
(2014) 10 RAJ CK 0052
In the Rajasthan High Court
Case No : Civil Writ Petition No. 14739/2013

Pawan Kumar

APPELLANT

Vs

Board of Revenue for Rajasthan, Ajmer and Others

RESPONDENT

Date of Decision : 28-10-2014

Acts Referred:

Constitution of India, 1950 — Article 227 — Hindu Minority and Guardianship Act, 1956 - Section 6 — Rajasthan Tenancy Act, 1955 - Section 188, 212, 88

Citation : (2015) 3 RCR(Civil) 999 : (2015) 2 WLN 440

Hon'ble Judges : Sangeet Lodha, J.

Bench : Single Bench

Advocate : R.K. Singhal, Advocate, for the Appellant

Final Decision : Allowed

Judgement

Sangeet Lodha, J.?This writ petition is directed against order dt. 22.11.13 of the Board of Revenue Rajasthan, whereby a revision petition preferred by the petitioner against the order dt. 30.9.13 passed by the Revenue Appellate Authority (RAA), Hanumangarh dismissing the appeal preferred by the petitioner against the order dt. 9.1.12 passed by the Sub Divisional Officer, Nohar refusing to grant injunction prayed for by way an application preferred under Sec. 212 of Rajasthan Tenancy Act, 1955 (for short "the Act"), stands dismissed. The petitioner (minor), through her natural mother (next friend), preferred a suit for declaration and permanent injunction against his adoptive father, the first respondent, under the provisions of Section 88 & 188 of the Act, in respect of ancestral land measuring 8.096 hectare comprising khasra No. 496/348 situated in village-Malwani, Tehsil & District Churu. The petitioner also filed an application seeking injunction under the provisions of Section 212 of the Act, claiming temporary injunction in terms that during the pendency of the suit, the first respondent may be restrained from alienating the disputed land.

2. The suit is being contested by the first respondent by filing a written statement thereto. The first respondent has denied the factum of adoption and

has taken the stand that the adoption deed is a forged document. It is averred that a suit filed by the adoptive mother of the petitioner for cancellation of adoption deed is pending consideration before the civil Court of competent jurisdiction. According to the first respondent, his father having expired in the Samvat 2031, he was recorded as sole khatedar of the land in question in the revenue record and therefore, on the basis of alleged adoption deed dt. 11.5.10, the petitioner cannot claim any right therein.

3. After due consideration of the rival submissions, the trial Court arrived at the finding that the suit preferred by the adoptive mother of the petitioner for cancellation of the adoption deed is pending consideration before the civil Court and as on the date of alleged adoption, the first respondent was the sole khatedar of the land and therefore, the petitioner has no prima facie case in his favour. Accordingly, the application seeking temporary injunction preferred by the petitioner was dismissed.

4. Aggrieved thereby, the petitioner preferred an appeal before the RAA, Hanumangarh. The RAA observed that the adopted son acquires same rights in the ancestral property, which are available to natural born son and a minor child is also entitled to avail the appropriate remedy for protection of his rights in accordance with law. Accordingly, the RAA found that the reasons assigned while rejecting the application seeking temporary injunction by the trial Court do not appear to be just and proper. However, the RAA dismissed the appeal observing that the natural mother of the petitioner (minor) could not have filed the suit on his behalf without being appointed as his guardian by the Court of competent jurisdiction.

5. Aggrieved by the order passed by the RAA dismissing the appeal, the petitioner preferred a revision petition before the Board of Revenue, which stands rejected by the order impugned. Hence, this petition.

