

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Revision No.8264/2015/TA/Pali :



Doli Aasannath Ji, through Shri Chatarnath Chela Kanwarnath,
R/o Vopari, Tehsil Kharchi, District Pali.

... Petitioner.

Versus

State of Rajasthan.

... Non-petitioner.

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L.B.

Shri V. Srinivas, Chairman
Shri Shyam Lal Gurjar, Member
Shri Satish Chand Kaushik, Member

Present :

Shri Rohit Soni : counsel for the petitioner.
Shri R.S. Brar
Shri Doongar Singh
Shri O.L. Dave
Shri Purna Shanker Dashora
Shri R.P. Sharma : Dy.Govt. Advocate
Shri Vikas Parashar
Shri V.P. Singh : Government Advocate

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Dated : 09.11.2017

J U D G M E N T

The factual matrix of the case is that in respect of disputed araji no. 122 situated at Village Vopari was recorded as khudkasht tenancy land of Doli Aasannath Ji in revenue record of Svt. 2010-2019. However, due to mistake of Settlement Department, the said land was recorded in the tenancy of Shri Chatarnath who was pujari of the said temple. Because the land was recorded in the personal name of Chatarnath, the ceiling proceedings were initiated in respect of the disputed property. The ceiling procedure is not applicable to the land of religious trust and accordingly it was objected. However, matter was objected upto the Board of Revenue because in ceiling case no. 34/70 State Vs. Chatarnath, the learned S.D.O.,

Sojat vide his judgment dated 18.9.1975 passed an order for acquisition of 92.10 standard acre land of the said Doli Aasannathji, which was challenged before the Board and this Board vide its judgment dated 09.5.2005 dismissed the revision of Doli Aasannath Ji and held that at the time of ceiling proceeding in the year 1970, the land was recorded in the name of Chatarnath and not in the name of temple or Doli. If the entry was wrong, then objection has to be filed at the same time. If the disputed land has been recorded by Settlement Department wrongly in the name of disciple, this point cannot be decided in ceiling proceeding. After getting the land entered in the name of Chatarnath, Chatarnath sold out some of the land and on the other hand he was claiming that the land was wrongly recorded into his name and land is of Doli Aasannath Ji. This plea is only for saving from ceiling proceeding and accordingly the revision was dismissed by the Hon'ble Member of the Board vide judgment dated 09.5.2005. Against that judgment, the review was filed and after hearing the review petition, the Board vide its judgment dated 05.12.2012 was pleased to held that both the learned lower courts erred in not appreciating the fact that when disputed land was of Doli Aasannath Ji and was recorded in the khudkasht of Doli Aasannath Ji (the temple), then it cannot be treated in the tenancy of priest or his disciple. Doli Aasannath Ji is perpetual minor and accordingly any person who is priest or disciple cannot get any tenancy right on the land of the temple. If the land is khudkasht land of the temple and it is being cultivated by any person, then also the cultivation will be treated by temple itself. As per section 46A of the Rajasthan Tenancy Act, 1955, the land of Doli Aasannath Ji is land for public purposes and on such type of lands, no one can get tenancy rights as per the provisions of section 16(6) of the Tenancy Act. Thus, the entry of tenancy in the name of Chatarnath Chela Kanwarnath on the land of Doli Aasannath Ji cannot give any right to him and entry in the name of Chatarnath is illegal, void and ineffective. Accordingly, any sale deed executed by Chatarnath or others in respect of disputed land is void ab initio. As per the revenue record of Svt. 2025 to 2028, the disputed land is not proved to be of Chatarnath disciple of Kanwarnath. Doli Aasannath Ji is public place of worship and as such the land of Doli Aasannath Ji will be treated as perpetual minor. Being aggrieved with that judgment dated 05.12.2012, again a review petition was filed by Doli Aasannath Ji through

