
(1988) 09 RAJ CK 0008

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2345 of 1988

Smt. Bhonri alias Jatan Kanwar

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 28-09-1988

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1989) 1 WLN 101

Hon'ble Judges : Farooq Hasan, J;D.L. Mehta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Farooq Hassan, J.—In this writ petition, the validity of the orders dated 14-1-1988 (in review petition), dated 15-4-1987 of the Board of Revenue, and dated 29-9-1980 of the Revenue Appellate Authority has been challenged by the petitioner, and this has arisen out of the following circumstances.

2. A suit filed by the petitioner was decreed vide order dated 18-8-1979 (Anx. 9) by the Assistant Collector, Bharatpur, and an appeal filed against the aforesaid order (Anx. 9) before the Revenue Appellate Authority Bharatpur was allowed reversing the judgment of the Assistant Collector, and the second appeal was filed before the Board of Revenue which was dismissed on April 15, 1987 vide Annexure 11, against which a review petition was also filed but, with no success to the petitioner.

3. The case of the petitioner is that the land bearing Khasra No. 794 measuring 2 Bighas 15 Biswas, situated in village Semali Tehsil Nagar district Bharatpur, was in his Khudkasht, and was recorded in Jamabandi of S.Y. 2012 corresponding to the year 1955; further that, after the abolition of the "Biswedari". the land in question was erroneously recorded as "Sawai Chak-Charagah" (pasture land) in the revenue record in S.Y. 2004 although in fact it was never declared as pasture land by any competent authority nor was used as such. Raghunath Singh (now

deed and being represented by his daughter, Bhuri alias Jatan Kanwar, the present petitioner) had filed an application before the Collector for correction of the entries and consequently, a note was inserted in Jamabandi of S.Y. 2024. To substantiate the above facts, certified copy of the Jamabandi of S.Ys. 2008, 2012 & 2024 have been filed as Annexures 1, 2 & 3 on the application for correction of the tehsil record the Tehsildar passed an order dated 23-8-1966 (Annexure 4) which was also filed in the original suit.

4. It has not been disputed that at the time when the suit was filed in the Court of the Assistant Collector, the land in question was recorded in the revenue records as Sawai Chak (pasture land). Though the suit of the petitioner's father was decreed but the Revenue Appellate Authority reversed the findings arrived at by the learned trial Court on the ground that Jamabandi of S.Y. 2012 and the judgment of the Collector which were produced before the Tehsildar have not been produced before it, as such it cannot be said that the land in question was in Khudkasht of the petitioner. Learned counsel for the petitioner submitted that the judgment of the Tehsildar delivered on the basis of the Jamabandi of S.Ys. 2008 & 2012, was a relevant and conclusive document. In view of the averments made in the plaint and the facts admitted by the petitioner the case of the petitioner before the Revenue Courts was that he was a tenant of the disputed land for which a declaration was sought and for that purposes it was necessary for the petitioner to have filed relevant document in support of his claim.

5. The Revenue Appellate Authority in its judgment dated 29-9-1980 (Annexure 10) observed that the order of the Collector dated 10-11-1965--on the basis of which, the Tehsildar had passed the order, has not been produced. Similarly, the documents which have been mentioned in the order of the Tehsildar dated 23-8-1966, have also not been produced by the petitioner, and in the absence of which, it cannot be said that the name of the petitioner-plaintiff was recorded in the relevant Jamabandi on the basis of which, the plaintiff can be declared as Khatedar tenant of the suit land; also observed the Revenue Appellate Authority. That apart, the Revenue Appellate Authority observed that if the land in question was recorded in the Khud-kasht of the petitioner in S.Ys. 2009 to 2012 then there was no reason for the entry of "Sawai Chak" in the Jamabandi of the S.Ys. 2024 to 2027. The Revenue Appellate Authority, therefore, was justified to hold that in the absence of the relevant record, the petitioner could not be held a "Bisweddar, Muafidar or Jagirdar", and after the abolition of resumption of Jagirs, Muafidar, Bisweddar, the petitioner cannot be held to be Khatedar tenant of the suit land. The learned Revenue Appellate Authority has considered the entries in Khasra Girdawari for the S.Y. 2030 where in the name of the petitioner has not been mentioned.

