

(2013) 05 RAJ CK 0197

In the Rajasthan High Court

Case No : Civil Writ Petition No. 9827 of 2010

Smt. Roop Kanwar

APPELLANT

Vs

Sohan Singh and Others

RESPONDENT

Date of Decision : 13-05-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, 41
Constitution of India, 1950 — Article 226, 227
Limitation Act, 1963 — Section 5
Rajasthan Land Revenue Act, 1956 — Section 88
Rajasthan Tenancy Act, 1955 — Section 223

Citation : (2013) 3 CDR 1392

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Deelip Kawadia, for the Appellant; Sajjan Singh, for the Respondent

Final Decision : Allowed

Judgement

Vineet Kothari, J.—The case comes up on an application being IA No. 2458/2013 seeking early hearing of the writ petition filed by the respondents. By the agreement of the counsels, the application is allowed and the arguments are heard.

2. This writ petition has been filed by the petitioner Roop Kanwar D/o late Sh. Udai Singh and sister of respondent No. 1 Sohan Singh aggrieved by the order of the Board of Revenue Annex. 8 dt. 7.9.2010 in Appeal No. 9490/2007/Udaipur--Smt. Roop Kanwar vs. Sohan Singh as well as order of the Revenue Appellate Authority Annex. 7 dt. 25.9.2007 passed in Appeal No. 199/2006 Sohan Singh vs. Smt. Roop Kanwar whereby these two revenue Courts below reopened the consent decree in a suit filed by the petitioner--plaintiff Smt. Roop Kanwar under Sec. 88 of the Rajasthan Land Revenue Act, 1956 on 19.5.1997 by the learned Court of SDO, Vallabh Nagar in Revenue Suit No. 202/1996--Roop Kanwar vs. Sohan Singh.

3. The suit was filed by the plaintiff Roop Kanwar claiming that she had 1/3rd share in the ancestral and joint agricultural land total measuring 17 bighas and 18 biswas in Arajji No. 3336 and 3302 etc. as mentioned in the said decree dt. 19.5.1997 and on the written statement filed by the defendant--brother Sohan Singh and mother Smt. Chhagan Bai W/o Udai Singh admitting her claim, the learned trial Court of SDO after obtaining Commissioner's report and examining the P.W. 1 plaintiff herself, without any cross-examination by the defendants and on the basis of documents produced on record, namely, the consent terms between the plaintiff--sister and defendants No. 1 and 2, brother and mother, their respective affidavits and compromise between the parties marked as Ex. 6, the learned SDO passed the consent decree on 19.5.1997 giving 1/3rd share of land in question to the plaintiff sister Roop Kanwar.

4. On 1.8.2006, after about 9 years of the said consent decree, the respondent--appellant Sohan Singh (brother) filed an appeal against the said consent decree dt. 19.5.1997 under Sec. 223 of the Rajasthan Tenancy Act and claiming that the land in question was in fact allotted in his personal name on 16.12.1976, the land in question could not be said to be the joint and ancestral property of the parties and therefore, the consent decree was not sustainable and therefore, the same deserves to be set aside by the learned Revenue Appellate Authority and the said appeal was filed along with the application under Sec. 5 of the Limitation Act seeking condonation of delay of 9 years in filing the said appeal, in para 6 of which, the appellant went to the extent of stating that the appellant came to know of the said decree and judgment of the learned SDO for the first time on 20.7.2006 when he enquired about the said "khata" (entries in revenue record) from the Patwari and then the Patwari informed him that he has only 1/3 share in the land in question. The learned Revenue Appellate Authority surprisingly without passing any order on condonation application or even condoning the delay as such despite opposition to this effect by the respondent--sister Roop Kanwar as noticed in para 13 of the impugned order itself and without even allowing specifically application filed by the appellant Sohan Singh under Order 41 Rule 27 C.P.C. along with which the appellant Sohan Singh purportedly wanted to produce the allotment document of the year 1976 in his name before the learned Revenue Appellate Authority, the learned Revenue Appellate Authority set aside the consent decree dt. 19.5.1997 and remanded the case back to the learned SDO for fresh trial. Para 11 till end of the order dt. 25.9.2007 of learned Revenue Appellate Authority is reproduced below for ready reference:--

5. The second appeal filed by the present petitioner Roop Kanwar before the learned Board of Revenue was also dismissed the impugned order dtd. 7.9.2010 and the Board has upheld the remand order of the learned Revenue Appellate Authority by observing in the impugned order that since the partition suit was filed by the plaintiff Roop Kanwar without impleading the State as defendant, which was necessary and even the State ought to have filed an appeal against the said consent decree and in absence of the same, the decree could not be sustained and thus on an altogether different ground, the learned Board of

Revenue rejected the appeal of the present petitioner Roop Kanwar while noticing in the said para that defendant No. 1--brother Sohan Singh had filed the written statement admitting the averment made in the plaint by the plaintiff Roop Kanwar that the agricultural land in question was a joint and ancestral property and the plaintiff--sister had 1/3d share in the said agricultural land. The said para of the learned Board of Revenue is quoted below for ready reference:

6. Being aggrieved by these findings and orders of Revenue Appellate Authority and Board of Revenue, the petitioner Roop Kanwar preferred this writ petition before this Court on 22.10.2010, in which coordinate bench of this Court vide order dt. 26.10.2010 issued notices and while permitting the learned SDO, Vallabh Nagar to proceed with the said proceedings, directed that he shall not finally dispose of the suit No. 202/1996.

