

1/2/12

IN THE BOARD OF REVENUE FOR RAJASTHAN AJMER

Review/Decree/TA/4853/2011/Jaipur.

Laxman son of Bija caste Gurjar resident of Khajpura Tehsil
Maujmabad Distt. Jaipur.

...Petitioner.

Versus

1. Kishna son of late Shyodan alias Chauthu caste Gurjar
resident of Khajpura presently residing at Mateda Gujron Ka
Mohalla Haripura Tehsil Phulera Distt. Jaipur.
2. Goga son of late late Shyodan alias Chauthu caste Gurjar
resident of Khajpura presently residing at Mateda Gujron Ka
Mohalla Haripura Tehsil Phulera Distt. Jaipur.
3. Tehsildar, Maujmabad Distt. Jaipur.
4. Sub-Registrar, Dudu.

...Non-petitioners.

D.B.

Dr. G.K. Tiwari, Member

Shri Shiv Kumar Sharma, Member

Present:-

Shri J.K. Pareek, counsel for the petitioner.

Shri S.P. Ojha, counsel for the non-petitioner No.1.

MR

Date: 01.12.2011

JUDGMENT

This review petition is filed under section 229 of the Rajasthan Tenancy Act 1955 (in short 'the Act') in order to carry out review of the impugned judgment dated 2.5.2011 of this court passed in Appeal Decree/TA/208/2010.

2. Briefly stated, the facts of the case are that the non-petitioners No. 1 and 2 preferred an appeal under section 224 of the Act against the judgment and decree dated 24.4.2008 of Revenue Appellate Authority Ajmer passed in appeal No. 32/07-223/Dudu. Revenue Appellate Authority by this judgment had set aside the judgment and decree dated 5.9.2007 of Sub-Divisional Officer, Sub-Divisional Officer by his judgment and decree dated 5.9.2007 had rejected the suit filed by the petitioner-plaintiff for declaration of khatedari rights under section 88 of the Act in respect of the suit land located in village Khajpura of Jaipur District. This court allowed the appeal of the non-petitioners-plaintiffs and set aside the judgment dated 24.4.2008 of Revenue Appellate Authority upholding simultaneously the judgment and decree dated 5.9.2007 of Sub-Divisional Officer. Aggrieved against the

impugned judgment dated 2.5.2011 of this court, the petitioner has submitted this review petition for the review of the said judgment.

3. We have heard the learned counsels of both the parties.

4. The learned counsel for the petitioner pleaded that the judgment dated 2.5.2011 of this court is illegal as the application filed by the non-petitioners-appellants under section 5 of the Limitation Act for condonation of the delay has not been decided and the delay in filing second appeal has not been expressly condoned. As such the second appeal was incompetent before this court; but the Division Bench of this court has overlooked this legal aspect and allowed the second appeal without condoning the delay. So the impugned judgment should be reviewed and rescinded and the judgment of Revenue Appellate Authority dated 24.4.2008 be upheld. The learned counsel cited 2009 (2) RRT 1179, 2009 (1) RRT 179, 2009 (1) RRT 184 and 1998 DNJ (SC) 767 in support of his contentions.

5. Opposing the contentions of the petitioners, the learned counsel for the non-petitioner replied that the second appeal was filed within the time reckoning from the date of knowledge which is 25.12.2009, as stated in the application filed under section 5 of the Limitation Act. The application under section 5 of the Limitation Act was filed as a measure of abundant precaution, even though the appeal filed was within period from the date of knowledge. But the petitioner-respondent did not submit any counter-affidavit in rebuttal of the facts stated in this application. This implied that the petitioner-respondent had no objection with regard to limitation. It was further contended that when objection of limitation is not pressed it is presumed that the delay is condoned while passing the judgment. The learned counsel cited 2002 DNJ (SC) 67 and 1992 RRD 545 in support of his contentions. Citing 2005 (1) RRT 545, it was pleaded that even if a view taken in the judgment is erroneous it cannot be a ground for review. As such there is no error apparent on the face of record. Therefore, the review petition deserves to be dismissed.

6. We have given thoughtful consideration to the rival contentions, perused the impugned judgment and gone through the material on record.



7. The only argument of the learned counsel for the petitioner seeking review of the impugned judgment of this court is that the point of limitation has not been decided prior to decision of the second appeal on merits. The second appeal under consideration was filed by the appellant in this court from the date of his knowledge of the impugned judgment dated 24.4.2008 of Revenue Appellate Authority. The non-petitioner-appellant has shown this date of knowledge as 25.12.2009 in the circumstances narrated in the application dated 18.11.2010 filed under section 5 of the Limitation Act. But the petitioner-respondent neither submitted any reply rebutting or contradicting the facts stated in this application nor filed any counter-affidavit rebutting or contradicting the date of knowledge of the non-petitioners- appellants shown to be 25.12.2009. Further the learned counsel for the petitioner-respondent did not argue at all during main appeal on the point of limitation pleading that the appeal was time barred. In such circumstances it would be presumed that the petitioner-respondent had waived his objection and the learned Division Bench has condoned the delay by implication. In this respect we are placing reliance on the judgment of Hon'ble Supreme Court as reported in 2002 DNJ (SC) 67 Davinder Pal Sehgal & Anr Vs. M s Partap Steel Rolling Mills Pvt. Ltd. & Ors. and the judgment of this court as contained in 1992 RRD 545 Usman Ali & Anr. Vs. Mst. Nath Kanwer.

8. Besides above, it is also stated that the argument about point of limitation is not a discovery of a new fact or new matter of evidence which could not have been brought to the knowledge of this court by the petitioner-respondent with exercise of due care and caution. Therefore, it cannot be considered to be an error apparent on the face of record. Presuming, though not admitting, that the judgment of the Division Bench of this court is 'erroneous' such erroneous judgment does not become subject matter of review under section 229 of the Act, as held in 2005 (1) RRT 545 (SC) Surendra Kumar Vakil & Ors. Vs. Chief Executive Officer M.P. & Ors.

9. Subject to the provision of the Civil Procedure Code a review petition can be filed before Board of Revenue for reviewing its own judgment under section 229(1) of the Act. According to Order 47 a review of a judgment can be allowed on the following grounds:-


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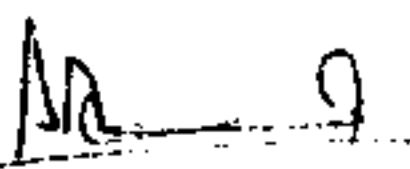
- (i) Discovery of new and important matter of evidence which after the exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when decree was passed or order was made; OR
- (ii) Some mistake or error apparent on the face of the record; OR
- (iii) For any other sufficient reason.

Thus, the scope of the review is quite limited as held in 2003(1) WLC (SC) 499. According to Order 47 Rule 1 of the Civil Procedure Code, review of the impugned judgment can be carried out only when there is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the petitioner or could not be produced by him at the time when the impugned order was passed. But the petitioner has not been able to discover and produce before the court such a new and important matter of evidence.

10. Review can also be undertaken if there is some mistake or error apparent on the face of record. An error apparent on the face of record should be such which strikes immediately looking at the face of record and which does not require any long drawn process of reasoning or examination of law, as is held in 1995 AIR (SC) 455. A review is neither an alibi to re-argue a case already heard and decided nor is it an avenue for an additional or special appeal not provided for under the law. Thus, the review petition is without any force.

11. In view of the foregoing discussions, the review petition fails and as such the review petition is dismissed in limine.

Pronounced.

 (Shiv Kumar Sharma)
 Member


 (Dr. G.K. TIWARI)
 Member