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(1954) 03 AP CK 0005

In the Andhra Pradesh High Court

Case No : Writ Application No. 470/5 of 1952

Rechamma APPELLANT

Vs

Hyderabad State and Another RESPONDENT

Date of Decision : 09-03-1954

Acts Referred:

Constitution of India, 1950 — Article 226
Land Revenue Act — Section 166(7)

Citation : (1954) 03 AP CK 0005

Hon'ble Judges : Misra, C.J;Deshpande, J

Bench : Division Bench

Advocate : Bhimsenachari, for the Appellant; Vinayakrao Vaidya and Gopalrao Tuljapurkar, for the Respondent

Final Decision : Dismissed

Judgement

Deshpande, J.—This is a petition for the issue of a writ of Certiorari under Article 226 of the Constitution. The, Petitioner asks this Court to quash the order of the Revenue Minister dated 26-11-1952, dismissing the Petitioner''s revision and conferring the succession on Rachotappa regarding his mali-pateli and patwarigiri of Selugunda, patwarigiri of Bhiman-pali, Kotwali-pateli of Hengangira, Mali pateli of Narva and Hissedari in Mali and Kotwali pateli of Kadechura.

2. The dispute relates to the right of succession to one Sidramaona the original watandar, who died on 1st Amardad 1340 F. (7-6-1931).

The competition was between three claimants, the present Petitioner, Rachamma, who is the widow of the deceased, Sangam Basappa, the brother of the deceased, and Rachotappa, the Respondent, who claimed to be an adopted son of the deceased. The course of litigation before the Revenue authorities was somewhat unusual. The Tehsildar, who was moved by Rachamma, held that Sangam Basappa was the best entitled, since according to him the deceased, Sidramappa, was a member of the joint Hindu family consisting of himself and his brother at the time of his death, The Deputy Collector, to whom the Teshildar submitted his recommendation for confirmation, disagreed with him and came to the conclusion that the family was a divided one. He held that the adoption was not satisfactorily proved and he, therefore, upheld the claim of Rachamma as the widow of the deceased.

Both Rachotappa and Sangam Basappa appealed against the Deputy Collector''s order to the Collector, who allowed the appeal of Rachotappa on 16th September 1938 (11-12-1347 P.) and dismissed that of Sangam Basappa, granting succession in the name of Rachotappa as an adopted son of the deceased. The Subedar to whom Rachamma an Sangam Basappa''s legal representative went up in appeal after the death of Sangam Bassappa, affirmed that decision, but it was reversed by the Revenue Minister on revision filed by Rachamma.

Rachotappa, however, filed a review petition on 2-11-1939, which was admitted on 26-6-1949 by that Director General of Revenue. It would seem that subsequently when the Board of Revenue was contented powers were conferred on it to hear all file cases of appeals, revisions and reviews pending More the Director General of Revenue and in consequence of these powers the review filed by Rachotappa came up before the Board for decisional the Board allowed the review petition on 4-1949, upheld the claim of Rachotappa and set side the judgment of the Revenue Minister against this judgment of the Board of Revenue revision petition was filed before the Revenue Minster, who dismissed the same on 26-11-1952. Aggrieved by this dismissal the Petitioner has come in Writ to this Court.

3. The main argument of the Petitioner is that he Minister''s order dated 10-12-1348F., was final and review against that order was unauthorised and impotent. It was also urged that there cold be no review of a revisional order, that in any case the grounds upon which the review was granted were inadequate, and that the Revenue Courts had no right to decide the question of adoption.

4. These points were debated at the Bar at some length and several authorities cited on behalf of each party. We think it is unnecessary to loiter into a detailed discussion on each of the points.

5. Under Article 226 of the Constitution a Writ of Certiorari can be issued only when a tribunal acts judicially in excess of its jurisdiction or fails to exercise the jurisdiction conferred upon it or in exercise of its jurisdiction contravenes the principles of natural justice. In the case before us the contention of the Petitioner is that there ''cannot be a review of the decision given by the Revenue Minister on 10-12-1348F. This contention of the Petitioner is devoid of merit because in the revision filed by the Petitioner before the Revenue Minister she did not raise this ground at all.

The order of the Revenue Minister indicates that the present Petitioner only objected as regards the grounds of review. She argued that the grounds urged were not of the nature on which a review petition could be granted but she did not (object to the jurisdiction of the Court. On the contrary she elected to argue the case on its merits and she must, therefore, be taken to have submitted herself to the review jurisdiction in the case. Obviously she cannot now be allowed to repudiate the order by applying for Certiorari. We are supported in this view by--Rex v. West Suffolk Compensation Authority (1919) 2 KB 374, (A);--Rex v. Williams (1914) 1 KB 608 (B);- O.A.O.K. Latchmanan Chettiar Vs. The Commissioner, Corporation of Madras and Another, and-- R.V.K.M. Surya Rao Bahadur Varu, Rajah of Pithapuram Vs. The Board of Revenue (Settlement of Estates) Madras, . The Petitioner''s contention regarding the absence of jurisdiction of the Revenue Minister to entertain a review must, therefore, fail.

6. There is a further fatal objection to the enter trainability of this petition. The order impugned refers only to the extent of the appointment of a person to the posts of village officers, which is entirely within the jurisdiction of the Revenue Court. As regards the watan property the parties have a right to go to a Civil Court and get their rights settled after full investigation. See in this connection--Dandokore Sangmeshwar Rao v. Dandkore Venkateshwar Rao 28 DLR 343 (E) and Jonnanla Raghavareddy v. Komatreddy 34 DLR 740 (F). It would appear that the decision of the Revenue authorities on the question of succession to the office also is liable to be altered if the Petitioner succeeds in obtaining a recognition of her title to the watan from a Civil Court and the decision of the Revenue Officer is only tentative. We need hardly emphasis that the extraordinary jurisdiction of the High Court will not be exercised where a more satisfactory and adequate remedy is available to a party by recourse to the ordinary law.

7. In view of what has been said above, we do not think it is necessary to examine the other contentions regarding the inadequacy of the grounds of the review or the incapacity of the Board to review an order passed on revision. We may only mention that sufficiency or insufficiency of the reasons for allowing a review is a question for the determination of the tribunal having seisin of the case and that Section 166(7), Land Revenue Act does not restrict the power of review to cases arising out of orders other than those passed on revision.

8. There is no force in this petition. We reject it with costs, which we assess at Rs. 50/-.

