

(1999) 11 RAJ CK 0010
In the Rajasthan High Court
Case No : Civil Writ Petition No. 604 of 1987

Mohan

APPELLANT

Vs

Board of Revenue for Rajasthan and Others

RESPONDENT

Date of Decision : 01-11-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (2000) 3 RLW 1737 : (2000) 2 WLN 46

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

J.C. Verma, J.—The petitioner is aggrieved against the order passed by the Board of Revenue dated 15.12.1986 (Annexure-6) attached to the writ petition whereby the Board of Revenue had set aside the judgment and decree of the Revenue Appellate Authority dated 5.4.1980 (Annexure 5). The prayer is to restore the order Annexure 5.

2. Jamnalal, the predecessor of the respondent Nos. 5 to 9 along with Rameshwar Lal (here-in-after called the respondent plaintiffs) had initially filed a suit against the present petitioners u/s 188 of the Rajasthan Tenancy Act in the court of Assistant Collector, Sikar in respect of Khasra Nos. 679 and 674 measuring 6 Bigha 17 Biswa and 3 Bigha 18 Biswa situated at village Bai. They had prayed that they were the recorded tenants of the said Khasra numbers and the entries in their names were wrongly removed and were prepared in favour of Ghinsa, Kanha, Kalu and Bodu Jats who are said to have caused their interest on the present petitioners. The tenants in the suit had denied the Khatedari rights of the plaintiff respondents with the prayer that the petitioners were in possession and further in Khasra No. 674 a separate Khasra number has been marked as Khasra No. 673 for digging a well by the petitioner. The suit filed by the plaintiff defendant was for permanent injunction without the prayer of possession. An objection was also taken that Heera, Ghinsa, Kanha, Bodu etc. have not been

impleaded as party. A further objection was taken by the defendant that in any case the suit was barred by limitation on the ground of adverse possession. The necessary issues were framed by the trial court.

3. During the pendency of the suit even a complaint u/s 145 Cr. P.C. was filed against the parties and after a thorough enquiry, it was found that the petitioners were in possession of the land. It, is further submitted that the application for interim injunction filed u/s 212 of the Rajasthan Tenancy Act was also dismissed on the ground that it was found as a matter of fact that the petitioners were in possession of the land and the plaintiffs were out of possession. The order on the application of temporary injunction was not challenged any further. The trial court i.e. the court of S.D.O. Sikar decreed the suit in respect of Khasra No. 679 only on the ground that the possession of the defendants over the land is in the capacity of the servants and as such the plaintiff being recorded as Khatedar tenant is entitled for decree of permanent injunction. Copy of the judgment is attached as Annexure-4, Being aggrieved against Annexure-4, the present petitioner filed the appeal before the Revenue Appellate Authority who vide its judgment dated 5.4.1980 (Annexure-5) set aside the order Annexure-4. The plaintiff challenged Annexure-5 before the Board of Revenue. The Board of Revenue had up-set the finding of the Revenue Appellate Authority and restored the decree passed by the S.D.O.

4. It is the contention of the learned Counsel for the petitioner that the Board of Revenue could not have any jurisdiction to create a new case for the plaintiff and pass a decree for possession in a suit for permanent injunction without amending the plaint and giving an opportunity of reply to the amended plaint. In any case the decree of possession could not have been passed by the Board of Revenue when the suit itself was for permanent injunction. It is the contention of the respondent plaintiff that the petitioner can atmost be called the licensee and no suit as such was maintainable against the licensee. It is further the contention that it had been found as a matter of fact that the petitioners were in possession of the land as per the order passed on the application of temporary injunction and also on the proceedings u/s 145 Cr. P.C.

5. The Revenue Appellate Authority had found that no copies of Jamabandi had been produced by the parties. It was further observed by the Revenue Appellate Authority that no issue was got framed by the plaintiff to the effect that the petitioner had been in possession as a servant. The plaintiff respondent had not even challenged the part of the decree which had gone against him in regard to Khasra Nos. 673 and 674. It was found and rightly so that the plaintiff had failed to prove himself to be tenant in possession or in cultivation.

6. The Board of Revenue had held that the application for amendment of the suit filed by the plaintiff under Order 6 Rule 17 of the CPC was not rejected in accordance with law and further had held that the judgment and decree dated 16.1.1979 passed by the SDO with respect of Khasra No. 679 was to be modified to ensure that the present petitioner, defendant in the suit if. in possession be

ordered to be ejected from the land in question.

7. The Board of Revenue has committed an illegality and has acted without jurisdiction in so far modifying the decree of the trial court by converting it into the decree of ejectment. Admittedly, the plaintiff had not filed a suit for ejectment, the suit was for permanent injunction. The possession was found to be with the petitioners. In case the Board of Revenue was of the opinion that the application under Order 6 Rule 17 CPC was for amendment of the suit, was not decided in accordance with law, the Board of Revenue should have remanded the case back to the authorities with a direction to allow the amendment so that both the parties should have a proper opportunity of filing a written statement to the amended suit and lead evidence accordingly. In any case this having not been done by the Board of Revenue, the Board could not have changed the nature of the suit from declaration/permanent injunction to that of eviction. This view is also supported by a Single Bench decision of this Court in the case of Ram Karan v. Board of Revenue reported in RLR 1987 (1) 168, wherein a suit for division of the property, the Board of Revenue had changed the nature of the suit for declaration of half share in the Khatedari land and for division of holding and it was held that in a suit for division of holding only, the same could not have been converted into a suit for declaration.

8. For the reasons mentioned above, I hold that the order of the Board of Revenue has acted without jurisdiction and it cannot be sustained in the eyes of law and Annexure-6 is, therefore set aside. The writ petition is allowed. No orders as to costs.