(2016) 12 RAJ CK 0070

In the Rajasthan High Court

Case No : Special Appeal Writ No. 380 of 2002

Ram Charan Alias Charan Das APPELLANT

Vs

Board of Revenue Ajmer RESPONDENT

Date of Decision : 21-12-2016

Acts Referred:

Citation : (2017) 1 WLCRajUC 333

Hon'ble Judges : Mr. K.S. Jhaveri and Mr. Dinesh Mehta, JJ.

Bench : Division Bench

Advocate : Mr. Sudesh Bansal, Advocate, for the Appellants; Mr. Shyam Lal Sharma, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

1. By way of this appeal, the appellants have challenged the order of the learned Single Judge, whereby the learned Single Judge has dismissed the petition.

2. The facts of the case are that the respondent-plaintiff filed a civil suit before the competent authority, which was decided in their favour. However, the First Appellate Court reversed the finding of the trial court and Board of Revenue decided the matter against the present appellants. Thereafter the present appellants approached the learned Single Jude and the learned Single Judge while considering the material in para no. 4, 5, 6, 7 and 8 observed as under:-

4. The powers conferred upon the High Court under Article 226 and 227 of the Constitution of India are extraordinary and discretionary powers as distinguished from ordinary statutory powers. Their Lordships of the Supreme Court in Ouseph Mathai and Others v. M. Abdul Khadir (JT 2001 (9) SC 517) propounded that jurisdiction under Article 227 should not be exercised by the High Court unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals resulting in grave injustice to any party.

5. The instant writ petition filed by the petitioners is not an extension of the proceedings under the 1955 Act. In Syed Sakoob v. K.S. Radha Krishanan (AIR

1964 SC 477) it was held by the Hon''ble Supreme Court that the jurisdiction of the High Court to issue a writ of certiorari is a supervisory jurisdiction and the court while exercising it is not entitled to act as an appellate court.

6. I do not find any wrong referable to grave dereliction of duty and flagrant abuse of power in the impugned orders. The Board of Revenue considered the judgment of the revenue appellate authority and reversed its finding and restored the finding of the trial court. Even on merits the petitioners have no case. Admittedly the petitioners are cultivating the land as subtenant and no khatedari rights could accrue in such land in favour of such cultivators as subtenant as contemplated under section 46 of the 1955 Act.

7. Their Lordships of the Supreme Court in Waryam Singh v. Amar Nath (1954 SCR 565) indicated that power by superintendence conferred by Article 227 is to be exercised more sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting the mere errors.

8. Instant case, in my opinion is not a fit case for invoking the powers under Article 227 of the Constitution of India."

3. Learned counsel for the appellants has contended that though a specific contention raised before the learned Single Judge that Jamabandi of Samvat 2013-16 Exhibit 3 only pertained to 21.11 Bighas, the decree has been passed for the entire land measuring 41.18 Bighas, yet the same has not been dealt with by the learned Single Judge. However no assertion is found to have been made either by the appellants or by the counsel for the appellants. Merely by taking a ground is not sufficient to establish that the learned Single Judge has not considered the same. However, we do not deem it appropriate to relegate the petitioner back to learned Single Judge, after 14 years. Even otherwise, we are in agreement with the view taken by the learned Single Judge as the petition was under Article 227 of the constitution of India, and the Court should be slow in exercise of discretionary jurisdiction.

4. More so intra-court appeal against an order passed in exercise of jurisdiction under Article 226/227 is not maintainable.

5. We are in complete agreement with the view taken taken by the learned single Judge as well as Board of Revenue that trust or temple property could not have been transferred Therefore, the view taken by Board of Revenue and learned Single Judge is required to be upheld and appeal deserves to be dismissed, which stands dismissed accordingly.