

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Revision No.3647/2016/TA/Jaipur :

Jagdish S/o Shri Rughna, by caste Meena,
R/o Village Vimalpura, Tehsil Chaksu, District Jaipur.

... Petitioner.

Versus

1. Nathu Singh S/o Shri Bajrang Singh
2. Madhu Kanwar D/o Shri Bajrang Singh
Both are by caste Rajput, residents of Village
Rotwada, Tehsil Phagi, District Jaipur.
3. State of Rajasthan, through Tehsildar Chaksu, District Jaipur.

... Non-petitioners.

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S.B.

Shri Satish Chand Kaushik, Member

Present :

Shri Shashikant Joshi : counsel for the petitioner.

Shri Hemraj Gupta and Shri Deepak Pareek : counsel for non-petitioners.

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Dated : 20.7.2016

J U D G M E N T

This revision petition has been preferred under section 230 of the Rajasthan Tenancy Act, 1955 (in short to be referred "the Act") against the order of learned Revenue Appellate Authority, Jaipur dated 09.5.2016 in case no.624/2015

2. In this case, a revenue suit for declaration and permanent injunction was filed by the plaintiff-petitioner against the defendant Bajrang Singh under sections 88, 188 and 92A of the Rajasthan Tenancy Act. The suit was registered as 292/2012 and defendants were summoned.

The non-petitioner no.1 Nathu Singh appeared before the court and moved an application under section 151 of the Code of Civil Procedure alleging therein that the original defendant Bajrang Singh S/o Bhanwar Singh was not alive on the date of filing of the suit. He was died on 06.11.2012 and as such the suit is liable to be dismissed. After that application, the plaintiff moved an application under Order 22 Rule 4 read with section 151 CPC and section 5 of the Limitation Act along with affidavits and requested for the substitution of legal heirs of Bajrang Singh on the record and the suit not to be declared abated.

3. After hearing the arguments on the applications of both the parties, the learned Sub Divisional Officer, Chaksu vide his order dated 20.11.2015 dismissed the application of Order 22 Rule 4 read with section 151 CPC and section 5 of the Limitation Act of the appellant and accepted the application of the non-petitioner no.1 Nathu Singh and the revenue suit of the appellant was declared abated and as such the suit was dismissed. Being aggrieved with the order dated 20.11.2015, the appeal was filed before learned R.A.A., Jaipur which was registered as appeal no.624/2015 and after hearing the appeal, the learned R.A.A. vide his order dated 09.5.2016 dismissed the appeal. Being aggrieved with the orders of both the learned lower courts, this revision petition has been preferred.

4. I have heard the learned counsel for the parties and gone through the material available on record.

5. The learned counsel for the petitioner argued that he has filed this revision petition inter alia on the ground that both the lower courts have made gross negligence and illegality by dismissing the suit and appeal of the plaintiff-petitioner. The orders dated 20.11.2015 and 09.5.2016 are against the law and have been dismissed on technical grounds while it is affecting the rights of agricultural land and in such a circumstances, the matter must be decided on merit. The orders of both the courts are against the principle of natural justice and passed in a hasty manner without providing any opportunity of hearing.

6. The learned counsel also argued that the order is bad in law as well, because the suit has been declared abated by the learned S.D.O., Chaksu vide his order dated 20.11.2015. When the court is of the opinion that the suit was filed against a dead person, then he was having no right to declare the suit abated. The learned appellate court also did not consider this fact and kept the order as it is. If a suit has been filed against a dead person, then it cannot be abated, but this type of suit is only of defective category and if such type of suit has been filed inadvertently or by mistake or without knowledge of the defendant's death, then this type of suit cannot be treated as not maintainable, it will be treated as "still born" or "defective" and that defect is curable defect and the courts are having power under Order 153 CPC to cure these type of defects and amend the suit. The learned counsel referred the judicial pronouncement RLW 2009(2) RJ page 1118. In that case, the Board of Revenue ordered that the memo of appeal can be amended and in such a circumstance, the court may return the appeal memorandum for amendment and re-presentation. In other judicial pronouncement 2007 RRD page 78, Board has ordered by allowing the 153 CPC application, the name of the appellant to be inserted and new appeal to be submitted. In the matter of 2011 RBJ 593, the Hon'ble Board again reiterated that where submitting an appeal against a dead person since this mistake came to the knowledge of the officer, an application under section 151 and 153 CPC was moved for bringing the legal representatives on record; this is a technical mistake and as such this application was allowed. Board has taken the view that the matter should not be dismissed on technical ground and this hyper technical attitude is against the principles of justice. As such, he argued for acceptance of the revision petition.

