

(2014) 03 RAJ CK 0062
In the Rajasthan High Court
Case No : Civil Review Petition No. 42/2013

Pratap Singh and Others

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 21-03-2014

Acts Referred:

Rajasthan Tenancy Act, 1955 — Section 212, 230

Citation : (2014) 03 RAJ CK 0062

Hon'ble Judges : Amitava Roy, C.J.;V.K. Mathur, J.

Bench : Division Bench

Advocate : Kapil Joshi, for the Appellant

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the review applicants-appellants.
2. By the instant application, a review and/or reconsideration of the judgment and order dated 21.3.2013 rendered in D.B. Civil Special Appeal No. 134/2013 dismissing the same has been sought for.
3. Having regard to the grounds averred, it would be expedient to outline in short the facts relevant. The respondents in the appeal aforesaid had instituted several Revenue Suits in the Court of Assistant Collector-cum-Sub-Divisional Officer, Jodhpur against the review applicants-appellants. They also filed an application under section 212 of the Rajasthan Tenancy Act, 1955 (for short, hereafter referred to as "the Act") seeking appointment of a Receiver in respect of the suit land and covered by khasra No. 126, village Chopasni Tehsil Jodhpur. Claiming themselves to be the owners of the suit land on the strength of the purchase made by them by registered deed of sale, the respondents alleged inter-alia that the review applicants-appellants were interfering with their possession of the land involved by digging earth therefrom and asserted that it was essential to appoint a Receiver to secure and protect the same. In reinforcement of this prayer, a report dated 20.5.2008 of the jurisdictional Patwari was also relied

upon.

4. The learned Assistant Collector-cum-Sub Divisional Officer, Jodhpur vide order dated 19.12.2008 while observing that the respondents were khatedars of the land involved and the review applicants-appellants were in possession thereof, appointed a Receiver as they (review applicants-appellants) were found to be digging earth therefrom which warranted such a measure. The Tehsildar, Jodhpur was appointed as a Receiver of the suit land by removing the review applicants-appellants therefrom.

5. The review-applicants-appellants preferred an appeal before the Revenue Appellate Authority, Jodhpur, which by order dated 16.1.2009 reversed this decision, whereafter, the respondents approached the learned Board of Revenue, which reiterated that they (respondents) were recorded khatedars of the land involved and that the possession of the review applicants-appellants thereon was of trespassers. It placed reliance on the report dated 20.5.2008 of the jurisdictional Patwari and was also of the view that as the review applicants-appellants had been digging earth from the suit land, they were thus by their said activities causing alteration of the nature and character thereof. It also held that in the attendant facts and circumstances, continuance of such activities of the review applicants-appellants had the potential of creating friction between the parties and being of the view that it was necessary to secure the rights and interest of the respondents in the suit land, interfered with the decision of the learned Revenue Appellate Authority and restored the order dated 19.12.2008 of the learned Assistant Collector-cum-Sub Divisional Officer, Jodhpur. The review-applicants-appellants having unsuccessfully challenged this determination before the learned Single Judge, preferred appeal.

6. In the appeal, it was urged on behalf of the review applicants-appellants that in absence of the conditions precedent enumerated in Section 212 of the Act, the appointment of a Receiver vis-a-vis the suit land was unwarranted and impermissible. It was argued further that the review applicants-appellants having been found to be in possession of the suit land, the decision to appoint a Receiver by dispossessing them acting on the report of the jurisdictional Patwari was illegal. In the alternative, it was argued that even assuming that the pre-conditions for invocation of the power under section 212 of the Act were existent, in the facts and circumstances of the case, an order of temporary injunction could have been passed to appropriately secure the property. No other plea was raised.

7. The learned counsel for the respondents, however, asserted that no interference in the face of the consistent finding of the learned Assistant Collector-cum-Sub-Divisional Officer, learned Board of Revenue and the learned Single Judge was called for. According to them, having regard to the prejudicial activities of the review applicants-appellants vis-a-vis the suit land, the order appointing a Receiver thereof was unassailable. They also drew the attention of this Court to a complaint filed by the review applicants-appellants before the

District Consumer Forum, Jodhpur to demonstrate that they did not claim any interest in the land covered by khasra No. 126.

