

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Revision /LR/ 2910/2013/Jaipur

- 1- Dashrath Singh s/o Satidan Singh
- 2- Raghuveer Singh s/o Sumer Singh
Caste Rajput r/o Village Bhainslana, Tehsil Kotputli,
District, Jaipur.

----- petitioners

Versus

- 1- Hajari Singh s/o Dan Singh
- 2- Ram Singh s/o Dan Singh
- 3- Toda Singh s/o Gopal Singh
Caste Rajput r/o Village Bhainslana, Tehsil Kotputli,
District, Jaipur.

----- Non-petitioners

Single Bench

Shri Moolchand Meena, Member

Present:-

Shri A. R. Sharma, Advocate for petitioners.

Shri Devi Dayal Sharma, Advocate for non-petitioners.

Order

Dated: 12-06-2013

1- This revision under section 84 and section 9 of the Rajasthan Land Revenue Act, 1956 (hereinafter referred to as 'the Act of 1956') has been filed by the applicant against order dated 25-03-2013 passed by the Divisional Commissioner, Jaipur.

2- Facts of the case in brief, leading to the present revision petition, are that mutation No.346 was attested by the Gram Panchayat on 22-06-1999 in favour of the petitioners, against which a time barred appeal was filed by the non-petitioners in the court of the Sub-Divisional Officer, Kotputli. The Sub-Divisional Officer, without affording opportunity for hearing to the petitioners, put up the file for hearing in Prashasan Gaon Ke Sang Campaign camp Bhainslana and

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accepted the appeal by ex-parte order dated 13-12-2010. The petitioners filed second appeal in the court of the Divisional Commissioner, Jaipur. The Divisional Commissioner rejected the appeal on 25-03-2013 and upheld the order dated 13-12-2010 passed by the Sub-Divisional Officer. The petitioners aggrieved from order dated 25-03-2013, have filed this revision in the Board.

3- I have heard the learned counsels for the parties on admission of this revision.

4- The learned counsel for the petitioners, while repeating the facts mentioned in the petition, have submitted that the Gram Panchayat, on the basis of a valid Will, had attested mutation No.346 on 22-06-1999 after having discussed the matter in its meeting. The non-petitioners were well aware of mutation No.346, but they have filed appeal against this mutation after a lapse of about 11 years, which was time barred and was liable to be rejected only as time barred. The non-petitioners have neither submitted an application under section 5 of the Limitation Act, nor the Sub-Divisional Officer had given any finding on the point of limitation. Since the appeal before the Sub-Divisional Officer was time barred, it was mandatory for the Sub-Divisional Officer to record its reasoned decision on the point of limitation. If the delay is condoned on reasonable grounds and the appeal is found to be in limitation, only then the appeal becomes competent to be decided on merits. But the Sub-Divisional Officer has committed a jurisdictional illegality in deciding the appeal on merits without deciding the point of limitation.

5- The learned counsel has also argued that the case was put up for hearing at camp Bhainslana, for which petitioners were not informed. The Sub-Divisional Officer, without providing opportunity of hearing to the petitioners heard the advocate for the non-petitioners ex-parte and decided the appeal on 13-12-2010. Thus order of the Sub-Divisional Officer was passed in contravention of basic principle of natural justice. Both the issues of limitation as well opportunity of hearing were raised by the petitioners in

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the second appeal before the Divisional Commissioner, Jaipur. But the learned Divisional Commissioner has also committed jurisdictional and legal error in not appreciating these mandatory issues. No finding was given by the Divisional Commissioner on limitation and opportunity of hearing and the appeal was rejected arbitrarily. Thus order of the Divisional Commissioner is also bad in the eyes of law and deserves to be quashed.

6- On merits of the case, the learned counsel had submitted that after death of khatedar Shri Ladu Singh, a mutation number 239 was attested in favour of his widow Smt. Phooli Devi on the basis of succession. The non-petitioners had not challenged mutation No.239 before the competent court and thus mutation No.239 and khatedari of Smt. Phooli Devi had become final. Lateron, the non-petitioners had filed a declaratory suit before the court of the Assistant Collector, Kotputli, which was dismissed by the court on the ground that second Will dated 02-06-1980 in favour of non-petitioners was not a valid Will. Smt. Phooli Devi being recorded khatedar of the disputed land has executed Will in favour of petitioners and mutation No.346 was attested in favour of petitioners on 22-06-1999 by the Gram Panchayat. Thus, petitioners are validly recorded khatedars of the land in question. Both the lower courts have ignored these important legal aspects of the case and have committed jurisdictional illegalities in rejecting appeal of the petitioners.

7- With these arguments, the learned counsel for the petitioners has urged for accepting the revision petition in hand and for setting aside orders of both the lower courts.

8- The learned counsel for the non-petitioners has submitted that recorded khatedar of the disputed land Shri Ladu Singh s/o Bhoor Singh, in his life-time, had executed a registered Will dated 02-06-1980 in favour of non-petitioners. So the subsequent Will by Smt. Phooli Devi in favour of petitioners is not a valid Will. This subsequent Will is not enforceable and the petitioners cannot acquire any rights in the disputed land. The Sub-Divisional Officer has rightly set aside mutation No.346 and has remanded the case to the Tehsildar

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for enquiry and deciding the mutation afresh. The order dated 13-12-2010 being a legal order well within the jurisdiction of the Sub-Divisional Officer did not warrant any interference and therefore, the petitioners' appeal was rightly dismissed by the Divisional Commissioner, Jaipur by his order dated 25-03-2013. The present revision filed by the petitioners is forceless and deserves to be dismissed at the level of admission itself.

