

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Revision No.9274/2008/LR/Pali :

1. Mohan Lal S/o Shri Varingaram
 2. Shanti Devi W/o Shri Mohan Lal
 3. Prakash S/o Shri Mohan Lal
 4. Jagdish Chandra S/o Shri Mohan Lal
- All are by caste Vishnoi, residents of Village Dalpatgarh,
Tehsil Rohat, District Pali.

... Petitioners.

Versus

1. Krishna D/o late Chhagan Lal W/o Rajendra, by caste Pushkarna Brahman, R/o Chaupasani Wale Kabutaron Ka Chowk, at present residing at Braham Chowk, Jodhpur.
 2. Usha D/o late Chhagan Lal (deceased), through legal representatives :-
 - 2/1. Vishnu Dutt S/o Shri Naraindas Joshi
 - 2/2. Shambhu Dutt S/o Shri Naraindas Joshi
 - 2/3. Naraindas JoshiAll residents of Joshiwada, Jodhpur.
 3. Arun Kumar S/o Shri Chhaganraj Pushkarna
 4. Raj Kumar S/o Shri Chhaganraj Pushkarna
- Both by caste Brahman, residents of Chaupasani Wale Kabutaron Ka Chowk, Jodhpur.
5. State of Rajasthan, through Sarpanch,
Gram Panchayat Chotila, Tehsil Rohat, District Pali.

... Non-Petitioners.

* * *

S.B. (Camp : Jodhpur)

Shri Pramil Kumar Mathur, Member

Present :

Shri Malam Singh Rajpurohit, counsel for the petitioners.
Shri Shashidhar Narain Bhatt, counsel for non-petitioners.
Shri Anadaram Choudhary, Dy.Govt.Advocate for the State.

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Dated : 2nd April, 2012

J U D G M E N T

Instant revision petition has been preferred under section 84 of the Rajasthan Land Revenue Act, 1956 (in short to be referred as 'the Act') against the order dated 26.8.2008 passed by the learned Additional Divisional Commissioner, Jodhpur in appeal no.104/2007 whereby the appeal filed by the petitioners was rejected.

2. Essential facts necessary for the disposal of this case are that late Chhaganraj was one of the co-tenant of the land bearing khasra no.202 area 327 bigha 15 biswa situated at Village Bandai Tehsil Rohat Distrit Pali. After the death of Chhaganraj, the land belonged to him was mutated in favour of his sons viz. Arun Kumar and Rajkumar. Thereafter, daughter of Chhaganraj Krishna W/o Rajendra had filed an appeal before Assistant Collector-cum-Sub Divisional Officer, Pali on the ground that she along with her sister Usha being daughters and legal heirs of deceased Chhaganraj are entitled for the equal share in the land in dispute. The concerned Gram Panchayat did not make any enquiry about the legal heirs of deceased Chhaganraj. Therefore, the mutation no.541 opened in favour of sons of deceased Chhaganraj is liable to be set aside and names of daughters along with the sons be entered in the concerned revenue record.

3. On 11.7.2007, learned Assistant Collector-cum-Sub Divisional Officer, Pali by accepting the contentions advanced by the present non-petitioner no.1 set aside the mutation No.541 and remanded the matter to the concerned Tehsildar with the direction to decide the mutation again after due enquiry and hearing the parties concerned.

4. Against the order passed by the learned Assistant Collector-cum-Sub Divisional Officer, Pali dated 11.7.2007, present petitioners filed an appeal before learned Additional Divisional Commissioner, Jodhpur claiming that they have purchased the land from the sons of the deceased Chhaganraj. Being the bonafide purchaser, they have the right & interest in the land in dispute. Before deciding the appeal, learned first appellate court did not afford any opportunity of hearing to them. The appeal filed before the Assistant Collector-cum-Sub Divisional Officer was time barred; therefore, the judgment dated 11.7.2007 be set aside. The learned Additional Divisional Commissioner after hearing both the parties, dismissed the appeal filed by the present petitioners on 26.8.2008; against which this revision petition has been preferred.

5. I have heard learned counsel for the parties and perused the record.

6. Learned counsel for the petitioners has submitted that present petitioners are bonafide purchasers of the disputed land. Both the courts have erred in reaching the conclusion that daughters of Chhaganraj have the right in the land in dispute because the matter of succession can be challenged before the civil court only not before the revenue court. Therefore, judgments of both the courts below are liable to be set aside and revision be allowed.

7. On the contrary, learned counsel for non-petitioners has submitted that the disputed matter does not relate with the succession. This fact is undisputed that the non-petitioners Krishna and Usha are the daughters of deceased Chhaganraj. Prevailing revenue law provides that in the case of the person died intestate, the mutation should be opened in the name of all legal heirs; therefore, both the courts below did not commit any irregularity in arriving at concurrent findings. Hence revision is liable to be dismissed.

8. Learned Deputy Government Advocate has submitted that the matter should be disposed as per the merits of the case.

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

10. It is evident from the case file that petitioners are preferring their claim in the footsteps of the sons of deceased Chhaganraj.

11. This is settled proposition of law that if a Hindu male died intestate then all property belonged to deceased will devolve firstly to the class I heirs of the deceased. Indisputably, non-petitioners Krishna and Usha being daughters are class I heirs of deceased Chhaganraj. As the concerned Gram Panchayat did not make any enquiry about the legal heirs of deceased Chhaganraj, therefore, the action of concerned Gram Panchayat in effecting mutation no.541 is neither valid nor justified. Hence, both the courts below have arrived to the conclusion in right perspective in setting aside the impugned mutation and remanding the matter for conducting an enquiry afresh after giving hearing opportunity to concerned parties.

12. It is well established that question of mutation lies with the revenue courts, hence, jurisdictional objection raised by the learned counsel for the petitioners has no significance.

13. Therefore, in the above circumstances, I do not find any infirmity in the judgments of both the courts below. Hence, this revision petition, being devoid of any merit, is dismissed.

Pronounced in open court.

(PRAMIL KUMAR MATHUR)
Member