

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal/Jagir Act/5853/2006/Dausa

- 1- Ramsahay s/o Gangadhar
- 2- Ramdhan s/o Gangadhar
- 3- Prahalad s/o Gangadhar (dead) through legal representative
 - 3/1- Dhapa w/o Prahalad
 - 3/2- Brijendra s/o Prahalad
 - 3/3- Rajendra s/o Prahalad
 - 3/4- Sampat Bai (minor) d/o Prahalad (minor) her mother Dhapa w/o Prahalad
- 4- Kailash s/o Gangadhar
- 5- Kishore s/o Gangadhar
- 6- Kallu s/o Ramsahay
All by caste Nath, r/o Pipalwada Nadi, Tehsil Bonli, District Sawai Madhopur.
---- petitioners

Versus

- 1- Gangaram s/o Gopal
- 2- Bajranga s/o Gopal
- 3- Ramphool s/o Gopal
- 4- Arjun s/o Gopal
- 5- Motilal s/o Kalyan
- 6- Jagdish s/o Kalyan
- 7- Kalyani w/o Kalyan
All by caste Bairwa, r/o Bichchudona, Tehsil & District Sawai Madhopur.
----- Non-petitioners

Single Bench

Shri Moolchand Meena,
Member

Present:-

Shri Ashok Agarwal, Advocate for the petitioners

Order

Dated: 17-02-2012

1- This review application under Section 229 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as 'the Act of 1955') has been filed by the petitioners aggrieved by order dated 16th May 2011, passed by single bench of the Board in revision No.5107/2002 filed by the petitioners.

2- Brief facts of the case leading to this revision are that petitioners filed an application under section 19 of the Act of 1955, wherein it was alleged that disputed land has remained in cultivatory possession of petitioners since Svt. 2004 and on commencement of the Act of 1955, the petitioners have acquired khatedari rights by operation of law. Now non-petitioners are committed to take possession of the land in dispute by force. Therefore it was requested that order be issued for entering the petitioners' name as khatedar tenant in revenue record and the non-petitioners be restrained from interfering in petitioners' possession on the land in dispute. The Trial Court rejected the application vide its order dated 02-02-2002; on the ground that the land in dispute belongs to persons belonging to Scheduled Castes and thus the application is in violation of Section 42 of the Act of 1955. The petitioners filed appeal against the order of the Trial Court before Revenue Appellate Authority, Sawai Madhopur. The Revenue Appellate Authority also rejected the appeal on 02-08-2002 and aggrieved by this order revision No. 5107/2002 was filed in the Board which has been dismissed vide order dated 16-05-2011. The present petition has been filed with request to review that order dated 16-05-2011. Concerned member Shri Shiv Kumar Sharma has since retired; therefore, it was listed for hearing before me.

3- Grounds taken in the review petition are, in brief, as under:-

- (1) that the Board has dismissed the revision on the pretext that land in dispute belongs to Scheduled Castes person and no khatedari can be given to sub-

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tenant of a general caste in such land on account of proviso to Section 19 of the Act of 1955. The proviso to Section 19 (1AA) was inserted in 1979 and prior to this proviso there was no such restriction, therefore view taken by the Board is not correct. Gangadhar, who was father of petitioner, was recorded as sub-tenant in Zamabandi of Svt. 2012 and he has remained in possession of the disputed land since before the commencement of the Act of 1955. Thus he had acquired khatedari rights in the disputed land by operation of law. The Board has erred in applying the said proviso in the present case.

- (2) that Board has also taken ground of concurrent findings of both the lower courts in dismissing the revision, and this view is also illegal, because there is no such law that concurrent findings cannot be interfered with.

Filing the review on grounds mentioned hereinabove, the petitioners have requested that order dated 16th May 2011 passed by the Board may be quashed and set aside; and revision filed by the petitioners against order dated 02-08-2002 and 02-02-2002 by Revenue Appellate Authority and the Trial Court; may be accepted.

4- The learned counsel for the petitioners was heard on the review petition. While repeating the grounds mentioned in the petition itself, the learned counsel has submitted that proviso added to Section 19(1AA) on 29-12-1979 cannot be applied to this case wherein possession of the petitioners on the disputed land is as old as since Svt. 2004. It has also been argued that restrictions under section 42-B are applicable in the case of sale, transfer of bequest. This restriction cannot come in way of acquiring khatedari rights by operation of law. The learned counsel has cited authorities of 1973 RRD 661, 2004 RRD 107, 1977 RRD 612 and 613, and 2007 RBJ 696 in support of the petition and his arguments.

5- Scope of the review under Section 229 read with Order 47 Rule 1 of the Civil Procedure Code, 1908 is very

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limited and there is a long series of adjudications by Hon'ble High Court and Hon'ble Supreme Court including AIR 1995 SC 455, wherein it has been repeatedly held that an review cannot take place of an appeal.

6- In the case of State of Rajasthan through Tehsildar Jodhpur Vs. Shokatkhani, as discussed in 2010 RRD 254 (case of Premraj Vs. Smt. Manbhari Devi), the Division Bench of the Board has laid down following principles with regard to scope of review petitions:-

“(a) Hon'ble Supreme Court and the Hon'ble High Court have held in several matters that the remedy of review is not an instrument for re-examination of the facts and it cannot be utilized as an instrument for re-writing the judgment. The scope of review does not provide an opportunity of an extra appeal. It has been held that even when judgment is erroneous the scope of review is not attracted.

