

W/R

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Review/TA/ 0346/2012/Bharatpur

Surjeet Singh s/o Mang Singh, Caste Rai Sikh, Village Teski,
Tehsil Nagar, District Bharatpur.

--- Petitioner

Versus

- 1- Fauja Singh s/o Shri Arjun Singh, Caste Rai Sikh, Village Teski, Tehsil Nagar, District Bharatpur.
- 2- Sub-Regsitrar/Naib-Tehsildar, Sikari, Tehsil Nagar, District Bharatpur.
- 3- Tehsildar Nagar, District Bharatpur.

--- Non-Petitioners

Single Bench
Shri Moolchand Meena, Member

Present:-

Smt. Poonam Mathur, Advocate, Petitioner:

Judgment

Dated 01-05-2012

This review petition under Section 229 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as 'the Act') has been filed by the petitioner aggrieved by order dated 15th December, 2011 passed by this Court, whereby petitioner's revision petition No.8436/2011 was rejected.

2- Brief facts of the case leading to this review are that a suit was filed by the present petitioner Shri Surjeet Singh, under section 88, 89 and 188 of the Act. An application under section 212 of the Act was also filed by the petitioner and during the pendency of the matter under section 212 of the Act. The petitioner filed an application for appointment of commissioner for site-inspection of the land in dispute, which was rejected by

Review/TA/0346/2012/Bharatpur
Surjeet Singh Vs. Fauja Singh & others

the Sub Divisional Officer vide order, 2011. The petitioner preferred a revision petition in the Board against the order dated 16th November, 2011 passed by the Sub-Divisional Officer. The revision petition was heard on the point of admission and this Court vide its order dated 15-12-2012, without issuing notices to the non-petitioners, rejected the revision petition at admission stage. The petitioner has filed the present review petition against this impugned order dated 15th December, 2012; mainly the grounds that the appointment of commissioner was not requested for the purpose of collecting evidence; rather it was for bringing actual physical status of the disputed land before the Court to assist it in imparting substantial justice. But the Sub-Divisional Officer, summarily, rejected the application without assigning any justified reasons thereof; and that this Court also, without considering this fact, rejected the revision at admission level. It has been requested by filing this review petition that impugned order be set aside and revision petition of the petitioner be allowed.

3- The petitioner's learned Counsel was heard. The learned counsel while repeating the facts and grounds mentioned in the petition itself has argued that the Sub-Divisional Officer had erred in observing that commissioner's report is merely aimed to collect the evidence. It has been also argued that the impugned order dated 15th December, 2012 passed by this Court is also based on this erroneous observation of the Sub-Divisional Officer. The Commissioner's report would be helpful in determining the real controversy between the parties. Therefore review petition may be accepted and the impugned order may be set aside.

4- I have considered the facts of the case and listened to the arguments advanced by the learned Counsel for the petitioner carefully. I have also gone through the record of the case and the impugned order carefully. The scope of review under section 229 of the Act, 1955 as well as under Order 47 Rule 1 of the Civil Procedure Code, 1908 is very limited and there is a series of authorities of the higher level Courts wherein it has been repeatedly held that issues heard and decided cannot be grounds

Review/TA/0346/2012/Bharatpur
Surjeet Singh Vs. Fauja Singh & others

for review. The Hon'ble Supreme Court, in 2005 (1) RRT 545, has held that:-

“A point that has been heard and decided cannot form a ground for review even if assuming that the view taken in the judgment under review is erroneous.”

5- This Court has rejected the petitioner's revision after discussing all the issues raised by him in his revision application. This Court, after going through the facts of the case and order dated 16th November, 2011 passed by the learned Sub-Divisional Officer, and also after discussing legal provisions relating to the appointment of commissioner, was of clear view that:-

“ appointment of the commissioner is entirely a discretionary power of the Court, and if the Court does not deem it necessary to appoint the commissioner, no party to the litigation can claim the commissioner's appointment as a matter of right. The applicant/petitioner, himself, has to prove his case by adducing necessary documentary as well oral evidence. He should not look towards the Court to help him in collecting the evidence. So the Sub Divisional Officer, in the case in hand, has not committed any jurisdictional error in rejecting the petitioner's application for appointment of the commissioner. Hence no interference in the impugned order is warranted through revision under section 230 of the Act.” (para 5 of the impugned order)

6- Even if, for the sake of arguments, the conclusions and observations of this Court while issuing impugned order dated 15th December, 2012 are erroneous, even then, it cannot be a ground for reviewing the impugned order. The Hon'ble High Court for Rajasthan in 2005 RBJ (12) page 290, has held as under:-

“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 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."

7- It is a well settled principle of law that 'erroneous decision' and 'an error apparent on the face of record' are different from each other, and there are different sets of legal provisions for dealing with both the things. If the decision suffers from 'an error apparent on the face of record', it can be corrected in review proceedings but if the decision is erroneous or is based on erroneous view taken by the Court on some documents, facts, evidence or law; it cannot be corrected in review proceedings. Further appeal or writ is the only treatment for erroneous decisions. Review proceedings cannot take place of an appeal or a writ petition.

8- The basic principles laid down by the Hon'ble Apex Court in AIR 1995 SC 455, regarding difference between an appealable and reviewable order, can be summarized as under:-

- (a) *That the review proceedings are not a by-way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1, CPC.*
- (b) *The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of Appeal. A power of review is not to be confused with appellate power which may enable an*

Review/TA/0346/2012/Bharatpur
Surjeet Singh Vs. Fauja Singh & others

Appellate Court to correct all manner of errors committed by the Subordinate Court.

- (c) *It has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions.*
- (d) *An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error on the face of the record.*

9- In view of the foregoing discussions, this Court is of the considered view that the impugned order dated 15th December, 2011 passed by this Court in revision petition No. 8436/2011 does not suffer from any 'error apparent on the face of record', nor any new and important matter or evidence has been put forth by the petitioner, which was not produced by him at the time when the revision was heard and decided. The present review petition being devoid of substance deserves to be rejected at preliminary stage of admission itself.

10- Consequently, the review petition in hand is hereby rejected at the stage of admission itself.

Pronounced in the open Court.

(Moolchand Meena)
Member