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Court : Rajasthan

Decided On : Aug-02-1978

Reported in : 1978(11)WLN317

Judge : M.L. Joshi and M.C. Jain, JJ.

Appeal No. : D.B.C.W. Nos. 1276/69 and 611, 612, 613, 614 and 615 of 1977

Appellant : Karan Singh

Respondent : State and ors.

Disposition : Petion Allowed

Judgement :

M.L. Joshi, J.

1. In the six writ petitions each of the petitioners seek to challenge the impugned judgment of the Board of Revenue passed in each case and pray for quashing the impugned judgment in respective cases.

2. Each of the petitioners had obtained 'decree in his favour which was not appealed against and the decree became final. Despite appeals having not been filed against the respective decrees the Collector made reference under Section 23/ of the Rajasthan Tenancy Act, hereinafter called the Tenancy Act for setting aside the decree passed in various suits in favour of the respective petitioners. The

Revenue Board entertained the reference and set aside the respective decrees. It is in these circumstances that the petitioners challenge the judgment of the Revenue Board in these cases and pray for quashing the same.

3. The petitioners have challenged the judgment of the Revenue Board amongst other on the ground that neither the Collector was competent to make a reference under Section 222 for setting aside the decree nor the Revenue Board was competent to entertain such reference under Section 222 of the Tenancy Act. As this point of law is common to all the writ petitions, the petitions are being disposed of together by a common judgment.

4. It has been strenuously urged by the learned Counsel for the petitioners that it was not within the competence of the Collector to make a reference under Section 232 of the Tenancy Act for setting aside the decree as the decrees do not fall within the purview of Section 232. It has been submitted that reference under Section 232 can be made for setting aside the order only and not for setting aside the decrees.

5. On the other hand, it has been contended on behalf of the respondent that Section 282 should not be given a narrow meaning as it is comprehensive in nature and it covers the case of decree also. Consequently it has been urged that the Collector was fully competent to make the reference for canceling the decree and so also the Board of Revenue was competent to entertain the reference and set aside the decree.

6. The main controversy in this case centers round the question as to whether a reference can be made under Section 232 of the Tenancy Act by the Collector for varying, cancelling or reversing the decree passed in revenue suit, although appeal lay against such decree but no appeal was filed against it and whether the Revenue Board was competent on such reference to vary, cancel or reverse the decree?

7. Before answering the question it will be useful to have a survey of the relevant provisions of the Act which have got bearing on the controversy before us. Section 208 of the Tenancy Act makes the provisions of the Code of Civil Procedure

applicable to the suits and proceedings under the Tenancy Act with certain reservations. There are certain exceptions. One exception is that provisions of the C.P.C. which are inconsistent with anything in the Tenancy Act then such provisions shall not be applicable so far as the inconsistency extends. Section 208 may be reproduced as under:

208. Application of Civil Procedure Code : The provisions of the Code of Civil Procedure 1908 (Central Act V of 1908), except:

(a) provisions inconsistent with anything in this Act, so far as the inconsistency extends.

(b) provisions applicable only to special suits or proceedings outside the scope of this Act, and

(c) provisions contained in List I of the Fourth Schedule, shall apply to all suits and proceeding under this Act, subject to the modifications contained in List of the Fourth Schedule.

We may now refer to Section 222 of the Act This section lays down that no appeal shall lie from any decree or order passed by any Revenue Court except provided in this Act. Section 223 makes provision for appeals from original decrees. Section 225 makes provisions for appeals from appellate decrees. Section 226 deals with appeals from orders. It will be useful to reproduce Section 225 as under:

225. Appeals from orders :- (1) An appeal shall lie from an order-

(i) to the Collector, if such order is passed by a Tehsildar;

(ii) to the (revenue appellate authority) if such order is passed by an Assistant Collector, a Sub-Divisional Officer or a Collector, and

(iii) to the Board if such order is passed by a revenue appellate authority

(2) No appeal shall lie from an) order passed in appeal under this section.

From Sub-section (2) of Section 225 it is abundantly clear that no second appeal lies against the order passed in appeal against the order. Section 257 provides that no decree or order shall be reversed on account of any misjoinder of parties or cause of action etc.

8. From the survey of the various relevant sections referred to above it is abundantly clear that the legislature has used the terms decree and order in a distinct manner. Section 222 and Section 227 contain both the words decree or order. From the perusal of these sections it will appear that the legislature had made provision for two appeals in respect of decrees but only one appeal in case of order. Section 222 to 227 and also Section 232 occur in the same chapter viz Chapter 15 of the Tenancy Act. The terms 'decree' or 'order' are obviously of different import as is apparent from the definition of these terms given in the Code of Civil Procedure. No inconsistent definition or meaning in regard to order or decree has been given in the Tenancy Act. There is, therefore, every justification to construe both the words in the light of definition given in the Code of Civil Procedure. The term 'decree' has been defined in Sub-section (2) of Section 2 CPC like this 'Decree' means the formal expression of adjudication which so far as regards the court in expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include rejection of a plaint and the determination of any question within Section 144.' Order has been defined in the C.P.C, under Sub-section (14) of Section 2 to mean the formal expression of any decision of the civil court which is not a decree.

