

In the High Court of Judicature for Rajasthan

Jaipur Bench

DB Special Appeal (W) No.374/ 2015

Date of Order 29.5.2015

Hon'ble Mr. Justice Ajay Rastogi
Hon'ble Mrs. Justice Nisha Gupta

Mr. Suresh Pareek, Sr. Adv. with
Mr. NC Sharma, for appellant.
Mr. Manoj Bhardwaj,
Mr. Manoj Bhardwaj,
Mr. Shashi Bhushan Gupta, for respondents.

Instant special appeal has been filed against order of the Ld. Single Judge dt.16.4.2015 confirming the order of the Board of Revenue, Ajmer dt.2.11.2010 and setting aside judgment of the Revenue Appellate Authority, Sawaimadhopur dt.16.9.2009 and restoring judgment of the Sub Divisional Officer, Sawaimadhopur dt.6.4.2009.

Brief facts culled out from the record are that the respondents-plaintiffs no.1-3 filed a suit for partition, correction of entries & permanent injunction before the court of SDO, Sawaimadhopur in reference to Khasra No.71, 80, 76/ 2 and 76/ 3 situated in village Kutulpoura Jatan, Tehsil Sawaimadhopur.

The Sub Divisional Officer, Sawaimadhopur, after taking into consideration the material on record, decreed the revenue suit vide order dt.6.4.2009 and sub divided the subject land treating it to be an ancestral property belonging to common ancestor Gangabishan. The

present appellants who are impleaded as legal representatives of Birdha, who is late son of Gangabishan and being common ancestors they are recorded khatedars of the subject land in question.

However, the revenue appellate authority reversed order of the SDO and on re-appreciation of material which has come on record, the Board of Revenue restored the order of Sub Divisional Officer vide its judgment dt.2.11.2010 and the Ld. Single Judge of this Court also on re-appreciation of evidence which came on record dismissed the writ petition vide order dt.6.4.2015..

Main thrust of submission of counsel for appellants is that as regards khasra no.76, the allotment was made in the name of Birdha, father of present appellants and in the light of allotment letter which has been placed on record by appellants before the Ld. Single Judge as Ann.3, at least this could not be the subject land for partition treating it to be an ancestral property amongst legal representatives of their common ancestor Gangabishan.

His further submission is that no documentary evidence has been placed on record to substantiate that Gangabishan was original recorded khatedar of subject land in reference of which the revenue suit came to be filed for partition along with legal representatives of other common ancestor Gangabishan.

Counsel further submits that suit for partition and correction of entries was filed by the respondents-1/ 1, 1/ 2 & 1/ 3 and the burden was upon them to prove that it was an ancestral property of their

common ancestor Gangabishan which could have been partitioned amongst the legal representatives of the common ancestral.

Counsel for appellants submits that there was no documentary evidence on record in support thereof and in these facts & circumstances, the finding which has been recorded by the S.D.O. and confirmed by the Board of Revenue and so also Ld. Single Judge of this Court is wholly perverse and that can be obviously interfered by this Court even in the limited scope available u/ Art.227 of the Constitution.

As regards letter of allotment which has been placed for perusal and available before the Ld. Single Judge as well indicates that it is in reference to Khasra no.76 and the subject property available for partition treating to be a part of ancestral property was 76/3 and nothing has come on record which could substantiate that khasra no.76 and 76/3 are one and the same which came to be allotted to the father of the appellant, copy whereof is on record as Ann.3.

As regards submission made by the appellant that there is no documentary evidence available on record to substantiate that their common ancestor Gangabishan was the recorded tenant of subject land which falls for partition amongst the legal representatives holds no merit for the reason the statement of the present appellants was recorded during the course of suit proceedings before the Sub Divisional Officer and it was deposed that the subject land was ancestral property & that could be considered for partition amongst

legal representatives of their common ancestor Gangabishan.

We have heard counsel for the parties and do not find any error being committed by the Sub Divisional Officer and confirmed by the Board of Revenue on factual matrix of the matter and the Ld. Single Judge was of the view that there is no perversity in the finding which calls for interference u/ Art.226 & 227 of the Constitution and after hearing the parties, we do not find any error being committed under order impugned which may call for interference by this Court.

Consequently, the special appeal being devoid of merit accordingly stands dismissed.

[Nisha Gupta], J.

[Ajay Rastogi], J.

dsr-

"All corrections made in the judgment/order have been incorporated in the judgment/order being emailed"

Datar Singh
P.S.



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