

(2013) 12 RAJ CK 0058

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 1564/2011 in Civil Writ Petition No. 11183/2011

Ram Prasad

APPELLANT

Vs

The Board of Revenue for Rajasthan

RESPONDENT

Date of Decision : 04-12-2013

Acts Referred:

Citation : (2014) 2 WLN 243

Hon'ble Judges : Amitava Roy, C.J;Veerender Singh Siradhana, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Amitava Roy, C.J.—The judgment and order dt. 26.08.2011, passed in S.B. Civil Writ Petition No. 11183/2011, constitutes the subject matter of challenge in the instant appeal. We have heard Mr. K.K. Mehrishi, the learned Senior Counsel assisted by Mr. Timan Singh, Advocate, for the appellant.

2. Briefly stated the facts, necessary for the disposal of the instant appeal, are that the predecessor in interest of respondent Nos. 5/1, 5/2, 6/1, 6/2, 7/1 and 7/2, had instituted a suit in the Court of Sub Divisional Officer, Kota, praying for a decree for declaration and perpetual injunction against the appellant/writ-petitioner and others contending that the Settlement Department had converted the land of their Khatedari and possession comprised in old Khasra No. 267 (Bada), measuring 4 Biswa, situated in Village Kanwalda, Tehsil Pipalda, into new Khasra No. 436, measuring 0.04 hectare and on changing the location thereof from its original place, it wrongly showed the same as being situated in the Talai. It was alleged that thereby the old Naksha Trace was changed and their land was shown as Gair Mumkin Rasta, which ought to be corrected and they ought to be declared Khatedar of the land according to the old Naksha Trace. Perpetual injunction was also sought for against the defendants therein for restraining them from interfering with their possession.

3. The appellant/writ-petitioner, in his written statement, denied the pleaded averments and on the basis thereof, issues were framed. By the judgment and order dt. 16.06.1998, the suit, on full trial, was dismissed for want of necessary clarity and evidence. Being aggrieved, the plaintiffs preferred an appeal in the Court of Revenue Appellate Authority, Kota under the Rajasthan Tenancy Act, 1955 (for short, hereafter referred to as "the Act") and the first Appellate Authority by its decision dt. 13.07.2001, partly allowed the same and remitted the matter back to the Sub Divisional Officer, Kota, directing it to resolve the dispute with reference to the revenue records existing prior to the settlement and that prepared after the same and also by making measurements of the land involved. The appellant/writ-petitioner being dissatisfied, unsuccessfully preferred an appeal before the learned Board of Revenue, which dismissed the same by judgment and order dt. 22.06.2011. The learned Single Judge by the impugned judgment and order, affirmed the verdict of the learned Board of Revenue.

4. Mr. Mehrishi has emphatically argued that the suit having been dismissed for want of evidence, no remand was permissible in terms of Order 41 Rule 23, 23A and 25 of the Code of Civil Procedure, 1908 (as amended) (for short, hereafter referred to as "the Code") and, therefore, as the impugned decisions of the revenue forums as well as the judgment and order of the learned Single Judge, are patently illegal, the same ought to be interfered with. According to the learned Senior Counsel, the decisions rendered by the revenue forums suffer from want of jurisdiction as in the attendant facts and circumstances, no order of remand could have been made. Mr. Mehrishi has added that as the litigation is pending since long, on this count as well, the order of remand is not sustainable in law. To reinforce his arguments, the learned Senior Counsel has placed reliance on the decisions of the Apex Court in *P. Purushottam Reddy and Another Vs. Pratap Steels Ltd.*, and *State of Punjab and Another Vs. Gram Panchayat and Others*, .

5. After hearing the learned Senior Counsel for the appellant and on a consideration of the materials on record, we are left unpersuaded by the pleas raised. As would be apparent from the pleadings of the suit, the stand off between the parties was founded on the revenue records and relatable as well to the location of the suit land. True it is that the learned Sub Divisional Officer, Kota, did dismiss the suit on the ground of want of clarity and evidence in support of the case of the plaintiffs. We are however of the comprehension that the higher forums under the Act, did rightly remit the matter to the Court of Sub Divisional Officer, Kota to resolve the dispute on the basis of the revenue records and survey of the land(s) involved.

6. In our understanding, in the singular facts and circumstances of the case, Order 41 Rule 23A of the Code is attracted, as in the opinion of the learned Revenue Appellate Authority, Kota and the learned Board of Revenue, Ajmer, a fresh consideration of the issues on the basis of the revenue records and on a

spot survey, was necessary in the interest of justice. In such eventuality, it was well within their authority as well to issue consequential directions, as contemplated under Order 41 Rule 23 of the Code. The learned Single Judge, in our view, has rightly affirmed the decisions of the lower revenue forums by holding that the same did not suffer from any jurisdictional error. The authorities relied upon on behalf of the appellant/writ-petitioner, in the facts and circumstances of the case, according to us, do not further his cause. The appeal, thus, lacks in merit and is dismissed. The stay application also stands rejected.