

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH**

S.B. Civil Writ Petition No.14317/08

Prahlad & Ors. **Versus** State & Ors.

DATE OF ORDER : 27/02/2009

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. Sanjay Mehrishi, for petitioners

Instant petition has been filed against the order of Revenue Appellate Authority which was confirmed by Board of Revenue in its order dt.18th November, 2008 and finally the matter has been remanded back to the original authority to consider the same afresh in accordance with law.

Petitioner filed a suit for declaration and perpetual injunction impleading Goga & Kana being brother & son of Mangla as defendants. However, it has come on record that service was never affected upon Kana who was one of the defendant impleaded by the petitioner in the original suit. However, suit was finally decreed by the original court vide order Ann.6 dt.27th January, 1990 - pursuant to which, appeal was preferred before the Revenue Appellate Authority but that was dismissed on the ground of limitation which was assailed by respondent-defendant by filing CW No.2600/97 which was decided on 17th April, 2001

whereby this court while condoning delay, directed the Revenue Appellate Authority to examine the issue on merits. In pursuance of order of this court, matter was examined by the Revenue Appellate Authority and taking note of material which came on record finally considered appropriate since service upon one of the defendant Kana was never effected and that has deprived him of right of hearing and accordingly, appeal preferred by respondent-defendant was accepted vide order dt.16th November, 2002 and matter was remanded back to the original authority to decide afresh in accordance with law - against which present petitioner preferred appeal before Board of Revenue and after hearing parties order of the Appellate Authority was confirmed and the Board of Revenue also in Para 7 of the order impugned noticed that service upon one of the defendant-respondent was never effected and in such circumstances, it has caused prejudice to him and certainly was in violation of principles of natural justice.

Counsel for petitioner submits that once there was complete material available on record and as per directions of this court appeal was to be decided on merits both the courts below were

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not justified in remanding back matter to the original authority for consideration afresh and it is in clear defiance of orders of this court and both the courts below have failed to appreciate the material which came on record for their consideration on merits.

I have heard counsel for petitioner and perused the material on record.

After going through the order of Appellate Authority and so also of Board of Revenue and taking note of the fact that matter has been remanded to be examined afresh in accordance with law on the premise that service was never effected upon one of the respondent-defendant Kana who was certainly having a right of hearing in the matter to which he was deprived, this court finds no manifest error in passing order impugned which may call for interference.

Consequently, writ petition stands dismissed.

[AJAY RASTOGI], J.