(2014) 03 RAJ CK 0126

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 275/2013

Parsa Ram APPELLANT

Vs

Board of Revenue RESPONDENT

Date of Decision : 04-03-2014

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 20 Rule 5

Citation : (2014) 3 WLN 269

Hon'ble Judges : Dinesh Maheshwari, J;Banwari Lal Sharma, J

Bench : Division Bench

Advocate : R.S. Choudhary, Advocate for the Appellant; Moti Singh, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. Though the matter is posted for final orders on the stay application but, with the consent and at the request of the learned counsel for the parties and having regard to the issues involved, we have heard this appeal at this stage itself. Put in brief, the relevant aspects of the matter remain that the plaintiff-appellant filed a suit for partition, as also for declaration of right, in relation to the agricultural land in question that had earlier been recorded in the name of his grand father. The defendants filed the written statement and also took a counter claim seeking declaration of their Khatedari Rights over a part of the land in question. Seven issues were framed by the learned Sub Divisional Officer (Revenue), Bhadra (''the SDO'') and the parties led their evidence. Ultimately, the learned SDO proceeded to decree the suit in favour of the plaintiff by the judgment and decree Dt. 26.06.2003.

2. A bare look at the judgment and decree dt 26.06.2003 is sufficient to find that after reciting the pleadings of the parties, the issues framed, and the evidence adduced, the learned SDO observed that the learned counsel for the plaintiff prayed for decreeing the suit whereas the learned counsel for the defendant prayed for dismissing the suit and decreeing the counter claim. Thereafter, the

learned SDO merely stated his conclusion that the suit was required to be decreed and accordingly, proceeded to decree the suit declaring the plaintiff as khatedar in relation to 29 kilas of land at Chak 18 and 5 bighas of land at Chak 19 AMS.

3. In the appeal taken by the defendant, the learned Revenue Appellate Authority, Hanumangarh took note of the submissions of the parties and referred to the previous decisions between the parties concerning the land in question including the judgment Dt. 18.05.1990 passed by the Board of Revenue in Appeal No. 212/1982. The learned Revenue Appellate Authority found that the judgment and decree had rightly been passed by the SDO and dismissed the appeal.

4. However, it was submitted by the defendant in further appeal before the Board of Revenue that the issues had not been decided as per the requirements of the Order XX Rule 5 CPC; and the learned Revenue Appellate Authority too did not carry out the requisite compliance of the requirements of law.

5. Accepting the submissions so made, the Board of Revenue proceeded to set aside the judgment and decree passed by the Subordinate Authorities and remanded the matter to the Sub Divisional Officer, Bhadra for decision afresh after recording specific findings on all the issues.

6. The writ petition (being CWP No. 4539/2013) filed by the plaintiff-appellant against the order so passed by the Board of Revenue has been dismissed by the learned Single Judge of this Court on 03.05.2013 with a short order that the order of the learned Board of Revenue, merely remanding the case to the learned SDO, does not call for any interference.

7. Having examined the material placed on record, we find the approach of the Board of Revenue in this matter unexceptionable. A bare look of the judgment and decree passed by the learned SDO makes it absolutely clear that nothing of reasons had been assigned nor any finding was recorded; and the impugned judgment Dt. 26.06.2003 could only be considered to be of rather an assumptive decision.

8. Apart that the judgment impugned so passed by the SDO falls short of the requirements of Order XX Rule 5 CPC, the judgment suffers from the basic flaw that no reasoning is at all available therein and hence, such a judgment could not have been sustained.

9. In view of the above, we find no ground to interfere with the orders passed by the Board of Revenue and the learned Single Judge in this case.

10. Accordingly, this appeal is required to be dismissed. However, it shall be expected of the SDO concerned to take up the matter expeditiously as it appears that the suit in question was filed way back in year 2000 and the litigation concerning to land in question commenced way back in the year 1982 or even before.

11. It is also made clear that as per the order passed by the Board of Revenue as affirmed by this Court, no further evidence is to be adduced and the SDO is only required to hear the parties, to examine the record and thereafter, to deliver the judgment in accordance with law. The SDO concerned shall be expected to conclude the matter at the earliest, preferably within six month from today.

12. Subject to the observations foregoing, this appeal stands dismissed. No costs.

