

Dheer Singh Vs. Amar Singh and ors.

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Court : Rajasthan

Decided On : Sep-30-1997

Reported in : 1998(2)WLC704; 1997(2)WLN492

Judge : B.S. Chauhan, J.

Appeal No. : S.B. Civil Writ Petition No. 2678 of 1988

Appellant : Dheer Singh

Respondent : Amar Singh and ors.

Advocate for Def. : Mr. R.S. Saluja

Advocate for Pet/Ap. : Mr. N.S. Acharya

Disposition : Petition allowed

Judgement :

B.S. Chauhan, J.

1. The instant writ petition has been filed challenging the order of the Board of Revenue dated 19.5.88 contained in Ex. 5 to the writ petition by which the Board has set aside the order of the Revenue Appellate Authority dated 22.9.82 contained in Ex. 4 to. the petition.

2. The facts giving rise to the petition are that one Jeewan Singh was the owner of the agricultural land measuring 49 bighas and 9 biswas situated in the Revenue Estate of village Palana District Bikaner. His wife had died and he had no issue. Jeewan Singh adopted the present petitioner, Dheer Singh when he was 5-6 years of age. The adoption took place on 7.7.1973 and the adoption deed was duly registered on 27.8.73 (Ex. 1) and all the formalities which are required under the law for adoption were also completed. Petitioner Dheer Singh started living with Jeewan Singh after adoption but Jeewan Singh died on 1st. Feb., 1974 leaving behind only survivor minor adopted son Dheer Singh. Respondents No. 1 to 4 alongwith one Smt. Bal Kanwar (whose name was subsequently deleted from the array of respondents vide order dt. 9.9.82) claiming to be the close relatives of said Shri Jeewan Singh moved an application before the Gram Sarpanch that the land belonging to Jeewan Singh should be mutated in their names. Vide order dated 15.4.74 passed by the village Sarpanch, the land belonging to Jeewan Singh was mutated in the names of respondents No. 1 to 4. The present petitioner Dheer Singh being aggrieved and dissatisfied, preferred an appeal against the order dt. 15.4.74. before the collector but the same was rejected, being time barred, vide order dated 14.10.74. Petitioner preferred second appeal before the Revenue Appellate Authority which was allowed vide order dated 22.7.75. The Revenue Appellate Authority quashed the mutation order dated 15.4.75 in favour of respondents No. 1 to 4 and remanded the case to the village Sarpanch to decide it de novo. Respondent No. 1 to 4 being aggrieved, filed a revision against the order of the Revenue Appellate Authority dated 22.7.75 before the Board of Revenue which was dismissed on 14.9.79 (Ex. 2). In the meanwhile, as there was no interim order in favour of contesting respondents and the Authority competent to record mutation has been changed from Sarpanch to Tehsildar, the Tehsildar vide his order dated 28.7.76 ordered the mutation in favour of the present petitioner Dheer Singh. This order was not challenged by the contesting respondents and it has become final.

3. After some time, the respondents No. 1 to 4 started interfering with the physical possession of the petitioner of the land in dispute. Thus, the petitioner filed a suit for permanent injunction being case No. 27 of 1979 restraining respondent No. 1 to 4 from interfering with peaceful possession of the land. The said suit was

dismissed by the Sub-Divisional Officer (hereinafter called the S.D.O.) vide judgment and order dated 5.1.82 contained in Ex. 3 to the writ petition.

4. Being aggrieved, present petitioner preferred an appeal before the Revenue Appellate Authority which was allowed vide order dated 22.9.82 contained in Ex. 4 to the writ petition, holding that the judgment of the S.D.O. was passed on the basis of revenue record wherein names of respondents No. 1 to 4 had been entered into because of the mutation order passed by the Sarpanch on 15.4.74 and the S.D.O. failed to appreciate that the said order had subsequently been set aside and mutation was made in favour of the petitioner vide order dated 28.7.76 and the same had become final and as the matter remained subjudice, the order dated 15.4.74 was not final and it also failed to appreciate the statutory provisions enshrined in Section 40 of the Rajasthan Tenancy Act, 1955 (hereinafter called the Act 1955). which provides for succession by inheritance in case a person dies intestate and provisions of Section 16 of the Hindu Adoption and Maintenance Act, 1956 (hereinafter called the Act 1956), which provide for presumption of bonafide and correctness of the registered documents and as the adoption deed has been registered, there was a presumption of the correctness and genuineness of adoption deed. Nobody had even tried to rebut the same by producing any evidence whatsoever. Being aggrieved and dissatisfied, the respondent No. 1 to 4 preferred appeal before the Board of Revenue under Section 224 of the Act 1955 and the same was allowed vide judgment and order dt. 19.5.88 contained in Ex. 5 to the writ petition.

5. Being aggrieved and dissatisfied, the present petition has been filed.

6. Heard Mr. N.S. Acharya learned Counsel for the petitioner and Mr. R.S. Saluja, learned Counsel for the respondents No. 1 to 4; Prakash Tatia for other respondents.