9. The distinction between the decree and order as defined in the Code of Civil Procedure is obvious. Whereas the decree means the formal expression of adjudication which so far as regards the court expressing it conclusively determines the rights of the parties to all or any of the matters in controversy in the suit, the term order only means the formal expression of any decision which is not a decree. It will thus appear that the definition of the term order is of a limited nature and cannot cover the term decree as defined in the Civil Procedure Code. The learned Additional Government Advocate contended that the term order occurring in Section 232 is of wider amplitude and should be construed to include the decree

also. In support of his contention he has relied upon *State of Rajasthan v. Motaram* 1976 RBD 222. In that case the Division Bench of the Board of Revenue has held that the word order used in Section 232 of the Tenancy Act must be interpreted in the wide general sense and if so interpreted it will include in its fold the decree also. We are unable to agree with the reasoning given by the learned Members of the Board of Revenue. The language of Section 232 is plain. It uses the word 'order' as central-distinguished from decree. Section 222 to Section 527 also use the words 'decree' and 'order' distinctly which clearly indicates that the words are of different import.

10. It is well settled principle of construction of statute that when in relation to the same subject-matter the plain words are used in the same statute, there is a presumption that they are not used in the same sense, vide *Board of Revenue v. Aurthar Pal Bentholl* : [1955]2SCR842. In the same case referred to hereinbefore Vankatarama Aiyer J observed that 'when two words of different import are used in a statute in two consecutive provisions, it would be difficult to maintain that they are used in the same sense. Right from Section 222 to 227 the legislature has used the words decree and order according to the appropriateness of the provisions. It has further made separate provision for appeal against decrees and orders. In case of decree the legislature has provided two appeals as stated above, whereas in case of order only one appeal would lie. From the entire context and scheme of chapter 15 it is difficult to hold that the words decree and order are of same import. Had the legislature intended to assign the same meaning then it need not have used the words decree and order in Section 232 and Section 227 of the Tenancy Act at the same time. Omission to mention the word decree in Section 232 along with word order is very significant. Wherever the legislature has intended to refer to the decree and order both, both the terms have been used in that section. But in Section 232 there is no mention of the term decree. The omission to mention the word decree in Section 232 legitimately gives rise to the inference that the legislature never intended a reference being made under Section 232 in respect of a decree. Had the legislature intended that reference could be made in respect of the decree nothing could have prevented it from using the word decree in Section 232 also when it has used both the words decree and order in Section 222 and Section 227. The irresistible inference therefore is that both the terms

have been used in different sense.

11. It was next contended by the learned Additional Government Advocate that the word order should be deemed to include decree in the context of Section 232 of the Tenancy Act. It was urged that the Collector is empowered to call for and examine the record if any proceeding decided or pending before any Revenue Court subordinate to him with a view to satisfy himself as to the legality or propriety of the order in respect of suits or proceedings except those which fall within the purview of Section 239 of the Act. On this basis it was urged by the learned Government Advocate that the Collector was competent to make a reference under Section 232 even in case of reversing or cancelling the decree. He specially invited our attention to proviso to Section 232 in order to justify that the word order is of wider amplitude. The proviso to Section 239 forbids the Collector to make a reference in respect of suit or proceeding falling within the purview of Section 239. It is difficult for us to understand how the proviso would justify the extended and wider meaning to the word order occurring in Section 232 of the Tenancy Act. Indeed we are of the opinion that the proviso does not seek to extend the meaning of the term order. Even in suit or proceedings, orders may be passed in the nature of injunction, appointment of receiver and the like. The mere use of words suits or proceedings in Section 232 will hardly justify the contention that Section 232 will cover the decree in the matter of reference to the Revenue Board. The proviso to Section 232 is of restricted import in the sense that it forbids the Collector to make reference in suits or proceedings which fall within the purview of Section 239. From the proviso it cannot be inferred that the legislature ever intended to apply Section 232 of the Tenancy Act for setting aside decree. We may, with all respect to the Members of the Revenue Board, say that they have fallen into error in not applying the definition of order given in the Code of Civil Procedure to the word order occurring in Section 232. They have also further ignored the fact that the legislature has used both the terms order & decree in the same sequence to emphasize the distinction between order and decree. We, therefore, find ourselves unable to subscribe to the view taken by the Board of Revenue and are of the opinion that the law laid down in *State of Raj. v. Meera* 1966 RRD 44 & *State of Raj v. Mota Ram* 1976 RRD 232 is not correct.

12. It was further argued by the learned Additional Government Advocate that Section 232 empowers the Collector to call for and examine the record in case or proceedings and as the terms case and proceedings are of wider connotation the reference could be made by the Collector to the Revenue Board in respect of the decrees also. We are not at all impressed with this contention either. It is true that the Collector is empowered to call for the record of the case or proceeding for satisfying herself as to the regularity of the proceeding, but that does not imply that the Collector is empowered to make reference in respect of decree under Section 232. The word 'case' may relate to an interlocutory order. The proceedings may also relate to interlocutory matters. It would, therefore, not be correct to extend the scope of Section 232 on this reasoning. Once the decree is passed & has become final on account of appeal having not been filed, it gives a vested right to the decree-holder. The decree is assignable whereas order is not. The interest of the third party by assignment may intervene which may lead to lot of complications if at all it is reversed on reference being made by the Collector to the Board of Revenue. Such an interpretation is not at all justified on the plain terms of Section 232. We are, therefore, of the opinion that the word 'border' occurring in the Section 232 does not cover the word 'decree' & its meaning cannot be extended so as to include the decree in it.

13. In view of the above discussion, we are firmly of the opinion that the Collector was not competent to make reference for cancelling the decree under Section 232 of the Tenancy Act. For the Revenue Board was competent to cancel the decree on such a reference. The impugned judgments of the Revenue Board deserve to be quashed on this score also. In view of our decision on this point we need not go into other contentions raised before us.

14. In the result, the petitions are accepted the impugned judgments of the Revenue Board in these cases are set aside. There shall be no order as to costs.