

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER**Revision No.3292/2004/LR/Jaipur :**

Vimla Devi W/o Shri Balu, daughter-in-law of Shri Sedu,
by caste Daroga, R/o Village Vishanpura Charnawas,
Tehsil Chomu, District Jaipur.

... Petitioner.

Versus

1. Bhagwan Sahai S/o Shri Hanuman (Deceased),
through legal representatives :-

1/1. Shambhu Dayal	}	sons of Shri Bhagwan Sahai
1/2. Kailash Chand		
1/3. Girdhari		
1/4. Sardar Singh		

1/5. Manju	}	daughters of Shri Bhagwan Sahai
1/6. Mohni		

- | | | |
|--------------|---|----------------------|
| 2. Rameshwar | } | sons of Shri Hanuman |
| 3. Babulal | | |
| 4. Shanker | | |
| 5. Gopal | | |

All are by caste Daroga, residents of Village Vishanpura
Charnawas, Tehsil Chomu, District Jaipur.

6. State of Rajasthan, through Tehsildar Chomu, District Jaipur.

... Non-Petitioners.

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S.B.

Shri Pramil Kumar Mathur, Member

Present :

Shri Hagami Lal Choudhary : counsel for the petitioner.

Shri Virendra Singh Rathore: counsel for legal representatives of non-petitioner no.1 & 2 to 5.

Shri Shanti Prakash Ojha : Dy.Govt.Advocate for non-petitioner no.6.

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Dated : 23 January, 2013

J U D G M E N T

Petitioner Vimla Devi had preferred an appeal before the Additional Collector (Fourth), Jaipur against the mutation no.377 dated 22.5.1981, which was alleged to have been attested on the basis of registered will dated 04.6.1977 executed in favour of Hanuman S/o Ramnath pertaining to khasra no.95 of Village Nangal Bharda Tehsil Chomu District Jaipur. Learned Additional Collector dismissed the appeal tendered by the present petitioner, on 15.3.2003. Being dissatisfied with the order dated 15.3.2003 passed by the Additional Collector (Fourth), Jaipur, petitioner has presented this revision petition.

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

3. At the threshold, the learned counsel for the petitioner has argued that mutation proceedings are governed by the Rajasthan Land Revenue Act, 1956 (in short to be referred as “the Act”) and as per the provisions of section 80 of “the Act”, it is obligatory on the part of the appellate authority to dispose of the appeal after calling for the record. He further submits that learned Additional Collector has disposed the appeal on merits, not on the grounds of limitation & maintainability which is in exception to section 80 of “the Act”. Hence, on this prime ground, the matter may be remanded back to the learned Additional Collector for deciding it afresh after calling for the record.

4. Learned counsel for legal representatives of non-petitioner no.1 & non-petitioners no. 2 to 5 opposed the above contentions and requested to dismiss the revision petition.

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

6. I have gone through the arguments advanced by learned counsel for the parties and scanned the matter carefully.

7. In view of the arguments advanced by the learned counsel for the petitioner, it would be better to have a glance at section 80 of “the Act” which runs as under :-

“80. Power of Appellate Authority –

(1) The appellate authority may either admit the appeal, or, **after calling for the record** and giving the appellant an opportunity to be heard may summarily reject it :

Provided that the appellate authority shall not be bound to call for the record where the appeal is time-barred or does not lie.”

8. Having gone through the above provision, it is crystal clear that after the presentation of the appeal, appellate authority has only two course of action :- (i) it may admit the appeal; or

(ii) it may summarily reject the appeal,

but rejection of the appeal has two imperative conditions attached with, which are as under :

(i) the record will be called for; and

(ii) an opportunity of hearing shall be provided to the appellant.

Without complying with these two conditions, an appeal cannot be rejected. Though the proviso of section 80 of “the Act” speaks that appellate authority shall not be bound to call for the record :- (i) where the appeal is barred by limitation; or (ii) not maintainable; then only appellate court is not bound to call for the record & appeal may be rejected by the appellate authority summarily.

9. In the backdrop of above provision, perusal of the impugned order reveals that learned Additional Collector (Fourth), Jaipur has not rejected the appeal on the ground of limitation & maintainability, but he has considered the merits of the case and adopted the criteria for deciding the appeal on merits alone, which does not conform the imperative provision of section 80 of “the Act” according to which it is incumbent upon the appellate authority to call for the record before deciding the appeal on merits. As a

result, this revision petition succeeds and the impugned order of the appellate authority dated 15.3.2003 is set aside and the matter is remanded to the Additional Collector (Fourth), Jaipur for deciding the case again afresh in the light of the observations made hereinabove.

Pronounced in open court.

(PRAMIL KUMAR MATHUR)
Member

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