8. On an elaborate consideration of the rival submissions and the materials available on record vis-a-vis the contentions raised, this Bench declined to interfere with the impugned judgment and order rendered by the learned Single Judge and dismissed the appeal. In course of the analysis of the relevant facts, the documents pertaining thereto and the competing assertions, this Bench noticed that the suits filed by the respondents were still pending for final adjudication. It was observed prima facie that the respondents are the recorded khatedars of the suit land as evidenced by the contemporaneous materials on record. The consistent finding of the learned Assistant Collector-cum-Sub Divisional Officer, Jodhpur and the learned Board of Revenue that the review applicants-appellants had been indulging, in course of their possession of the suit land, in activities of digging up the same and thereby altering its nature and character was also recorded. The finding of the Board of Revenue that continuance of such activities had the potential of creating tension and conflict between the parties was also taken note of. Having regard to the scope and purport of Section 212 of the Act, it was held that in the attendant facts and circumstances and on an overall consideration thereof, the order of appointment of a Receiver could not be indicted to be wholly unwarranted. In the face of the fact that the respondents are the recorded khatedars of the land involved, it was observed that prima facie the review applicants-appellants did not have any right in law to intermeddle therewith or resort to activities prejudicial thereto. On a consideration of the judgment and order rendered by the learned Single Judge, concurrence with the findings contained therein was also recorded.

9. The review applicants-appellants though had preferred Special Leave Petition (Civil) No. 25692/2013 before the Hon"ble Apex Court, the same was disposed of on 13.9.2013 having regard to the fact that meanwhile an application for review of the judgment and order dated 21.3.2013 had been preferred before this Court.

10. It is now sought to be urged that the learned Single Judge as well as this Bench in the accompanying appeal had not taken into consideration the plea that in the face of Section 230 of the Act, the Board of Revenue had wrongly exercised its jurisdiction in the matter. Violation of the principles of natural justice as the review applicants-appellants were not heard, reliance on forged and irrelevant documents and disregard to the dispute with regard to the title rendering appointment of a Receiver by dispossessing the review applicants-appellants from the suit land impermissible in law, have now been asserted as grounds for seeking a review of the judgment and order dated 21.3.2013.

11. The learned counsel for the review applicants-appellants has reiterated the above.

12. Upon hearing the learned counsel for the review applicants-appellants and on a consideration of the averments made in the review application, we are not

inclined to accede to the prayer made. Not only the assertions now made are beyond the arguments advanced at the hearing of the appeal, the present endeavour is patently one to occasion a rehearing thereof in the garb of review. New pleas have now been raised referring to so-called errors on the part of the learned Single Judge also to seek a review of the decision involved. In deciding the accompanying appeal, this Bench had limited its scrutiny to the materials relevant for the adjudication thereof bearing in mind that the suits are pending trial. Not only both the sides were heard, the appeal was decided on an examination of the rival pleadings and the documents on record, pleas raised and taking note as well of the concurrent finding of the learned Assistant Collector-cum-Sub Divisional Officer and the Board of Revenue with regard to the activities of the review-applicants-appellants in digging earth from the suit land thus altering the nature and character thereof. To reiterate, the possibility of confrontation between the parties if such activities continued unabated was also recorded in unambiguous terms by these forums. In the comprehension of this Court, the order appointing a Receiver in terms of Section 212 of the Act was sustainable and warranted. The purpose of invoking power under section 212 of the Act indeed is to preserve the subject matter of a suit pending trial thereof on merits, be it by injunction or through a Receiver to be decided by a court of competent jurisdiction on an overall evaluation of the materials on record.

13. Be that as it may, in the above background and having regard to the extremely constricted scope of review of a judicial decision, none of the pleas now raised, in our comprehension, does constitute a ground for review of the judgment and order dated 21.3.2013.

14. The review application is thus rejected.