7. The learned counsel for the respondent, Mr. Sajjan Singh, contended that the concurrent orders of the revenue Courts below of learned Revenue Appellate Authority as well as the learned Board of Revenue are justified and do not require any interference by this Court in the present writ petition under Art. 226 and 227 of the Constitution of India in view of the narrow scope delineated by the Hon'ble Supreme Court in the case of Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil, He further submitted that since the allotment of land in question was in favour of respondent Sohan Singh in his individual name, therefore, the very basis of the partition suit filed by the sister Roop Kanwar claiming 1/3rd share was not available to her and therefore, and by mere remand of the proceedings to the learned SDO, no prejudice is caused to the parties and even to the petitioner Roop Kanwar and therefore, no interference in the impugned remand order is called for and the present writ petition deserves to be dismissed.

8. I have heard the learned counsels at some length and perused the record and impugned orders.

9. This Court is at loss to understand firstly the reason of filing of appeal against the consent decree dt. 19.5.1997 by the appellant Sohan Singh approximately after 9 years of consent decree in which he not only filed a written statement duly signed by himself and her mother Chhagan Bai along with his affidavit that the land in question was ancestral and joint and that the plaintiff--Smt. Roop Kanwar was entitled to 1/3rd share in the said agricultural land even though on that very day, even if his alleged 1976 allotment in his individual name to be considered, he was very well aware of that in the year 1997 and therefore, there was apparently no good reason for him to file a written statement along with his affidavit during the course of trial before the learned SDO admitting the claim of the share of plaintiff--petitioner Roop Kanwar. That very document of the year, 1976 could not furnish him a fresh reason to go back and resile from the consent decree after 9 years thereof in the year 2006 and surprisingly despite such a huge delay on his part, the learned Revenue Appellate Authority did not even choose to decide the application under Sec. 5 of the Limitation Act and despite

such application for condonation of delay being opposed by the petitioner Smt. Roop Kanwar, the learned Revenue Appellate Authority chose to set aside the consent decree by the impugned order dt. 25.9.2007. From the quoted portion of the learned Revenue Appellate Authority's order, it also does not appear that he even allowed the application under Sec. 41 Rule 27 C.P.C. of the appellant Sohan Singh thereby taking the additional evidence viz. 1976 allotment document on record and finding it to be having some relevance and nexus with the matter, he could remand the matter back to the learned SDO for fresh trial after such a long period.

10. Thus, in the considered opinion of this Court, no foundation existed with the learned Revenue Appellate Authority to allow the appeal of the appellant Sohan Singh, which was not only highly belated but appears to have been filed on false and frivolous grounds. The only pretext which perhaps prompted him to file this appeal after 9 years of consent decree was that he came to know of the allotment of land in his personal name of the year 1976 only now in the year 2007 and surprisingly to cover up his lapse, he even makes a false statement in his application under Sec. 5 of the Limitation Act when he says that he came to know of this consent decree of the year 1997 in the year 2006 only when he enquired about his holding of land from Patwari. The learned counsel for the respondents, however, was not able to rebut sufficiently this false averment made by the respondent Sohan Singh in the said application under Sec. 5 of the Limitation Act which on the basis of record per se appears to be a false averment. Such litigants who take the process of law in their hands by making false averments before the Courts, cannot be encouraged and on the other hand, they deserve to be dealt with iron hands of justice. The learned RAA had no reason to condone such a huge delay of 9 years and that too impliedly without any specific condonation of 9 years and even without allowing the application under Sec. 41 Rule 27 C.P.C., of appellant Sohan Singh, he remanded the matter back to the learned SDO that too setting aside the consent decree of the parties in so called "Nyayahit" (interest of justice). There was apparently no interest of justice in favour of appellant Sohan Singh and therefore, the learned RAA grossly erred in allowing the said appeal of the respondent Sohan Singh.

11. Unfortunately, the Board of Revenue also fell in the same error and taking altogether a different ground for dismissing the appeal of the present petitioner Smt. Roop Kanwar, the Board finds that in such a partition suit, since it amounts to transfer of agricultural land, the State being a necessary party in the suit and the State having not been impleaded by the plaintiff--petitioner as a defendant, the consent decree was not sustainable. Even the ground taken by the learned Board of Revenue is not sustainable. The partition suit is nothing but declaration of respective rights of the parties in joint and ancestral property as per succession law. It does not amount to transfer of agricultural land in that sense and therefore, the State could not be said to be a necessary party, in the absence of which the suit itself could not be held to be maintainable. At least this could not be a ground, even if it had some significance, for setting aside the

consent decree after so many years. The learned Board of Revenue has also failed to look into the two important aspects of the matter, firstly the huge and unexplained delay in filing the appeal itself by the appellant Sohan Singh of 9 years and despite opposition of the said application and there being no specific order of the learned RAA condoning the delay also, whether such an order could be sustained or not and secondly whether on the basis of document of the year 1976, which was not even taken on record by the learned Revenue Appellate Authority by allowing the application under Sec. 41 Rule 27 C.P.C., whether the remand of case by setting aside the consent decree by the learned Revenue Appellate Authority was justified or not. Both these relevant and important aspects of the matter do not find any place in the reasoning given by the learned Board of Revenue while upholding the order of the learned RAA. That renders the order of the learned Board of Revenue also illegal and unsustainable. Accordingly, the present writ petition of plaintiff Roop Kanwar deserves to succeed and the same is accordingly allowed and the impugned order of the learned RAA dt. 25.9.2007 (Annex. 7) and the impugned order of the learned Board of Revenue dt 7.9.2010 (Annex. 8) are set aside and the consent decree of the learned SDO Annex. 3 dt. 19.5.1997 is restored. No order as to costs. A copy of this order be sent to the parties concerned and the learned revenue Court below forthwith.