(1956) 02 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Miscellaneous Writ Case No. 83 of 1955

Mansingh APPELLANT

Vs

Board of Revenue and Others RESPONDENT

Date of Decision : 01-02-1956

Acts Referred:

Constitution of India, 1950 — Article 226
Marwar Land Revenue Act, 1949 — Section 79(1), 79(2), 79(3)

Citation : AIR 1957 Raj 136 : (1956) RLW 453

Hon'ble Judges : K.N. Wanchoo, C.J;I.N. Modi, J

Bench : Division Bench

Advocate : Sumerchand, for the Appellant; Kansingh, Deputy Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Wanchoo, C.J.—This is an application by Mansingh for writ of certiorari against the decision of the Board of Revenue in a correction of papers case during settlement operations in the district of Jaloro.

2. The facts, which have led to this application, may be briefly narrated. The applicant claims that he was granted half illage of Charli in Tehsil Ahore, Dist. Jalore by the jagirdar of Abore whose younger brother he is Some time thereafter settlement operations started in this village, and in July, 1951, during these operations, an entry is said to have been made ex parte in the revenue records in which Bersingh, opposite party No. 5, was shown as a co-sharer of certain land attached to 8 wells, and as full owner of certain other lands. The applicant''s claim with respect to these lands was that he was the sole owner of these lands by virtue of the grant from the jagirdar of Ahore, and the entries made ex parte by the Settlement Department were incorrect. Consequently he applied to the Assistant Record Officer, Jalore on the 26th of July, 1951, for correction of these entries.

The matter was enquired into by the Assistant Record Officer, and he passrd an order on the 21st of November, 1952, lidding that some of the lands were the joint property of the applicant and the opposite party Ber Singh, and the other land was the exclusive properly of the applicant. He, therefore, ordered correction of entries in the record of rights accordingly. The matter was taken in appeal by both parties to the Record Officer. The appeal was decided on the 30th of April, 1954. The Record Officer practically maintained the order of the Assistant Record Officer, but specified the shares of each party in those lands in which the Assistant Record Officer had held that they were joint.

Thereupon, both parties again went in appeal to the Additional Settlement Commissioner. Ber Singh had always been contending from the beginning that the Settlement Authorities had no jurisdiction to decide this matter of proprietary right, and should have left the dispute to be decided by the proper court. The applicant did not challenge the jurisdiction of the Settlement Authorities to decide the dispute. He only challenged the correctness of the decision. The Additional Settlement Commissioner allowed the appeal of the applicant, and held that he was solely entitled to be entered in the revenue record on all the lands as landlord, and Ber Singh was not entitled to be entered on any land.

Thereupon, Ber Singh went in revision to the Board of Revenue, and again raided the point that the Settlement Authorities should not have derided this question. The Board of Revenue accepted the revision of Ber Singh En part, and set aside the order of the Additional Settlement Commissioner, and restored the order of the Record Officer. Thereupon, the present application was, made to this Court.

3. The applicant now takes up the position which was taken up by Ber Singh in the revenue courts, and the main contention on his behalf is that the dispute between the parties was about proprietary rights to land, and should not have been decided by the Settlement Authorities, and in any case an issue should have been sent down for decision u/s 36 of the Rajasthan Revenue Courts (Procedure and Jurisdiction) Act (No. I) of 1951 to the civil court. Another point, that is urged, is that there is an error apparent on the face of the judgment of the Record Officer, which has been upheld by the Revenue Board, and that is that the Record Officer has held that the share of the applicant is 12 annas in the Chain land in schedule I, and the share of Ber Singh is 4 annas, while the judgment itself shows that those shares were respectively 12 annas, 6 4/5 pics in the case of the applicant, and 3 annas, 5 1/5 pies in the case of the opposite party, and that even if he desired to round up the figures, he should have rounded them up as 32 1/2 annas and 3 1/2 annas.

There is also an attack on the merits of the decision, but we think it unnecessary to mention the grounds of that attack.