6. Learned counsel for the petitioner submitted that the trial Court dismissed the application seeking temporary injunction on the basis that the petitioner has not been able to make out prima facie case in his favour, however, the reasoning adopted by the trial Court was found to be erroneous by the RAA. Learned counsel submitted that the RAA has seriously erred in dismissing the appeal solely on the technical ground that the natural mother of the petitioner cannot maintain a suit on behalf of the minor without being appointed as legal guardian of the minor by the competent Court. Learned counsel submitted that as a matter of fact, any person can be next friend of a minor plaintiff if he is not of unsound mind, is himself not a minor and his interest is not adverse to that of minor. Learned counsel submitted that no permission of the Court to represent the minor as friend under Order XXXII Rule 1 CPC is necessary and the Court has inherent jurisdiction to protect the interest of the minor and therefore, the RAA could not have declined to interfere with the order passed by the trial Court on such a technical ground. In support of the contention, learned counsel has relied upon a decision of this Court in the matter of State of Maharashtra Vs. M/s. Shiv

Datt and Sons, etc., .

7. On the other hand, the counsel appearing for the respondent while supporting the order impugned passed by the Board of Revenue submitted that natural mother of the petitioner could not have filed the suit on behalf of the minor inasmuch as, the petitioner is claiming the right in the disputed land being adopted son of the first respondent. Learned counsel submitted that admittedly, the suit for cancellation of the adoption deed preferred by the first respondent's wife, the adoptive mother of the petitioner, is pending before the civil Court of competent jurisdiction and the fact that as on the date of execution of the adoption deed, the petitioner was sole recorded khatedar of the land in question, is also not in dispute and therefore, the question of the petitioner claiming any right in the land in question as adopted son, does not arise. Learned counsel submitted that the concurrent finding arrived at by the revenue Courts regarding absence of prima facie case in favour of the petitioner, 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. I have considered the rival submissions and perused the material on record.

9. Indisputably, as per the provisions of Order XXXII Rule 4, any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit, provided that the interest of such person is not adverse to that of the minor and that he is not in the case of a next friend a defendant or in the case of a guardian for the suit a plaintiff. In this view of the matter, the next friend of the minor need not be necessarily one of the guardians enumerated in Section 6 of Hindu Minority and Guardianship Act. Further, in terms of the provisions of Order XXXII Rule 4, it was absolutely not necessary that the next friend of the minor who has filed the suit on his behalf must have been appointed as legal guardian of the minor by the Court. Thus, the view taken by the RAA regarding the maintainability of the suit filed by the natural mother of the petitioner as next friend, does not appear to be correct. Be that as it may, any such issue arising in the matter may be decided by the trial Court at the appropriate stage in accordance with law. But, in any case, at this stage, the suit preferred cannot be held to be not maintainable inasmuch as, it had been filed by the natural mother of the petitioner as next friend for enforcement of the right of the minor in the ancestral property of adoptive family.

10. It is pertinent to note that the RAA has recognised the right of the adopted son in the ancestral property of the adoptive family, however, the relief prayed for was declined solely on the ground that the suit preferred by the petitioner's natural mother as her next friend is prima facie not maintainable. The Board of Revenue has rejected the revision petition by merely recorded its ipse dixit that the order passed by the Courts below does not suffer from any irregularity or illegality without examining the relevant aspects of the matter and therefore, the order impugned deserves to be set aside.

11. Coming to the merits of the case, it is not in dispute that the petitioner was adopted by the first respondent by way of a registered adoption deed. Merely because, the legality of the adoption deed is questioned by the first respondent's wife by filing a suit before the Court of competent jurisdiction, the same does not become inoperative. It is not disputed before this Court that the property in question is the ancestral property, may be that it was recorded in the revenue record in the name of the first respondent after the death of his father. Thus, at this stage, it cannot be concluded that the petitioner a minor, cannot claim any right whatsoever in the disputed property on the strength of alleged adoption. In this view of the matter, in the considered opinion of this Court, the right of the minor in the property in question claimed on the basis of alleged adoption deserves to be protected. Accordingly, the petition is allowed. The orders impugned passed by the Board of Revenue, RAA, Hanumangarh and Sub Divisional Officer, Nohar, are set aside. The application preferred by the petitioner under Sec. 212 of the Act shall stand allowed in terms that the first respondent shall not alienate the disputed property in any manner during the pendency of the suit before the Court of Sub Divisional Officer, Nohar. No order as to costs.