*(b) The scope of review is very limited and review is not the method of re-examination of a judgment. It even does not give any scope to the court to sit in appeal over the judgment pronounced by the same court. The scope permits only to correct the mistakes which are apparent on the face of the record. **Hon'ble Supreme Court in Smt. Meera Bhanja Vs Nirmala Kumari Chaudhary, AIR 1995 SC page 455** clearly held that the error apparent on the face of the record should be such which should strike immediately looking at the face of the record and which does not require any long drawn process of reasoning or examination of law. The courts are not supposed to re-appreciate the evidence but only restrict themselves for correction of the mistakes which are visible on the face of the record. **In Ajit Kumar Rath Vs. Orissa State AIR 2000 SC 85, the Hon'ble Apex Court** has held that the power is not absolute and it is subject to restrictions indicated in Order 47 CPC. A review cannot be claimed as a remedy for a fresh hearing or for correction of an erroneous view taken earlier.*

(c) The power of review can be exercised only for correction of patent error of law or fact which stares on

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the face without any elaborate argument being needed in establishing it. The error apparent on the face of the record is one which is self-evident and does not require a process of reasoning and it is distinct from erroneous decision. Rehearing the matter or detecting an error in the earlier decision and then correcting the same do not fall within the ambit of the jurisdiction of review. Jurisdiction of review cannot be used as an appellate jurisdiction in disguise. Hon'ble Supreme Court in State of Haryana Vs. Mohinder Singh 2003 (1) WLC (SC) page 499 considered the scope of review under Order 47 Rule 1 CPC which is reproduced here:- "Civil Procedure Code O.47 Rule 1- Scope- Hearing of review does not mean giving one more chance for rehearing matter already disposed of- High Court in hearing review as if it was rehearing whole petition overstepped its limits- Order of High Court set aside and original order restored."

It is evident from perusal of above authority that an error on the face of record is that which does not require process of reasoning. **The basic issue in the case, which has been heard and decided, cannot be reheard in the garb of review.**

8- In 2005 (1) RRT 454 (SC), as cited in 2020 RRD 212, the Hon'ble Supreme Court has held that even if a erroneous view taken on a particular issue, it cannot be a ground for review.

9- The Hon'ble High Court in 2005 RBJ (12) 290, has held that:-

"The scope of review is very limited. It has been clearly held in a catena of cases that a judgment order may be open to review under Order 47 Rule 1 CPC if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by process of reasoning can hardly be said to be an error apparent on the face of record justifying exercise of power of review. In exercise of jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be re-heard and corrected. There is clearly distinction between 'an erroneous decision' and 'an error apparent on the face of the record.' While the former can be

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corrected by higher forum, the latter can be corrected by exercise of review jurisdiction. A review petition has, therefore, a limited purpose and can not be allowed to be an appeal in disguise.”

Thus it has been categorically held by the Hon’ble High Court in above authority that an erroneous decision and an error apparent on the face of record are two different things. **An error in the decision, which is not apparent but which has to be detected and proved through a long process of legal as well factual arguments, cannot be said to be an error on the face of record.**

10- The impugned order passed on 16th May, 2011 by the leaned Single Bench of the Board was perused meticulously. When the issues raised in the present review petition are looked at in the light of authorities cited above, I am of the view that it is re-putting all the issues before the Court for rehearing, which have already been raised in the revision itself and have been decided after recording reasons thereof. The Single Bench, while pronouncing the decision dated 16th May 2011 has discussed all averments made by the petitioners in their revision. All the authorities cited before me, as mentioned in para 4 hereinabove, were also cited before the Single Bench when the revision was taken for hearing. The petitioners had raised the issue of non-applicability of Section 42-B of the Act of 1955, in cases where khatedari rights are claimed to be acquired by operation of law. The learned Single Bench, while passing impugned order has discussed this issue and has held, for the reasons mentioned therein, that petitioner are not entitled to get khatedari rights in the disputed land which belongs to person of Scheduled Castes. Applicability of proviso to Section 19 (1AA) of the Act has also been discussed in details. Now it cannot be re-examined in the review whether the said proviso is applicable or not in the present case. Contention of the petitioners has remained the same; from Trial Court upto the revision before the Board, that accrual of khatedari rights in their favour is based on ‘by operation of law’ theory and their rights are not hit by restrictions in Section 42-B of the Act of 1955. This issue has

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been dealt with by the Board in impugned order. Now the same issue cannot be agitated by the petitioners in the garb of review. However, if petitioners feel that the Board in impugned order has not taken correct view on this issue, option of further course of action, in the form of appeal or writ, is open for them as per law in force.

11- In view of discussions and observations hereinabove, I am of the considered view that the review in hand has no force. There is no error in the impugned order, which can be termed as an error apparent on the face of record. I need not comment about the correctness of the view taken by the learned member in the impugned order; however it is clear that it does not come under the scope of review. Hence, this review petition deserves to be rejected.

12- Consequently the review petition is rejected.

Pronounce in the open court.

(Moolchand Meena)
Member