
(1959) 02 RAJ CK 0012

In the Rajasthan High Court

Case No : Civil Writ Application No. 141 of 1958

Misra and Others

APPELLANT

Vs

Rajasthan Board of Revenue and Others

RESPONDENT

Date of Decision : 03-02-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 19
Limitation Act, 1908 — Section 5
Rajasthan Tenancy Act, 1955 — Section 214

Citation : AIR 1959 Raj 290 : (1959) RLW 447

Hon'ble Judges : K.L. Bapna, Acting C.J.; Jagat Narayan, J

Bench : Division Bench

Advocate : J.S. Rastogi and R.C. Vyas, for the Appellant; Shrikishan Mal, for the Respondent

Final Decision : Allowed

Judgement

Jagat Narayan, J.—This is an application under Article 226 and 227 of the Constitution by 28 persons against an order of the Board of Revenue dated 9-5-1958, confirming an order of the Additional Commissioner dated 25-3-1957.

2. The facts, which have given rise to this application, are these : The petitioners brought a suit for declaration of their Khatedari rights against Virendra Singh, respondent No. 3, which was decreed. Against that decree Virendra Singh preferred an appeal in the Court of the Additional Commissioner. 20-2-1957 was fixed for hearing the appeal. On that date Virendra Singh and his counsel were absent. The appeal was accordingly dismissed for default. On 23-3-1957, Shri Sardar Nath Modi, who was appearing for Virendra Singh, applied for setting aside the ex parte order dismissing the appeal. The office reported on this application that it was filed beyond limitation.

The learned Additional Commissioner, how ever, restored it without giving any reason as to why he treated the application as being within time. The petitioners then filed a revision application before the Board of Revenue against the order of

the Additional Commissioner. The Board held that Section 5 of the Limitation Act was applicable to the application for restoration of the appeal, and that there was sufficient reason for not presenting the application within the period of limitation provided under Art. 168. Against this order, the present application has been filed.

3. We are of the opinion that the Board erred in applying Section 5 of the Limitation Act to the application for restoration, which was made under Order XLI, Rule 19, C.P.C. Section 5 applies only to:

1. appeals,
2. applications for review of judgment,
3. applications for leave to appeal.

4. any other application to which this section is made applicable by or under any enactment for the time being in force. Section 214 of the Rajasthan Tenancy Act, 1955, on which reliance was placed by the Board of Revenue and the respondent only makes the provisions of the Limitation Act applicable to suits, appeals, applications and proceedings under or in pursuance of the Tenancy Act. This provision makes Section 5 of the Limitation Act applicable as it stands. It does not make the provision of Section 5 applicable to all applications to which this section has not been specially applied by any enactment. Our attention has not been drawn to any enactment applying the provisions of Section 5, to an application under Order XLI, Rule 19, C.P.C, in proceedings under the Tenancy Act. We accordingly hold that the order of the learned Additional Commissioner dated 25-3-1957, restoring the appeal is without jurisdiction, and the view taken by the Board is erroneous.

4. We accordingly allow the application, and set aside the order of the Additional Commissioner, dated 25-3-1957, as well as the order of the Board of Revenue dated 9-5-1958. In the circumstances of the case, we order that the parties shall bear their own costs.