7. On the other hand, the learned counsel for the non-petitioners argued that the suit was filed for declaration and permanent injunction under sections 88, 188 and 92A of Rajasthan Tenancy Act, 1955. The cause of action was alleged in the matter that defendant Bajrang Singh has threatened the sale of the disputed land on 18.11.2012 and on this allegation, the suit was filed while as per the record, the defendant no.1 was died on 06.11.2012. When he was died on 06.11.2012, how he may come

for threatening on 18.11.2012 and as such the suit is misconceived one and it was filed on wrong cause of action. No cause of action arose for the suit. If any person is filing a suit, he must file with a clean hand. Not only this, after filing the suit against the dead person, when the application under section 151 CPC was moved by the son of the defendant Bajrang Singh- the non-petitioner no.1, no step has been taken for curing the defect and after 2½ years, this application under Order 22 Rule 4 read with section 151 CPC and section 5 of the Limitation Act was moved. After hearing the parties, the learned lower court dismissed the application under Order 22 Rule 4 and Section 5 of the Limitation Act and admitted the application of the non-petitioner no.1 under section 151 CPC and the suit was declared abated and dismissed.

8. The learned counsel referred the judicial pronouncement 2012(1) RRT 189, wherein the D.B. of this Board has specifically held that appeal against a dead person is a nullity and on the same analogy, if a suit is filed against a dead person, is also a nullity. In 2010(2) RRT 1458 Balwant Singh Vs. Jagdish Singh, the Hon'ble Supreme Court of India has held that during the appeal, appellant landlord died. The application for substitution of LRs was filed after 778 days on the pretext that they were not aware of the pendency of the appeal. It is not the bonafide reason and in such a circumstance, it was held that abatement is automatic, no specific order is required, and as such the suit was dismissed. In the matter of 2015(1) RRT 232 Bhanu Pratap Singh Vs. Smt. Ghanshyam Kumari, the Hon'ble Rajasthan High Court again reiterated the view of the Hon'ble Supreme Court and held that law of limitation is not a formality only, delay cannot be condoned when the party itself was not vigilant. In the matter of 2013(2) RRT 1089 Deepa Vs. Kola alias Kushal, it was held that when the application for mutation has not been moved upto 46 years, then this delay is not to be condoned. In 2012(1) RRT 332 Shaitan Vs. Mohan Lal, it was held that there is no necessity to file written statement when the suit is barred by law and suit for declaration is not maintainable on the basis of unregistered sale deed, as such, the suit was not maintainable as per law. On this ground also in the present matter, the suit was liable to be dismissed and as such there is no illegality in the order of learned S.D.O.,

Chaksu as well as of learned R.A.A., Jaipur. The same view was taken by Hon'ble Board again in Surji and ors. Vs. Devendra and ors. reported in 2013(2) RRT page 1164. In 2011(2) RRT 721 Jagdish Shri and ors. Vs. Shri Sitaram and anr., the full bench of the Board has decided it that no khatedari right can be provided on the ground of adverse possession. No tenancy right can be conferred on the basis of adverse possession and the suit was filed on the basis of adverse possession, so it is liable to be dismissed. In 2014(2) RRT 1154 Ram Singh and ors. Vs. Patasi, the Hon'ble Board has clarified that the scope of revision is very limited. In this matter when the suit was not maintainable and it was found by both the courts on law as well as on facts, then this Board should not interfere in the concurrent finding in revision. The Hon'ble High Court of Rajasthan in the matter of Temple of Thakur Shri Mathuradassji, Chhota Bhandar Vs. Shri Kanhaiyalal and ors. 2008(3) WLC Rajasthan page 534 held that if any suit is not maintainable, then it has to be dismissed under Order 7 Rule 11 CPC. This suit was also of the same nature.

