
(2012) 05 RAJ CK 0054
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5076 of 2012

Rohitash

APPELLANT

Vs

Board of Revenue, Rajasthan Ajmer and Others

RESPONDENT

Date of Decision : 15-05-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 22 Rule 4
Rajasthan Tenancy Act, 1955 — Section 188, 53, 88, 89

Citation : (2012) 2 WLN 523

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Aditya Narayan Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

Alok Sharma, J.—This petition has been filed challenging the order dt. 18.12.2007 passed by the Board of Revenue for Rajasthan Ajmer (herein after "the Board"), whereby the Board has upheld the order dt. 11.11.2004 passed by the Sub Divisional Officer Thanagazi, Alwar dismissing the application filed by the petitioner under Order 1 Rule 10 CPC in a suit laid by the Smt. Gendi against Murli under Secs. 88, 89, 188 and 53 of the Rajasthan Tenancy Act, 1955, where her case was that as daughter of deceased Jhutha she was entitled to equal share along with her brother Murli in Jhutha's khatedari rights in Khasra Nos. 81, 91, 92, 187, 194, 195 and 384 situated in village Chandpuri Tehsil Thanagazi. The Board held that the petitioner Rohitash would be free to lay an independent suit if he was entitled to any rights as the adopted son of Murli. The petitioner has also challenged the order dt. 06.02.2012, passed by the Board, whereby review petition filed by the petitioner has been dismissed. Heard learned counsel for the petitioner, and perused the material available on record of writ petition including the impugned orders passed by the Board.

2. I am of the considered view that if the petitioner claims to be adopted son of Murli, who is stated to have died, he would be free to move application under

Order 22 Rule 4 CPC before the Sub Divisional Officer Thanagazi. Even otherwise the petitioner has been given liberty by the Board to avail the remedy of laying a suit in respect of his purported rights over the property of late Murli on the basis of his being adopted son of Murli. Further it is to be noted that in the event the legal representative of defendant Murli in the suit laid by Mst. Gendi is not brought on record the suit shall stand abated.

3. In view of obtaining facts and circumstances of the case, I do not find any force in the writ petition and the same is dismissed. The petitioner shall be however free to take any of his other remedies in law merely dismissal of the application under Order 1 Rule 10 CPC in Smt. Gendi's suit notwithstanding. Stay application also stands dismissed.