(2014) 06 MP CK 0103

In the Madhya Pradesh High Court

Case No : R.P. No. 173/14

R.B. Overseas (Pvt. Ltd.) APPELLANT

Vs

The State of Madhya Pradesh RESPONDENT

Date of Decision : 24-06-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Limitation Act, 1963 — Section 14
Madhya Pradesh Land Revenue Code, 1959 — Section 44, 50

Citation : (2014) 06 MP CK 0103

Hon'ble Judges : U.C. Maheshwari, J

Bench : Single Bench

Advocate : Sanjay Sanyal, Learned Counsel, Advocate for the Appellant; Sheetal Dubey, Learned G.A, Advocate for the Respondent

Final Decision : Dismissed

Judgement

U.C. Maheshwari, J.—Heard on the question of admission.

2. On behalf of the petitioners of W.P. No. 16278/13, disposed of vide order dated 30.9.2013, this review petition is preferred under Order 47 Rule 1 of CPC to recall the aforesaid order dated 30.9.2013 and pass the appropriate order in the light of the order passed in identical W.P. No. 16209/2013 vide dated 12.2.2014.

3. The present petition is preferred by the petition saying that subsequent to remanding the matter by the SDO vide order dated 7.2.2011 in Revenue Appeal No. 102-A/-6/2009/10 to the Additional Tahsildar with some direction to decide afresh. The Tahsildar vide order dated 11.1.2012 has replaced the name of the petitioner by inserting the name of the respondent No. 2 in the revenue record without extending any opportunity of hearing to the petitioner and on challenging such order before the SDO in the first appeal u/s 44 or M.P. Land revenue code "in short the code". On consideration the same was dismissed as non-maintainable holding that aforesaid order of the Additional Tahsildar being

interlocutory in nature is not appealable. Such order of SDO was under challenge in the aforesaid petition. While disposing of such petition the petitioner was extended a liberty to file the second appeal against the aforesaid order of the SDO. But while passing such order the aforesaid order dated 12.2.2013 passed in identical writ petition No. 16209/13 was not taken into consideration. As such in view of such cited order the Tahsildar ought to have been directed to reconsider the matter to place the name of the petitioner in the revenue record where the name of the respondent No. 2 has been placed but no such direction was given. In such premises he prayed to recall the aforesaid order dated 30.9.2013 by way of review and pass appropriate order in this regard.

4. It is noted that copy of order dated 7.12.2011 passed by the S.D.O. in the aforesaid revenue appeal No. 102/A-6/2009-10 was neither filed in the original petition nor in the present review petition enabling the Court to know that on which directions after setting aside the earlier order of the Naib Tahsildar the case was remitted back to such Court.

5. In the available circumstances, I am of the considered view that when the petitioner has challenged the order of the SDO dated 9.5.2013 passed in appellate jurisdiction in Revenue appeal No. 134-A/6/2011 u/s 44 of the Code then as per settled proposition and the statutory provision, against such order only second appeal before the Commissioner was maintainable and on filing such appeal the Commissioner may consider the matter to answer the question, the approach of the SDO holding the aforesaid order of Additional Tahsildar was either interlocutory or final. The same could not be considered and answered by this court under the writ jurisdiction. So, in such premises this Court has not committed any apparent error on the face of the record in passing the impugned order 30.9.13 and extending the liberty to the petitioner to file the second appeal against the aforesaid order of the SDO.

6. Mere perusal of the aforesaid order of the Additional Tahsildar dated 11.1.2012, it is apparent that in compliance of the aforesaid remand order of the S.D.O. Dated 7.2.2011, whereby the earlier order of mutation of the petitioner passed by the Naib Tahsildar on which the name of petitioner was mutated in the revenue record was set aside and case was remanded to decide a fresh, such Tehsildar has not committed any error in restoration of earlier position of revenue record by scoring out the name of the petitioner and directing the summons to the parties to prove their respective case. So in such premises, such order was interlocutory and the appeal before the SDO was not tenable, only the remedy of revision u/s 50 of the Code was available to the petitioner. But in view of setting aside the order of the Naib Tahsildar by the SDO and reminding the matter to decide afresh (very foundation of mutation of petitioner) on filing the revision against the order of Additional Tehsildar dated 11.1.2012 in the lack of any mutation order in favour of the petitioner he could not get any order for replacing his name in the revenue record at the place of the respondent No. 2.

7. As the aforesaid writ petition was filed for quashment of the aforesaid order

dated 9.5.2013 passed by the SDO in the appellate jurisdiction in subsequent appeal, therefore to examine the sustainability of such order the remedy of second appeal was only available to the petitioner that is why the writ petition was disposed of by extending the above mentioned liberty.

8. In the aforesaid premises this Court has not committed any apparent error on the face of the record in disposing of the aforesaid writ petition vide impugned order dated 30.9.2013.

9. However, in the available circumstances in the interest of justice besides the aforesaid earlier order dated 30.9.2013, the petitioner is extended a liberty to challenge the aforesaid original order of the Additional Tahsildar dated 11.1.2012 by way of revision u/s 50 of the Code before the appropriate forum of revenue Court. It is further observed that on filing the aforesaid revision petition along with an application u/s 14 of Limitation Act then concerning revenue Court is directed instead to dismiss such revision on the question of limitation decide the same on merits. Concerning Revenue Court is further directed that while dealing with such revision consider the question whether after setting aside the mutation order of Naib Tahsildar by the S.D.O. and remitting back the matter to the Additional Tahsildar with direction to decide afresh then what wrong has been committed by such Additional Tahsildar in restoring the earlier position in the revenue record by placing the name of respondent No. 2 at the place of petitioner.

10. The review petition is dismissed with aforesaid observation, directions and liberty.

11. C.C. as per rules.

