Board of Revenue cannot be

justified in entertaining such reference u/s 232 of the Act and the decree passed by the Revenue Court cannot be set aside.

5. He further submitted that in the present case, these petitioners were in possession of suit property way back even prior to settlement in Samwat Year 2012 and their names were duly recorded in the Revenue Record even at the time of settlement and their old possession was proved by producing witnesses before trial Court. He further submitted that reference was unjustified, highly belated and barred by limitation. Therefore, the Board of Revenue could not set aside the said decree u/s 232 of the Act.

6. The learned Counsel for the State Ms. Pratishtha Dave on the side opposite submits that said decree u/s 88 of the Act could not be granted in favour of the petitioner, but the petitioner could apply only for allotment u/s 15AAA of the Rajasthan Tenancy Act, 1955 if conditions of such allotments were fulfilled by the petitioner.

7. I have considered rival submissions and perused the record. Since admittedly possession of the petitioners over the land in dispute even prior to settlement has not been rebutted by the State before the trial Court, the decree of the trial Court holding that the petitioners were in possession even prior to settlement in Samwat Year 2012 and their names having been duly recorded in the Revenue Record at that time, could not be validly assailed on the ground of availability of remedy to the petitioners u/s 15AAA of the Act. Moreover, the learned Counsel for the petitioners seems to be justified in relying upon the decisions of this Court cited supra wherein after a delay of so many years, if reference is made u/s 232 of the Act to the Board of Revenue, the Board of Revenue cannot entertain such reference u/s 232 of the act even if no limitation is prescribed u/s 232 of the Act. It is well settled that such reference has to be filed within a reasonable period. Since this Court has consistently held that delay of 6 to 9 years or more is fatal. Respectfully following the aforesaid judgments, this Court holds that reference u/s 23 of the Act in the present case was highly belated and was barred by limitation.

8. In view of this, this petition is allowed. The impugned order of the Board of Revenue dt. 13.02.2003 is quashed and set-aside. No. order as to costs.