
(2019) 09 RAJ CK 0046
In the Rajasthan High Court
Case No : Civil Writ Petition No. 8006 Of 2019

Om Prakash

APPELLANT

Vs

Devi Lal And Ors

RESPONDENT

Date of Decision : 05-09-2019

Acts Referred:

Rajasthan Land Revenue Act, 1956 — Section 10, 75, 136
Constitution Of India, 1950 — Article 227

Citation : (2019) 09 RAJ CK 0046

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : Narendra Thanvi, Mahendra Thanvi

Final Decision : Dismissed

Judgement

1. This petition is directed against the order dated 19.7.18 passed by the Board of Revenue Rajasthan, Ajmer whereby a special appeal preferred by the petitioner against order dated 9.1.13 passed by the Single Bench of Board of Revenue dismissing the appeal preferred by the petitioner against the order dated 28.5.07 passed by the Divisional Commissioner, Bikaner, has been dismissed.

2. The facts relevant are that the petitioner preferred an application under Section 136 of the Rajasthan Land Revenue Act, 1956 ("the Act") before the Sub Divisional Officer, ("SDO") Tibbi for correction of the entry of the land comprising Killa No.1,2,3, Stone No.227/288 in Chak 5 TLW in the revenue record. Precisely, the case set out by the petitioner was that there existed an approach road passing through the aforesaid land to his agriculture land comprising Stone No.227/287 Killa No.16, 25, Stone No.226/287 Killa No.5, Stone 227/288 Killa No.4,5, Stone No.222/289, Killa No.3,4 Stone No.226/290 Killa No.12 total 1.619 Hectare land in Chak 5 TLW, however, during settlement proceedings, without there being any order of the competent Court, the same was categorized as "Nahri" land and therefore, the entry in the revenue record deserves to be

rectified.

3. The application preferred by the petitioner as aforesaid was allowed by the Sub Divisional Officer, Tibbi vide order dated 17.11.6. Aggrieved thereby, an appeal preferred by the private respondents was allowed by the Divisional Commissioner, Bikaner Division vide order dated 28.5.07 and the order passed by the SDO directing rectification of the revenue entry was set aside. The second appeal preferred by the petitioner against the appellate order passed by the Divisional Commissioner was dismissed by the Single Bench of the Board of Revenue vide order dated 9.1.13. A special appeal preferred by the petitioner under Section 10 of the Act against the order passed by the Single Bench has been dismissed by the Division Bench of the Board of Revenue by the order impugned. Hence, this petition.

4. Learned counsel appearing for the petitioner contended that the Board of Revenue has seriously erred in passing the order impugned without considering the relevant fact that the SDO had only rectified the inadvertent error committed in making the entry of the land in question during settlement proceedings. Learned counsel submitted that prior to settlement proceedings, the land in question was recorded as "gair mumkin rasta" and thus, the order passed by the SDO after due consideration of all relevant aspects was not required to be interfered with by the appellate authority. Learned counsel submitted that the fact that the petitioner was using the way passing through fields of his brother Tiloka Ram since long, was absolutely an irrelevant consideration and thus, the Board of Revenue has seriously erred in passing the order based thereon. Learned counsel submitted that the error crept in the revenue record can always be rectified by the SDO invoking the power under Section 136 of the Act.

5. I have considered the submissions of the learned counsel for the petitioner and perused the material on record.

6. A perusal of the orders impugned reveals that the existence of the sanctioned way passing through the land comprising Stone No.227/288, Killa No.1,2,3 was not established by the petitioner by producing any cogent evidence on record. To the contrary, on the basis of the site inspection report and other material on record, it was established beyond doubt that as a matter of fact, the petitioner has received his khatedari land in question by way of partition between the brothers and throughout, the petitioner was using approach road to his land passing through the land which fell in the share of his brother Tiloka Ram. As a matter of fact, in the first instance, the petitioner had preferred an application under Section 75 of the Act before the SDO, Tibbi for sanctioning a way passing through Stone No. 227/288 Killa No.1,2,3 which stood dismissed by the SDO, Tibbi vide order dated 8.4.04. Aggrieved thereby, an appeal preferred by the petitioner was also dismissed by Revenue Appellate Authority, Hanumangarh, vide order 26.4.05. If there was an existing way passing through Stone No.227/288 Killa No.1,2,3, then, there was no occasion for the petitioner to make an application for sanctioning the way. That apart, it has also come on

record that the petitioner had preferred an application for sanctioning the way passing through Stone No.224/287 Killa No.21 to 25 stating that he is using the said way as approach road to his khatedari land for last 20 years. Be that as it may, as per the site inspection report submitted by the Patwari, the petitioner was, as a matter of fact, using the way passing through the land comprising Stone No.227/287 Killa No.21 22 and 23.

7. In view of the discussion above, in the considered opinion of this Court, the concurrent finding arrived at by the appellate authorities after due consideration of the material on record cannot be said to be capricious or perverse so as to warrant interference by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India.

8. In the result, the petition fails, it is hereby dismissed in limine.