6. And, on the basis of Annexures 1 to 6 which admittedly have not been produced along with suit filed in the Court of the Assistant Collector, fallacious attempt of wrangle by the learned counsel for the petitioner has been made contending that in view of the facts mentioned in these documents, the petitioner

can be held to be Khatedar tenant of the land in dispute. To substantiate his arguments, the learned counsel for the petitioner has cited a decision of this Court in *Mishrilal v. Ram Khilari* 1987 RRD 202 which we have perused. But, we are of the opinion that the cited decision is on different points and in different set of circumstances, and not on the controversy evolved in the present case. Thus, it is distinguishable, and is not applied to the present facts and circumstances of the case.

7. We may state that most of the documents, referred to have, are covered by the definition of the revenue record and presumption though is attached to these documents; but the same is rebuttable. In these circumstances, if these documents are considered they definitely the opposite party will have right of defence to rebut the presumption, then and then only the aforesaid documents can be acted upon. But in a writ of certiorari, this is not possible because the scope of this Court under Article 226 is very limited and fettered. The issuing of writ of certiorari can be availed of only to remove or adjudicate on the validity of judicial acts; further in granting such a writ, the superior court does not review or reweigh the evidences upon which the determination of the inferior tribunal purports to be based. It merely demolishes the order which it consider to be without jurisdiction or palpably erroneous but does not substitute its own views or those of inferior tribunal. Where the errors cannot be said to be errors of law apparent on the face of the record, but they are merely errors in appreciation of documentary evidence or affidavits, errors in drawing inferences or omission to draw inference, or in other words, errors which a court sitting as a court of appeal only could have examined, there is no case for the exercise of such jurisdiction. It is enunciated principle that a finding of fact cannot be challenged under Articles 226 & 227 of the Constitution of India on the ground that the evidence before the inferior court was insufficient or inadequate to sustain the findings, as a writ court is not a court of appeal. The interference is possible only when it is shown that in recording the said finding the inferior court had erroneously refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence which had influenced the impugned findings. The same cannot be assailed in writ jurisdiction. The writ court is not empowered to act as an appellate court and this limitation necessarily means that findings of fact reached by the inferior court as a result of the appreciation of evidence cannot be re-opened or questioned in writ proceedings. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding being within the exclusive jurisdiction of the inferior court, the points cannot be agitated before a writ court.

8. In the present case, it is admitted fact that the documents on the basis of which the petitioner is claiming his Khatedari rights, were not at all produced before the revenue courts and in the absence of these documents, the revenue authorities as well as the Board of Revenue were justified in arriving at the conclusion that the petitioner failed to establish his Khatedari rights on the land in question; and there was no error of law much less an error apparent on the

face of record. There is no failure on the part of the Board of Revenue to exercise its jurisdiction nor did the revenue courts act in disregard of principles of natural justice nor was the procedure adopted by it nor in consonance with the procedure envisaged by the relevant.

9. We do not find any infirmity in the findings of the inferior courts which would justify interference by this Court under Articles 226 & 227 of the Constitution. Even otherwise, as discussed and held earlier, how so ever they may be erroneous the findings are of facts which can only be corrected by a court of appeal. More over, the petitioner was failure to lead adequate and sufficient evidence on the point of his claim of Khatedari rights over the land in dispute before the inferior courts and the inference of fact to be drawn from the said finding being within the exclusive jurisdiction of the inferior court, the points raised herein cannot be agitated before a writ court. We are satisfied that there is no justification for interference in the impugned orders passed by the inferior courts.

10. In the result, this writ petition has to fail and is here by dismissed no order as to costs.