

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Revision/LR/5846/2001/Dausa.

1. Ramphool)
2. Dwarka Prasad)
3. Sita Ram) sons of Shri Narain caste Gujar residents of
4. Vijay Singh) village Sungadi Tehsil Baswa Distt. Dausa.
5. Ramdayal)
6. Mst. Munni widow of Narain
7. Bhorya son of Kalu (deceased) through LRs:-
7/1 Narain son of Bhorya
7/2 Ramchandra son of Bhorya
7/3 Jairam son of Bhorya (deceased) through LRs:-
7/3/1 Mst. Bhola Devi widow of Jairam
7/3/2 Rajesh minor son of Jairam through guardian mother Bhola Devi
7/4 Makkhan son of Bhorya
7/5 Kailash son of Bhorya
7/6 Gulab daughter of Bhorya
7/7 Narbada daughter of Bhorya
8. Ramdhan son of Sharwan
All by caste Gurjar residents of village Sungadi Tehsil Baswa Distt.
Dausa.

...Petitioners.

Versus

1. Laxman son of Mangya caste Gujar resident of village Sungadi
Tehsil Baswa Distt. Dausa.
2. State of Rajasthan through Tehsildar, Baswa.

...Non-petitioners.

S.B.
Shri Bajrang Lal Sharma, Member

Present:-

Shri J.K. Pareek, counsel for the petitioners.
Shri Avinash Mathur, counsel for the non-petitioners.
Shri S.K. Sharma, Dy. Govt. Advocate for State.

Date: 23.1.2014

J U D G M E N T

The petitioners have filed this revision petition under section 84 of the Rajasthan Land Revenue Act, 1956 (in short 'the Act') being aggrieved by the order passed by Divisional Commissioner, Jaipur on 13.12.1999 in appeal No. 3/1999.

2. The factual matrix of the case is that Naib Tehsildar, Baswa (Distt. Dausa) sanctioned mutation No. 1 on 30.7.1997 in favour of the non-petitioner No.1 on the basis of a court judgment and decree dated 9.8.1996. Being aggrieved by the order passed on this mutation, an appeal was preferred before District Collector, Dausa which was accepted and the mutation No. 1 sanctioned on 30.7.1997 was

quashed and set aside. Being dissatisfied by the judgment passed by Additional District Collector on 5.8.1998, second appeal was preferred before Divisional Commissioner, Jaipur which was accepted on 13.12.1999. This revision petition has emanated from the judgment passed by Divisional Commissioner, Jaipur on 30.12.1999.

3. Heard the learned counsels of the parties.

4. The learned advocate for the petitioners contended that the mutation attested by Naib Tehsildar, Baswa was sanctioned in compliance of the judgment and decree passed by Assistant Collector's court on 9.8.1996. The judgment and decree passed by the trial court were ex-parte. An application was filed by the petitioners before the trial court to stay the execution of the judgment and decree and stay order was passed by the trial court on 25.7.1997 but despite the court's stay order, the mutation was sanctioned on 29.7.1997 by Naib Tehsildar in disobedience of the court's order. He further contended that the learned appellate court unnecessarily inferred that the judgment passed by learned Additional District Collector and summarily accepted the second appeal and remanded the case. He submitted before this court that the learned Additional District Collector quashed and set aside the impugned mutation sanctioned by Naib Tehsildar on 30.7.1997 and directed the Tehsildar to act in compliance of the final judgment and decree to be passed by the Sub-Divisional Officer, Bandikui, therefore, there was hardly any necessity to interfere with such a plausible judgment. The learned advocate further urged the court that this revision petition be accepted and the judgment passed by Divisional Commissioner be quashed and set aside.

5. The learned counsel for the non-petitioners contended that the judgment passed by Divisional Commissioner is an order passed in larger interest of justice and does not suffer from any infirmity. He urged the court that the mutation which is to be sanctioned in compliance of a court judgment and decree is to be examined with this spirit that whether the court judgment and decree has become final? Since in this case, the application under Order 9 Rule 13 of the Code of Civil Procedure was filed, a stay order was granted, therefore, the

mutation proceedings should have been disposed of after passing the judgment of the trial court on merits. The learned advocate argued that there is no merit in this revision petition, therefore, it may be dismissed.

6. I have given serious consideration to the rival contentions raised by the learned counsels of the parties and have perused the record available on file.

7. Indisputably mutation No. 1 was sanctioned in compliance of the ex-parte judgment and decree passed by Assistant Collector, Bandikui on 9.8.1996. This is also factually true that on the date when this impugned mutation was sanctioned, the learned Assistant Collector stayed execution of its own judgment and decree on an application filed by the defendants. This is also very pertinent to mention here that mutation No. 1 was sanctioned in compliance of the court judgment and decree. In such cases, mutation attesting authority is not required to apply its mind on merits but it has to make compliance of the court judgment and decree in the revenue records. Since the judgment and decree passed by the Assistant Collector on 9.8.1996 have been under review, therefore, such a mutation does not have any effect.

8. In circumstances of this case, if some party had any grievance against judgment and decree dated 9.8.1967 or against the mutation sanctioned in compliance of such a judgment and decree, the party should have approached the court who issued such judgment and decree. Neither learned Additional District Collector nor the Divisional Commissioner had any jurisdiction to examine the decree passed by the trial court under the Rajasthan Tenancy Act in an appeal under Rajasthan Land Revenue Act. Therefore, certainly the mutation sanctioned in compliance of such a judgment and decree could not have been examined by them. They had no jurisdiction to examine the legality of such mutation because such mutation was sanctioned in compliance of the court judgment and decree dated 9.8.1967. In the circumstances of this case, this court is of the explicit view that the judgment passed by learned Additional District Collector on 5.8.1998 and the impugned judgment passed by learned Divisional Commissioner on 13.12.1999 in this case are bad orders in eye of law

and have been passed by the courts who did not have any jurisdiction to examine such mutation.

9. In circumstances of this case, the Tehsildar is directed to comply with the directions given by the trial court pertaining to the disputed land. He can file an application before the trial court and request for guidance that whether the impugned judgment and decree are in force or mutation be sanctioned in its compliance? The directions of the trial court are to be complied in this case.

10. As discussed above, the judgments dated 13.12.1999 and 5.8.1998 passed by learned Divisional Commissioner, Jaipur and Additional District Collector, Dausa respectively are quashed and set aside. Since the judgment and decree dated 9.8.1996 is also under review, the mutation No. 1 does not stand good, therefore, it is also quashed and set aside. The Tehsildar shall comply with the judgment and decree to be passed afresh by the learned trial court pertaining to the disputed land. The revision petition filed by the petitioners is disposed of accordingly.

Pronounced.

(Bajrang Lal Sharma)
Member