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IN THE BOARD OF REVENUE FOR RAJASTHAN AJMER

Revision/TA/323/2007/Kota.

Harishankar son of late Girdhari Lal caste Brahmin resident of village Atraliya Tehsil Ramganj Mandi Distt. Kota.

...Petitioner.

Versus

1. Smt. Ghisi Bai widow of Satyanarain caste Brahmin resident of Sarola Kalan Tehsil Khanpur Distt. Jhalawar presenting residing at Village Atraliya Tehsil Ramganj Mandi Distt. Kota.
2. Ratan Lal son of late Girdhari Lal caste Brahmin resident of village Atraliya Tehsil Ramganj Mandi Distt. Kota.
3. State of Rajasthan through Tehsildar Ramganj Mandi.

...Non-petitioners.

**S.B. (Camp Kota)
Dr. G.K. Tiwari, Member**

Present:-

Shri D.L. Nagar, counsel for the petitioner.

Shri Narendra Kumar Gupta, counsel for the non-petitioners.

Date: 13.9.2011

JUDGMENT

This revision petition, under section 230 of the Rajasthan Tenancy Act 1955 (in short 'the Act'), is directed against the impugned judgment dated 27.11.2006 of Sub-Divisional Officer Ramganj Mandi who has rejected the application filed before him under Order 6 Rule 17 of the Civil Procedure Code (C.P.C.) for amendment of the pleading in the suit.

2. I have heard the learned counsels of both the parties.

3. The learned counsel for the petitioner contended that the pleadings can be amended at any stage of the suit under Order 6 Rule 17 of the C.P.C. in the interest of justice. The petitioner seeks amendment in the plaint by inserting a new para to the effect that the petitioner Harishankar was taken in adoption by the deceased khatedar Anandi Lal. As such the petitioner is entitled to khatedari right in one-half share of Anandi Lal. It is necessary to make this important change in the pleadings of the

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plaint otherwise the petitioner-plaintiff will suffer irreparable injury. But Sub-Divisional Officer rejected the application of Order 6 Rule 17 of the C.P.C. through the non-speaking impugned ^{which} order should be set aside and the proposed amendment in the plaint should be allowed.

4. Opposing the contentions of the petitioner, the learned counsel for the non-petitioners pleaded that the suit was filed by the petitioner-plaintiff for correction of entry in the revenue record on the ground that the name of Shankar Lal is incorrectly written in jamabandi (Ex.-1), whereas it should have been Harishankar - the name of the petitioner. But now the petitioner is claiming khatedari right in the share of the deceased khatedar Anandi Lal on the basis of alleged adoption of the year 1962. This is altogether a new and concocted plea. If there was any such adoption in the year 1962, he should have mentioned it in the plaint at the first instance. In this case the suit was earlier decided against which an appeal was made before Revenue Appellate Authority who remanded the case. After this remand order of Revenue Appellate Authority, the present amendment is sought, which is not based on any event subsequent to suit. As such it is not permissible. The learned counsel cited 2008 RBJ 289, 2004 (2) DNJ (Raj.) 639 and 1996 DNJ (SC) 93 in support of his contention. The learned counsel pressed for rejection the revision petition.

5. I have given thoughtful consideration to the rival contentions, perused the impugned judgment and gone through the material on record.

6. Perusal of the record of the trial court shows that the petitioner-plaintiff filed a suit on 3.1.2001. Not only this, the petitioner-plaintiff also filed rejoinder to the written statement filed by the non-petitioners-defendants. Thereafter necessary issues were framed and the suit was decided by the trial court by its judgment dated 2.9.2004 against which the petitioner filed an

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appeal under section 223 of the Act before Revenue Appellate Authority Kota who partially allowed the appeal and remanded the case to Sub-Divisional Officer Ramganj Mandi for retrial and rehearing by his judgment dated 16.1.2006. Thereafter Sub-Divisional Officer started rehearing as directed by the Revenue Appellate Authority. After all these, the petitioner-plaintiff filed an application dated 10.10.2006 under Order 6 Rule 17 of the C.P.C. for amendment of the pleadings in the plaint on the ground that he is an adopted son of the deceased khatedar Anandi Lal, and as such he is entitled to the tenancy right in the share of the deceased khatedar Anandi Lal. The plea of the petitioner is that the alleged adoption was made in the year 1962. It is strange that an important event of adoption which allegedly took place in the year 1962 did not find any mention in the plaint of the suit which was filed by the petitioner on 3.1.2001. After filing of the suit so many developments have taken place like the suit was decided, an appeal was made and the case remitted to Sub-Divisional Officer. But strangely this factum of adoption allegedly carried out way back in the year 1962 was never put forth by the petitioner in any court all the while. Perusal of the plaint shows that the entire case of the petitioner-plaintiff is built around alleged incorrect entry in the revenue record (jamabandi Ex.-1) which according to the petitioner should be 'Harishankar' instead of 'Shankar Lal' as one of the co-tenants in the jamabandi. But now the petitioner suddenly seeks to shift and alter the entire stand taken by him so far by becoming an adopted son of one of the khatedar tenants-the deceased Anandi Lal. Apparently this is an after-thought of the petitioner, which changes the very basis and nature of the suit.

7. It is noteworthy to observe here that a pleading can be amended when there is an important and material event subsequent to the filing of the suit; but the alleged event of adoption purported to have taken place in the year 1962 is not a

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subsequent event but an event much prior to the filing of the suit. As such, an amendment which is based on an after-thought and not on an event subsequent to the filing of the suit, cannot be permitted under Order 6 Rule 17 of the C.P.C. as are consistently held in 2008 RBJ (15) page 289, 2004 (2) DNJ (Raj.) 639 and 1996 DNJ (SC) 93.

8. In view of the foregoing discussion, there is no force in the revision which stands dismissed and the judgment of Sub-Divisional Officer Ramganj Mandi dated 27.11.2006 is upheld.

Pronounced.


(Dr. G.K. Tiwari)
Member