9. I have gone through the contentions advanced by learned counsel for the parties. After hearing both the parties and scanning of the matter, I am of the view that though technically a suit filed against a dead person cannot be declared abated under Order 22 Rule 4 CPC because a suit filed against a dead person is not covered under Order 22 Rule 4 CPC. But at the same time, it is also correct that any suit filed against a dead person is a nullity. The Hon'ble courts upheld that any suit/ appeal filed against a dead person is curable if it can be cured in the interest of justice. But in the facts and circumstances of the present case, this suit cannot be treated in that category because admittedly when the suit was filed against the dead person on the ground that a person who was died on 06.11.2012 has made threatening on 18.11.2012 and that was alleged cause of action for that matter, then how that suit can be treated as bonafide one. In the facts and circumstances of the matter, the learned S.D.O., Chaksu specifically mentioned in his order that the application under section 151 CPC was moved on 10.6.2013; prior to this, the fact was mentioned before the court verbally as well. But no application for amendment under section 151 or 153 CPC was moved and the application for setting aside of

abatement under Order 22 Rule 4 and section 5 of the Limitation Act was moved on 17.11.2015 i.e. after 2½ years. The application of section 151 CPC is clearly showing the intention of the plaintiff to make the harassment to the opposite party. The learned trial court in the circumstances, specifically mentioned that the application for setting aside the abatement or for substitution of legal heirs should be made immediately and when it is not done, then the substitution cannot be allowed. The application under Order 22 Rule 4 and section 5 Limitation Act is liable to be dismissed because no valid reason has been given for the delay and as such both the applications were dismissed rightly. Though, the learned trial court declared the suit abated and dismissed it on the ground of abatement, it does not make any difference so far the fate of the matter is concerned.

10. The question for consideration is (1) Whether in a suit filed against a dead person, an application under Order 22 Rule 4 CPC is maintainable ? (2) If the suit has been dismissed on the ground of abatement, can this order be maintained ?

11. After giving my thoughtful consideration, I am of the considered opinion that the order passed by the learned S.D.O., Chaksu is technically not correct, but fate of the suit has been given as dismissal rightly and the defect has been cured by the appellate court by mentioning that there was no cause of action for filing of the suit. It is also pertinent to mention here that a suit filed against a dead person is a nullity.

12. As discussed above, it is clear that any suit filed against a dead person is a nullity and if an action is void ab initio, then it cannot be survived by moving an application under Order 22 Rule 4 CPC read with section 151 CPC. In such circumstances, the application under Order 22 Rule 4 is not maintainable. The answer of the second question is also inaffirmative because the fate of the suit is dismissal. If the court has ordered the dismissal of it because of abatement, it does not make any difference and as such there is no need to quash that order and the order is liable to be maintained.

13. However, there is an exception of the rule that if the suit was filed bonafidely and during the course of appeal etc., without knowledge of death the appeal was preferred, then the court may consider the application for substitution of parties. But when at the time of filing of the suit, the cause of action was not there, as in the present case, the suit will be treated as totally misconceived and is liable to be dismissed. Thus, the filing of present revision petition before this court is the abuse of the process of law. As such, this revision petition is liable to be dismissed; hence dismissed. The order of learned Revenue Appellate Authority, Jaipur dated 09.5.2016 and that of learned Sub Divisional Officer, Chaksu dated 20.11.2015 are hereby upheld.

Pronounced in open court.

(SATISH CHAND KAUSHIK)
Member

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