Amolak Chand etc. and after hearing of the matter, the Hon'ble Member of the Board in Review/TA/7411/2014/Pali vide his judgment dated 18.12.2015 accepted the review petition and quashed the judgment dated 05.12.2012 and ordered that the original revision to be taken on record and applicant to be inserted as non-petitioner and thereafter after providing the opportunity of hearing and evidence, the order for summoning of record of lower court was ordered. The original appeal be put up for hearing before this Single Bench for 29.01.2016. Let the file be consigned to record room. According to the order of the Hon'ble Member Shri Ashfaq Hussain, the revision was taken on record and hearing was started. During the course of hearing, an application for withdrawal of the revision petition was moved on 26.9.2017. Another application was moved by one Shri Dharm Singh under section 151 CPC seeking permission to proceed in the matter on behalf of Doli Aasannath Ji. It was alleged that Chatarnath disciple Kanwarnath, now deceased and his son Deenanath always acted against the interest of the temple; as such, they cannot be treated as a person taking care of the interest of the temple in true manner. They are continuously acting against the interest of the temple, as such, they should not be allowed to appear on behalf of temple and in the interest of justice and public at large, the applicant to be allowed to represent the temple. After hearing Shri R.S. Barar, counsel for the petitioner, Shri Rohit Soni, counsel for non-petitioner, Shri Vikas Parashar, counsel for the applicant and Shri V.P. Singh, Govt. Advocate, the Hon'ble Member Shri Sanjay Kumar vide his order dated 05.5.2016 referred the matter for adjudication before the Larger Bench of the Board on two questions which are as under :-

(1) Whether it is permissible in law to file a review petition against the order passed in review petition as per the Rajasthan Tenancy Act, 1955 ?

(2) Whether it is permissible for a stranger person to file the review petition before the Board of Revenue under section 229 of the Tenancy Act, 1955 and under Order 47 of the Code of Civil Procedure ?

2. We have heard learned counsel for the petitioner Shri R.S. Barar; the learned counsel for non-petitioners no. 2 to 6 Shri Rohit Sosni; the learned counsel Shri V.P. Singh, Govt. Advocate for the State and Shri Vikas Parashar, counsel for the applicant. Apart from these advocates, we

have also heard the learned senior counsels Shri Doongar Singh, Shri O.L. Dave, Shri P.S. Dashora, Shri R.P. Sharma on these questions.

3. So far question no. 1 is concerned that, "whether it is permissible in law to file a review petition against an order passed in review petition as per the Rajasthan Tenancy Act, 1955?", it was argued by the learned counsels that it is basic law that a question which is not triable before the bench cannot be referred and decided. In this case, this question is not pending for decision before the learned S.B. that, "whether review of a review order is maintainable or not?" and that is why this question is hypothetical question which cannot be decided by the Board in this form.

4. We have gone through the file. In fact, the intention of the Hon'ble member seems that he wants to judge the legality of order passed by Hon'ble Member Shri Ashfaq Hussain. In fact, this question has not been framed appropriately. We are framing it again. The appropriate question is :

(1) "whether the order passed by the Hon'ble Member Shri Ashfaq Hussain hearing review of the review is sustainable under the law or not?"

5. So far the second question is concerned that, "whether it is permissible for a stranger person to file a review petition before the Board of Revenue under section 229 of the Rajasthan Tenancy Act, 1955 and under Order 47 of the Code of Civil Procedure" is concerned, the Hon'ble Member Shri Ashfaq Hussain accepted the review petition filed by the stranger person while in the judgments reported in 2001 (1) RRT 444, 1988 RRD 64 and 1983 RRD 498, it was held that a stranger cannot file review petition.

6. We have considered the arguments advanced by the learned counsels and perused the relevant provisions regarding review of the case. The provisions of review as envisaged in section 229 of the Rajasthan Tenancy Act, 1955 are as under :

"229. Power of review by Board and other revenue courts -
Subject to the provisions of the Code of Civil Procedure, 1908
(Central Act V of 1908) -

- (1) the Board of its own motion or on the application of a party to a suit or proceeding, may review and may rescind, alter or confirm any decree or order made by itself or by any of its members; and
- (2) every revenue court, other than the Board, shall be competent to review any decree, order or judgment passed by such court."

7. The learned counsel for the petitioner Shri Barar argued that it is specifically mentioned in section 229 that subject to the provisions of the Code of Civil Procedure, 1908, the Board of its own motion or on the application of a party to the suit or proceeding, may review and may rescind meaning thereby that these provisions are subject to provisions of Code of Civil Procedure, 1908. Order 47 Rule 1 CPC says as under :-

"1. Application for review of judgment- (1) Any person considering himself aggrieved—

- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
- (b) by a decree or order from which no appeal is allowed, or
- (c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review. "

Thus, a stranger can also file the review because Order 47 permits review for any person aggrieved with the order.

