(1989) 12 RAJ CK 0046

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1093 of 1988

Rameshwar and Another APPELLANT

Vs

Board of Revenue Ajmer and Others RESPONDENT

Date of Decision : 12-12-1989

Acts Referred:

Citation : (1989) 2 WLN 671

Hon'ble Judges : Milap Chand Jain, Acting C.J.;I.S. Israni, J

Bench : Division Bench

Final Decision : Allowed

Judgement

I.S. Israni, J.—This petition is directed against the judgment and decree passed by the Board of Revenue, dated 11-11-1987, whereby the appeal of respondents Nos. 4 & 5 Har Dayal and Sagaria was allowed and the plaintiff petitioner''s suit was dismissed.

2. The petitioners filed a suit for declaration against the respondents Har Dayal and Sagaria with the allegations that the petitioners are Khatedars to the extent of 1/2 share in the land comprised of Khasra Nos. 107 & 109 measuring 1 Bigha 13 Biswas and 1 Bigha and 1 Biswas, total 2 Bighas 14 Biswas and they are in possession of their half share These Khasra numbers are old Khasra numbers. Their equivalent is 121 recorded in the new settlement. The petitioners'' case is that the defendants got the land entered in their name. The plaintiff, therefore, sought a declaration that to the extent of half share, the entries of the defendant-respondents is void and ineffective as against the plaintiff-petitioners half share. Written statement was filed and after trial the learned Assistant Collector, Behror, dismissed the plaintiff''s suit. The plaintiffs preferred an appeal before the Revenue Appel-Hate Authority. The Revenue Appellate Authority set aside the judgment and decree of the learned Assistant-Collector and passed a decree for declaration to the effect that the plaintiffs are Khatedars of l/4th share of Khasra No. 121 measuring 2 Bighas. The defendants preferred an appeal before the Board of Revenue. The Board of Revenue, how ever, allowed the appeal and

dismissed the plaintiff''s suit and set-aside the judgment and decree of the Revenue Appellate Authority. The learned-members of the Board of Revenue observed that the present Khasra No. 121 has been constituted out of old Khasra No. 107 and old Khasra No. 108, on that basis, it was observed that the plaintiffs are entitled to a declaration for l/4th share in the entire new Khasra No. 121. It was also observed that the plaintiff wrongly averred in the plaint that the new Khasra No. 121 is constituted out of old Khasra Nos. 107 & 109. This statement is not based on fact so the whole basis of the plaint does-away and on such a consideration it was observed that the Revenue Appellate Authority seriously erred in declaring the plaintiffs as Khatedars to the extent of 1/4th share in Khasra No. 121. The other ground on which the appeal was allowed was the Jai Ram and Jagta were necessary parties as they were recorded Khatedars to the extent of 1/4th share in Khasra No. 107. For these reasons, the learned members of the Board of Revenue set-aside the judgement and decree of Revenue Appellate Authority and accepted the appeal and dismissed the plaintiff''s suit.

3. We have heard learned Counsel for the petitioner and learned Counsel for the respondents No. 4 and 5. It is true that in the allegations made in the plaint, the plaintiff have averred that the New Khasra No. 121 is constituted out of Khasra Nos. 107 and 109 (old) but the fact is that Khasra No. 121 comprises of Khasra No. 107 measuring 1 bigha-8 biswas and part of Khasra No. 108, measuring 12 biswas. As regards Khasra No. 109 is concerned, its new number is 122 and 122 new khasra number comprises of 109, measuring 1 bigha 6 biswas and part of 108 measuring 17 biswas. So far as the present suit is concerned, in view of the clear statement in the relief-clause, it relates to Khasra No. 121 alone although mention has been made to Khasra No. 109 old, but thereafter a categorical statement has been made that the suit relates to new khasra number 121. On that basis, it can be taken that the suit relates to new khasra No. 121 alone and not in respect of new khasra No. 122, which is constituted to khasra No. 109 and part of khasra No. 108. Proceeding on that basis, it is to be seen as to whether learned Members of the Board Revenue were right and justified in dismissing the plaintiff''s suit in toto. On the basis of documents and evidence on record, the plaintiffs have been able to make out a case that the plaintiffs have got l/4th share in khasra No. 107 old, measuring 1 bigha, 7 biswas. As there is no mention of Khasra No. 108 old so the land of khasra No. 108 cannot be taken into consideration which forms part of new khasra No. 121. plain" tiffs suit, therefore, shall remain confined to old khasra No. 107 which has become part of new khasra No. 121. The grievance of the plaintiff-petitioners in the plaint was that the whole of the khasra was got recorded by the defendants in their name. They had no right to get the share of the plaintiff petitioners recorded in their name and to this extent the plaintiffs are entitled to a decree. In the light of the above consideration he would have sent the matter back to the Board of Revenue after setting-aside the judgment and decree passed by them. But it would not be good to remand the matter back it this stage. The plaintiff can be given relief to the

extent to which the plaintiff is found to be entitled to the relief.

4. Accordingly, the writ petition is allowed. The judgment and decree passed by the learned Members of the Board of Revenue are set-aside and the plaintiff''s suit is decree to this extent that the entry of the defendants in the revenue record regarding 1/4th share possessed by the plaintiff-petitioners in respect of the land of Khasra No. 107 (old) forming part of Khasra No. 121 (new) is bad and ineffective against the petitioners.

5. Parties shall bear their own costs through out.