4. The application has been opposed on behalf of the Board of Revenue, and the contention on their behalf is that there is another remedy open to the applicant, and as such this court should not interfere at the stage in the exercise of its extraordinary jurisdiction. Her Singh in his reply has gone back on the objections

that he had been raising all alone before the settlement authorities, and contends like the Board of Revenue that the applicant has another remedy open, and therefore this application should be dismissed. He has also supported the decision of the Record Officer on the merits but we need not go into the question of merits at all in this case for reasons which will just appear,

5. These proceedings began before the Assistant Record Officer apparently under item(5) Group F, of the First Schedule of the Rajasthan Revenue Courts (Procedure and Jurisdiction) Act (No. 1) of 1951. They were taken during the course of settlement operations, and in this connection we have to look to the Marwar Land Revenue Act (No. XL) of 1949 as the substantive provisions of that Act as to the manner in which settlement operations would take place, were still operative in spite of the Rajasthan Revenue Courts (Procedure and Jurisdiction) Act (No. 1.) of 1951. which merely provided the forum for settlement of disputes.

In this connection, the relevant sections are Sections 75 to 79 of the Marwar Land Revenue Act. Section 75 enjoins upon the Officer making the settlement to prepare a record of rights. Tills record of rights consists of two parts namely (1) Khewat in which the rights of landlords including sub-proprietors are entered with specifications as to the nature and extent of the interest of each, and (2) Khatanni Jamabandi in which the rights of cultivators or those otherwise occupying land are entered. Section 76 provides how entries which are undisputed arc attested, and we need not refer to it because the entries in this case were disputed. Section 77 deals with tenancies, and may be passed over for this is not a case of tenancies. Section 78 provides procedure for decision where the lent is in dispute, and that section is also inapplicable to the present case. Then comes Section 79 which is a residuary section, and provides that all other disputes regarding entries in the record of rights shall be decided on the basis of possession. Thus reading Section 75 and Section 79 together, it is the duty of the officer, who is making the settlement, to prepare a register called Khewat of all land-lords specifying the nature and extent of the interest of each, and in making entries in that register he has to decide on the basis of possession. Sub-section (2) of Section 79 further lays down that if the settlement officer is unable to satisfy himself as to which party is in possession, he shall make a summary enquiry as to the person best entitled, and shall put such person in possession. This sub-section has no application in this case for the settlement officer was able to come to the conclusion on the question of possession, and made his entries on the basis of possession. Then we come to Sub-section (3) which provides that no order as to possession passed under this section shall debar any person from establishing "bis right in any civil or revenue court having jurisdiction. This clearly applies both to sub-section (1) and Sub-section (2) of Section 79, and makes the order of the Settlement Officer subject to the decision of a proper civil or revenue court.

The reason for this is also clear for the settlement officer has to decide merely on the basis of possession, and even if he goes into the question of title, the enquiry is of a summary nature. It was for this reason that Sub-section (3) provides that the order of the Settlement Officer passed under Subsections (1) and (2) of Section 79 making entries in the revenue record and putting a person in possession weuld be open to review by a proper civil er revenue co''nrt.

The contention on behalf of the Board of Revenue is that the orders that have been passed by the settlement authorities in this case are u/s 79(1), and any party aggrieved by such an order has the right to go to a civil or revenue court having jurisdiction. In this particular case, as the matter relates to proprietary possession, and as we are told there is no specific provision in this behalf in the Rajasthan Tenancy Act (No. 3) of 1955 which has replaced the Rajasthan Revenue Courts (Procedure and Jurisdiction) Act (No. I) of 1951, any party, which feels aggrieved by such an order, can go to the civil court to have his title determined.

In these circumstances, we are of opinion that we should not interpose at this stage, and must leave it to the party aggrieved to agitate the matter in the proper civil court.

6. We may, however, remark that the Record Officer was not right in rounding off the shares as he did to 12 annas in the case of the applicant, and 4 annas in the case of Ber Singh. He was himself conscious of the fact that the applicant''s share, according to the evidence before him, was more than 12 annas, and Ber Singh''s share was less than 4 annas. Even if some rounding off was necessary, he should have brought the shares to 12 1/2 annas and 3 1/2 annas if he desired to avoid fractions of pies.

We trust that the necessary corrections will be made now by the Record Officer himself, and we do not therefore propose to pass any order in this connection. The Record Officer is present in Court and assures us that he will make necessary corrections and enter the sharers as 12 1/2 annas and 3 1/2 annas.

7. In the view that we have taken, the application fails, and is hereby dismissed. In the circumstances, we pass no order as to costs.