8. The learned counsel Shri P.S. Dashora argued that in section 208 of the Tenancy Act, application of the CPC, 1908 has been defined in detail. Section 208 says that :-

"208. Application of Civil Procedure Code - The provisions of the Code of Civil Procedure, 1908 (Central Act V of 1908), Except :

- (a) provisions inconsistent with anything in this Act, so far as the inconsistency extends.
- (b) provisions applicable only to special suits or proceedings outside the scope of this Act, and
- (c) provisions contained in List I of the Fourth Schedule, shall apply to all suit and proceedings under this Act, subject to the modifications contained in List II of the Fourth Schedule."

List I of Schedule IV specifically bars the proceedings under sections 113, 114 and 115 of the CPC. Section 113 deals with the power of reference to the Hon'ble High Court. Section 114 deals with review and section 115 deals with revision; meaning thereby that provisions of review enumerated under section 114 CPC are not applicable to the proceedings before Board of Revenue or revenue courts and as such, review by stranger should not be permitted.

9. So far our view is concerned, in regard to first question that "whether the order passed by the Hon'ble Member Shri Ashfaq Hussain hearing review of the review is sustainable under the law or not?", the sustainability of review of review order passed by Hon'ble Member Shri Ashfaq Hussain dated 18.12.2015 is concerned, it can be decided only by deciding the question that whether filing of review petition against the order passed in review petition is permissible under the law or not ? The legal position in this regard is very much clear. Order 47 Rule 9 CPC specifically bars review of review, which is reproduced as under :

"9. Bar of certain applications.- No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained."

10. Regarding review of a matter, the Rajasthan Tenancy Act is totally silent on the point that whether review of a review can be heard and decided or not? And when we see the provisions of Order 47 Rule 9 CPC, it says that no application to review an order made on an application for review or a decree or order passed or made on a review shall be entertained; meaning thereby that review against review is not permissible in any case. As such, the order passed by the Hon'ble Member Shri Ashfaq

Hussain dated 18.12.2015 is entirely against the established legal principles and is liable to be quashed and the order of the Hon'ble Member Shri D.R. Meena dated 05.12.2012 is liable to be sustained.

11. In regard to second question that "whether it is permissible for a stranger person to file a review petition before the Board of Revenue under section 229 of the Rajasthan Tenancy Act, 1955 and under Order 47 of the Code of Civil Procedure", we are of the opinion that the intention of the legislature is that a person who is having interest anyway in disputed tenancy land can agitate the matter in revenue courts and stranger to proceedings generally should not be allowed to come and make a hindrance in the enjoyment of the recorded tenant-landholder or cultivator, but at the same time when provisions of section 114 of the CPC are not applicable to Tenancy Act, provisions of Order 47 have been made applicable to it because it has not been barred specifically as per Schedule IV and thus we are of the considered view that general provisions of Order 47 are applicable to the Rajasthan Tenancy Act. Section 229 of the Rajasthan Tenancy Act, 1955 clearly says that, "subject to provisions of Code of Civil Procedure, 1908", meaning thereby that provisions of Order 47 are clearly applicable to the cases under Rajasthan Tenancy Act. Order 47 Rule 1 CPC specifically says that, "any person considering himself aggrieved", meaning thereby a stranger can also file a review if he is aggrieved with the judgment/ order passed. Thus, we are of the considered opinion that a stranger can also file the review because Order 47 permits review for any person aggrieved with the order.

12. Consequently, the order of the Hon'ble Member Shri Ashfaq Hussain dated 18.12.2015 is hereby quashed. The file of the learned lower court be returned to the learned lower court with a direction to proceed in the matter as per order of the Hon'ble Member Shri D.R. Meena dated 05.12.2012. The reference petition is disposed of accordingly. The file be consigned to record room.

Pronounced in open court.

(Satish Chand Kaushik)
Member

(Shyam Lal Gurjar)
Member

(V. Srinivas)
Chairman