9- I have given a thoughtful consideration to the rival contentions made by both the learned counsels for the parties and have also gone through the record and the impugned order available in the file.

10- It is evident from mere perusal of order dated 13-12-2010 passed by the Sub-Divisional Officer that in pursuance of notices issued by the Sub-Divisional Officer court, the petitioners had presented themselves in the court through the counsel. Meanwhile the case was listed by the court in Prashasan Gaon Ke Sang Campaign camp Bhainslana without issuing any notices thereof to the petitioners. The counsel for appellant-non-petitioners was heard ex-parte in that camp and order dated 13-12-2010, accepting the appeal and setting aside mutation No.346, was passed by the Sub-Divisional Officer on the back of the petitioners. Thus, the petitioners were deprived of their natural right of hearing before passing order dated 13-12-2010. Once the petitioners had given their appearance in the regular court of the Sub-Divisional Officer through the counsel in response of notices of the appeal, it was incumbent upon the court to inform them about listing the case in camp of Prashasan Gaon Ke Sang Campaign. Since the petitioners had no information regarding hearing of the case in the Camp in place of regular court, they could not attend such hearing in the camp and they could not put up their defense in the matter. Thus, order dated 13-12-2010 passed by the Sub-Divisional Officer was in contravention of principles of natural justice. **The courts of justice are not supposed to pass any order prejudice to the interest of a person without affording such person a proper opportunity for hearing.**

11- Mutation No.346 was attested by the Gram Panchayat on 22-06-1999 and an appeal filed by the non-petitioners after 11 years was time-barred. There is no mention in the order dated 13-12-2010 whether any application under section 5 of the Limitation Act was filed or not filed by the appellant-non-petitioners requesting for condoning delay in filing the appeal. Here, it is proper to have a perusal of statutory provisions in this regard:

Section 3-A of CPC is as under:-

“3-A. Application for condonation of delay:

- (1) When an appeal is presented after the expiry of the period of limitation specified therefore, it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within such period.*
- (2) If the Court sees no reason to reject the application without the issue of a notice to the respondent, notice hereof shall be issued to the respondent and the matter shall be finally decided by the Court before it proceeds to deal with the appeal under rule 11 or rule 13, as the case may be.*
- (3) Where an application has been made under sub-rule (1), the Court shall not make an order for the stay of execution of the decree against which the appeal is proposed to be filed so long as the Court does not, after hearing under rule 11, decide to hear the appeal.”*

Section 3 of the Limitation Act, 1963 provides as under:-

“3. Bar of limitation:

- (1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.”*

Section 5 of the Limitation Act, 1963 is as under:-

“5. Extension of prescribed period in certain cases:

Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.-The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.”

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12- From perusal of above provisions of order 41 rule 3-A of the CPC and sections 3 and 5 of the Indian Limitation Act, 1963, it is a clear that **any revision/appeal can be examined on merits only if it is within the time limit or if its delay has been explained by the petitioner/appellant to the satisfaction of the Court.** Every appeal/revision filed after the time limit prescribed **shall be accompanied** by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within such period. **Therefore, it was duty of the Sub-Divisional Officer, Kotputli to decide first the issue of limitation and if there were reasonable and acceptable grounds explained by the appellant for not filing the appeal in time, the court should have made a speaking order condoning delay in filing the appeal. Only thereafter the appeal becomes competent to be decided on merits.** But the first appellate Court of Sub-Divisional Officer has failed to comply with mandatory provisions of the statutes and the appeal has been decided on merits in contravention of law. Thus, the Sub-Divisional Officer, Kotputli has committed jurisdictional illegality in passing order dated 13-12-2010.

13- The present appellant, in his first appeal before the Divisional Commissioner, Jaipur had also raised objections regarding errors committed by the Sub-Divisional Officer on points of limitation and opportunity for hearing. But the learned Divisional Commissioner failed to appreciate these legal issues. The Divisional Commissioner, without recording any finding on these mandatory legal issues, dismissed the appeal and upheld the Sub-Divisional Officer's order dated 13-12-2010, which was suffering from legal and jurisdictional errors. So in my opinion, the Divisional Commissioner, Jaipur also, while passing the order dated 25-03-2013, has exercised its jurisdiction illegally.

14- In view of discussions in foregoing paras, I am of the considered view that both the lower courts have exercised their jurisdiction illegally, and orders dated 13-12-2010 passed by the Sub-Divisional Officer, Kotputli and order dated 25-03-

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2013 passed by the Divisional Commissioner, Jaipur deserves to be quashed. The case in hand deserves to be remanded to the Sub-Divisional Officer, Kotputli with directions. I do not deem it fit to make any observation on merits of the case.

15- Though arguments were heard on admission of the revision, but after hearing arguments advanced by learned counsels from both the sides, and after having observing as above, I am of the view that nothing is now left in this revision for which it can be placed for further hearing at the Board's level. The revision deserves to be disposed of finally.

16- Consequently, revision petition in hand is hereby allowed partially and orders dated 13-12-2010 and 25-03-2013 passed by the Sub-Divisional Officer, Kotputli and Divisional Commissioner, Jaipur respectively, are hereby set aside. The case is remanded to the Sub-Divisional Officer, Kotputli with directions that issue of limitation should be decided first after affording proper opportunity for hearing to both the parties, and if the appeal is found to be in time limit or the court is satisfied to condone the delay for the reasons to be recorded, only thereafter the appeal should be decided on merits afresh.

Pronounced in the open court.

(Moolchand Meena)
Member