

1/14/11

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Revision No.133/1999/TA/Bharatpur :

Ramjilal S/o Shri Dhundhi (Deceased), through legal representatives :-

1. Kanta Prasad Sharma S/o Purushottam Lal Sharma
2. Vasudev Sharma
3. Puran Chand Sharma
4. Madan Mohan Sharma
5. Kailash Chand Sharma
6. Lavesha Sharma

All are by caste Brahman, residents of Village Bhador,
Tehsil and District Bharatpur.

...Petitioners.

Versus

State of Rajasthan.

... Non- Petitioner.

* * *

S.B.

Shri Pramil Kumar Mathur, Member

Present :

Shri Yagya Dutt Sharma, counsel for the petitioner.
Shri Vijendra Choudhary, Dy.Govt.Advocate for the State.

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Dated : 11 - 11 - 11

JUDGMENT

This revision petition is directed under section 230 of the Rajasthan Tenancy Act, 1955 (hereinafter to be referred as "the Act") against the order dated 14.12.1998 passed by learned Assistant Collector. Bharatpur in case No.157/98.



2. The essential facts rising to this revision petition are that plaintiff Ramjilal filed a revenue suit for declaration under Rajasthan Tenancy Act, 1955 regarding khasra No.1093 to 1096, 1074, 1205 & 1216 situated at Tehsil Bhador District Bharatpur. That revenue suit had been dismissed by the learned trial court on 24.3.1998. Assailing the judgment dated 24.3.98, plaintiff Ramjilal has filed a review petition before the trial court. That review petition too, has been dismissed by learned trial court vide impugned order dated 14.12.1998. Against which, this revision petition has been preferred.

3. I have heard learned counsel for the parties and perused the record.

4. Learned counsel for the petitioner has argued that trial court has erred in passing the impugned judgment because it has neither afforded any opportunity of hearing nor followed the due procedure of law and dismissed the suit on merit erroneously.

5. On the contrary, learned Dy.Government Advocate submitted that the learned trial court has passed the reasoned judgment on the basis of the material available on record and has not committed any mistake in passing the impugned judgment. Hence, there is no justification in interfering with the judgment passed by the court below and the present revision petition is liable to be dismissed.

6. I have given my thoughtful consideration to the rival contentions and carefully scanned the matter.

7. It is evident from the material available on the record that after framing the issues, the plaintiff moved an application under Order 13 Rule 2 of Civil Procedure Code before the trial court on 15.1.98 and file has been listed for the reply of that application till dated 06.02.1998. Thereafter, case was adjourned on 06.02.98 & 20.02.98 and strangely even after the absence of the counsel for the plaintiff, the case was dismissed on 24.3.1998 on merit. It has been mentioned in the judgment dated 24.3.1998 that plaintiff has not



produced any oral or documentary evidence and case was being decided under the provisions of Order 17 Rule 3 of the Code Of Civil Procedure.

8. It is pertinent to mention that provisions of Order 17 Rule 3 can be applied only when party to a suit to which time has been granted, fails to produce his evidence or to cause the attendance of his witnesses or to perform any other act necessary to the further progress of the suit, for which time has been allowed.

9. In the background of Order 17 of the Code of Civil Procedure, the perusal of the order sheet of the case file makes it abundantly clear that learned trial court did not afford any opportunity of producing any evidence to the plaintiff. When the impugned judgment was pronounced, file was pending for the disposal of the application filed under the provisions of Order 13 Rule 2 of the Code of Civil Procedure. File was never listed for the production of the evidence of the either party. Under the provisions of Order 17 Rule 3, when the plaintiff is absent then the case can be disposed under the provisions of Order 17 Rule 2, which is reproduced as under :-

"2. Procedure if parties fail to appear on day fixed - Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit.

Explanation- Where the evidence or a substantial portion of the evidence of any party has already been recorded and such party fails to appear on any day to which the hearing of the suit is adjourned, the Court may, in its discretion, proceed with the case as if such party were present."

10. It transpires from the language used in this provision that under Order 17 Rule 2 of the Code of Civil Procedure when the evidence or substantial portion of the evidence was not recorded, then case may be thrown out only in pursuance of Order 9 of the Civil Procedure Code. On the contrary when the substantial portion of the evidence has been recorded, then only the case can be decided on merit. But here the proceeding of the trial court reveals that case was never listed for the production of evidence or no opportunity has been afforded to the plaintiff for the recording of evidence. Therefore, trial court adjudicated the matter by flouting the due procedure

established by law and in flagrant violation of the principle of natural justice, which shows the casual & arbitrary approach of the trial court. Even when the review petition has been filed before the trial court, the trial court did not scrutinize it honestly and again by repeating the same draconian act, even having the error apparent on the face of the record, discarded the review petition. It is expected from the courts of law to decide the matter on the principle of natural justice after following the due procedure established by law and not on whims & surmises.

11. In view of what has been discussed above, this revision petition having full of force is liable to be accepted, hence accepted. The judgments of learned Assistant Collector, Bharatpur dated 24.3.1998 & 14.12.1998 respectively are set aside and the matter is remitted back to learned Assistant Collector, Bharatpur to decide the matter afresh, in the light of above observations within a period of three months from the date of receiving this order.

Pronounced in open court.


(PRAMIL KUMAR MATHUR)
Member

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