(2013) 11 RAJ CK 0147

In the Rajasthan High Court

Case No : Civil Writ Petition No. 7648/2013

Somoti	APPELLANT
Vs	
Board of Revenue	RESPONDENT

Date of Decision : 20-11-2013

Acts Referred:

Citation : (2014) 3 WLN 223

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

Mohammad Rafiq, J.—This writ petition is directed against the judgment of the Board of Revenue dt. 09.04.2013 which has over turned the judgment of the Divisional Commissioner dt. 05.04.2012 and that of the Additional Collector dt. 14.09.2007. The Additional Collector in his judgment while condoning the delay of 11 years in appeal filed by the petitioner and remanded the matter to the Tehsildar for deciding the question of mutation again. Contention of the learned counsel for the petitioner is that brother of the petitioners, declaring himself as sole legal representative of their father, got the entire land mutated in their favour and therefore mutation proceedings have rightly been revoked on remand by the Additional Collector. It is argued that the delay of 11 years in filing the appeal occurred because petitioners were completely unaware of the mutation entry dt. 24.01.1994 having been attested in favour of respondent No. 5 and even if the appeal was filed on 14.12.2005, delay has rightly been condoned.

2. Learned counsel for the respondents opposed the writ petition and submitted that land was purchased by respondents No. 6 and 7 in 2000 and they are in possession since then. In fact, they have obtained the land and mortgaged the same with the Bank and that the Board of Revenue has reversed the order of the Divisional Commissioner and upheld the order passed by the Court below on the premise that petitioners have already filed revenue suit before the Court of Sub Divisional Officer and suit is pending before Sub Divisional Magistrate Bharatpur

and if eventually the suit is decreed, the mutation entries as it is would be liable to be reversed. The mutation is merely a fiscal entry and therefore is not going to make any difference. Parallel proceedings before the Tehsildar in the name of mutation proceedings ought not to have been allowed to be proceeded when already revenue suit is pending before the Sub Divisional Magistrate Bharatpur.

3. Having heard learned counsel for the parties and perused the material available on record, I find that petitioners have already filed a suit for correction of revenue entries, which is the bone of dispute between the parties and is already pending adjudication before the Sub Divisional Magistrate Bharatpur therefore same proceedings for the same purpose before the Tehsildar on remand by the Additional Collector cannot be justified as the matter will have to be decided in the main proceedings of the revenue suit. If eventually petitioners succeed, mutation entry, as rightly held by the Divisional Commissioner and the Board of Revenue, would be liable to be reversed.

4. In the circumstances, Sub Divisional Magistrate Bharatpur is directed to decide the main suit from the date of service upon the respondents within four months. Plaintiff shall conclude his evidence within four months and defendant respondents would also do so within four months thereafter. The Sub Divisional Officer Bharatpur shall decide the suit within one year from the date, copy of this order is produced before him. The respondents shall not further alienate the property. Mutation would be subject to final order that may be passed in the revenue suit. With that direction, the writ petition is disposed of.