

disputed lands in favour of non-petitioners No.1 & 2 as khatedar tenant. On the basis of this judgment & decree, mutation No.884 was made. Considering this judgment & decree in favour of non-petitioners as beyond jurisdiction, illegal and against record, Additional Collector, Deeg (Bharatpur) has made this reference to the Board of Revenue after affording an opportunity of hearing to the non-petitioners.

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

4. In support of reference, learned Dy.Govt.Advocate submitted that in support of their claims, non-petitioners have not submitted any documentary evidence of long cultivatory possession before trial court. Assistant Collector, Kama has passed the judgment & decree only on the basis of oral evidence ignoring the bar created under section 45 of "the Act". Transfer of khatedari on given grounds also causes revenue loss to the State. The above said judgment & decree is absolutely against the record and in violation of the provisions of "the Act", hence deserves to be set aside. In view of above, learned Dy.Govt.Advocate requested that the reference be accepted.

Learned counsels for the non-petitioners have submitted that non-petitioners are continuously cultivating on the disputed land and are in cultivatory possession since long; hence they are the khatedars of the said land. On this basis, Assistant Collector, Kama has rightly passed the impugned judgment & decree on 15.03.1994 and hence mutation No.884 has been made which does not cause any revenue loss to the government. Therefore, the present reference deserves to be rejected.

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

7. From perusal of available record, it appears that the non-petitioners No.1 & 2 had filed a revenue suit on the basis of fact that disputed land was given for cultivation by father of non-petitioners No.3 & 4 in Samvat 2016 and since Samvat 2016 they are in continuous possession of the land. So on the basis of continuous possession since Samvat 2016, they may be declared as khatedars.

CCM. ARED BY

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Reference No.1918/2003/LR/Bharatpur
State Versus Navi Khan

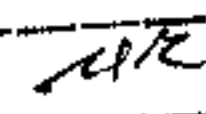
petitioners. Hence under these circumstances, learned trial court has passed the judgment & decree in utter violation of sound & settled proposition of law. Therefore, the judgment & decree passed by Assistant Collector, Kama on 15.03.1994 being illegal and against provisions of law is liable to be quashed and the reference made by Additional Collector, Deeg (Bharatpur) deserves to be accepted.

14. In view of above discussion, the reference is accepted and the judgment & decree of Assistant Collector, Kama dated 15.03.1994 made in favour of non-petitioners is quashed and the mutation No.884 made thereof is hereby cancelled. The reference is disposed of accordingly.

Pronounced in open court.


(PRAMIL KUMAR MATHUR)
Member

COMPARED BY


(N.S. Sarda)
19.1.2012