

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER**Review No.1781/2013/TA/Bharatpur :**

1. Kamal Singh S/o Shri Tursiram (Deceased),
through legal representatives :-
 1/1. Samay Singh
 1/2. Yaduraj Singh
 1/3. Madhuraj Singh } sons of Shri Kamal Singh
2. Lakhmi Chand S/o Shri Tursiram
3. Madan S/o Shri Tursiram

All are by caste Jat, residents of Village Nagla
 Basokhar, Majra Paprera, Sub-Tehsil Kumher,
 District Bharatpur.

...Petitioners.

Versus

1. State of Rajasthan
 2. Sukkhan
 3. Khajju
 4. Gunna
- } sons of Shri Ramjani

All are by caste Jatav, residents of Village Basokhar,
 at present residing at Vijay Nagar, Sub-Tehsil Kumher,
 District Bharatpur.

... Non-Petitioners.

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S.B.

Shri Pramil Kumar Mathur, Member

Present :

Shri Mukesh Jain : counsel for the petitioners.

Shri Ramjan Mohammad : Dy.Govt.Advocate for the State.

None present : on behalf of rest of the non-petitioners.

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Dated : 25th April, 2013

J U D G M E N T

This review petition has been preferred under section 229 of the Rajasthan Tenancy Act, 1955 (hereinafter to be referred as 'the Act') against the judgment passed on 14.12.2012 by the Single Bench of this court in

reference no.12425/2004 whereby the reference moved by the District Collector, Bharatpur was allowed and the judgment & decree of Sub Divisional Officer, Bharatpur dated 24.8.1974 in revenue suit no.69/74 was set aside.

2. I have heard the arguments of learned counsel for the parties at admission stage and perused the record.

3. Learned counsel for the petitioners has attacked the impugned judgment by submitting that judgment & decree passed by the learned Sub Divisional Officer was appealed before the Revenue Appellate Authority, Bharatpur and that appeal was dismissed by judgment & decree dated 29.10.1987. When a judgment of trial court is decided by appellate court then in such a situation, Collector is not competent to move the reference because appellate authority is not subordinate to Collector.

4. On the contrary, Dy.Govt.Advocate for the State has submitted that petitioner has not produced the judgment & decree of appellate court before the Board as well as before the Collector. Therefore, the contention raised by the petitioners is not supported by any kind of evidence. He also argued that scope of review is very narrow and on the grounds pleaded & argued is not sufficient to allow this review petition.

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

6. It is beyond dispute that a review proceeding cannot be equated with the original hearing of the case and the finality of the judgment delivered by the court will not be reconsidered except where a glaring omission or patent mistake or like grave error has crept in by judicial fallibility.

7. In the light of this settled position, it is true that power of reference should not be utilized when decree was challenged & decided by the appellate court because appellate court is not subordinate to Collector and under section 232 of 'the Act', Collector can make the reference for the revenue courts subordinate to him only.

8. Though the certified copies of register of appeals and copying application show that the judgment passed by the Sub Divisional Officer on 24.8.1974 was challenged before the Revenue Appellate Authority, Bharatpur and that appeal was disposed of by the Revenue Appellate Authority, Bharatpur on 29.10.1987. But in support, above documents & memo of appeal or copy of judgment were not presented either before the Collector or before the Board when impugned judgment was passed, by which it can be inferred that appellate authority had decided the matter on merits. If the above documents are yet to be relied on as a piece of evidence, then it should have been tendered in evidence before the Board when impugned judgment was passed, which has not been done. So at the stage of review when the matter has been conclusively decided by the Board, then reliance on the above referred documents which could be produced by the petitioners at the time when the impugned judgment was passed is not a valid ground for accepting this review petition because hearing of review does not mean giving one more chance for rehearing the matter already disposed of as has been propounded by the Hon'ble Supreme Court in the judgment reported in 2003(1) WLC (Supreme Court) Civil page 499 titled as 'State of Haryana & ors. Vs. Mohinder Singh & ors.'

9. It will be in the interest of justice to state that in the instant case, the question of public policy is involved because the petitioners who are the members of general caste have obtained the decree from the trial court on the basis of consented written statement filed by non-petitioners no.2 to 4 who are the members of Scheduled Caste/ Scheduled Tribe. Therefore, in view of the bar contained in section 42(b) of 'the Act', such transfer is absolutely forbidden by law and is void ab initio. Hence, by obtaining the decree, the petitioners have successfully evaded the public policy as enshrined in section 42(b) of 'the Act'.

10. Again, it will be pertinent to observe that even in cases where the Collector is not empowered to make reference under section 232 of 'the Act', the Board is empowered to set aside the orders if a clear breach of provisions of law comes to its notice and it considers it essential to use its powers of superintendence & control.

11. For above manifold reasons especially when the trial court has passed the decree in flagrant violation of manifest law, I do not find any justification to allow this review petition. Consequently, this review petition is dismissed at admission stage.

Pronounced in open court.

(PRAMIL KUMAR MATHUR)
Member

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