7. Shri Acharya has vehemently argued that the Board of Revenue as well as the Revenue Appellate Authority have erred in not appreciating that the mutation entries in favour of respondents No. 1 to 4 made on 15.4.74 had subsequently been set aside vide order dt. 28.7.76, which had become final and, thus, no relevance could have been given to the mutation entry in favour of the

respondents. The Board has erred in observing that the adoption was not a relevant issue for determining the controversy and the Revenue Appellate Authority has given unwarranted weightage to the adoption deed. The Board failed to appreciate and apply the statutory provisions of Section 40 of the Act 1955 and presume the bonafide of the adoption deed as mandatorily required under Section 16 of the Act 1956.

8. On the other hand, Shri Saluja has contended that as the revenue entries had not been in favour of the petitioner on the date of filing the suit, the suit itself was not maintainable and no interference in called-for by this Court against the impugned order passed by the Board of Revenue.

9. I have considered the rival contentions of the parties. Admittedly, the mutation entries dated 15.4.74 had been set aside vide order dated 22.7.75 by the Appellate Authority and subsequently vide order dated 28.7.76, the mutation entry was made in favour of the petitioner. The suit was dismissed by the S.D.O. vide order dated 5.1.82, therefore, it looks apparently abhorrent and wrong to hold after six years of the mutation entry in favour of the petitioner that the suit was not maintainable. The issue of mutation entry made in favour of the contenting respondents vide order dt. 15.4.74 remained subjudice throughout till the fresh mutation entry was made by the competent authority in favour of the petitioner vide order dated 28.7.76. Thus, the natural corollary of the matter being remained subjudice throughout is that the mutation entry ought to have been recorded initially in favour of the petitioner and, thus, to hold that the suit was not maintainable as on the date the suit was filed, the mutation entry was in favour of the contesting respondents, cannot be said to be tenable. The reason being that competent Authority seized of mutation case is enjoined by law to decide disputes regarding entries of names by an enquiry into the question of possession. In the instant case, an entry was finally made in favour of petitioner, he shall be assumed to be in possession throughout. The Board failed to notice the observations made by the Appellate Authority that at the relevant time, the prevailing practice had been to show a person in possession, whose name appeared in the Jamabandi of that particular year. The Govt. issued a circular subsequently to find out the factum of possession and then to record the mutation entry. Sri Bhanwar Lal, the natural

father of petitioner deposed before S.D.O. that one Chaudhary had started cultivating the land in dispute and he was restrained to do so by bringing the order of the court. The contesting respondents admitted before S.D.O. in their cross examination about the stay order of the court. Contesting respondents did not produce any evidence to prove their possession. Their bold statement that they were in possession for last 30-35 years is contrary to record as there had never been any dispute regarding possession prior to the death of Sri Jeewan Singh. Revenue Appellate Authority pointed out the contradictions in their deposition that at one place, they deposed that respondent No. 1 Amar Singh was in possession of the land since 1951 and on another place, they deposed that they came in possession after the death of Jeewan Singh. There is another very strange aspect of the case. The contesting respondents have never disclosed their relationship with late Sri Jeewan Singh. Their claim had been that they were closely related to him, but it is not clear, as what was the bond of their relationship. In the reply to the writ petition, they claimed to be the nephews of Jeewan Singh. Relationship of nephew and uncle is very vague. This shows they did not approach the competent Authority with clean mind, clean heart, with clean objective and it makes them disentitled for any relief whatsoever. (Ramjas Foundation and Ors. v. Union of India and Ors. : AIR 1993 SC852 ; G. Narainswamy Reddy v. Govt of Karnataka and Ors. : [1991]2SCR563 ; and K.R. Srinivas v. R.M. Premchand and Ors. : (1994)6SCC620)

10. It is settled law that the mutation proceedings are meant to show mere possession of the land for the purpose of collecting the revenue by the State. It is not to adjudicate the title of the parties and it is the title and possession of the land which confer a locus standi to file a suit for permanent injunction under Section 188 of the Act 1955.

11. In Nirman Singh v. Lal Rudra Pratab Narain Singh Thakur and Ors. (1926) Vol. 10 R.D. 241, the Privy Council placed reliance on Corea v. Appu Hamy, 1912 Appeal Cases 230, and observed as under:

(Mutation proceedings) are much more in the nature of fiscal inquiries instituted in the interests of the State for the purpose of ascertaining which of the several

claimants for the occupation of certain denominations of immovable property may be put into occupation of it with the greater confidence that the revenue for it will be paid. It is little less than a travesty of judicial proceedings to regard the (mutation) orders as judicial determinations expelling proprio vigore individual from any proprietary right or interest he claims in immovable property.

12. Thus, the complicated issue of title has to be decided in a regular suit. What is required under the law to maintain a suit under Section 188 of the Act 1955 is that a person filing the suit must be a tenant of the holding in dispute; he should be in possession of the suit land on the date of the suit and the right to enjoyment of that holding of the said plaintiff is invaded or threatened to be invaded by defendants. In the instant case, the petitioner has inherited the land in dispute by application of provisions of Section 40 of the Act 1955 being the only survivor of Shri Jeewan Singh and became tenant by succession as Section 40 of the Act 1955 provides that when a person dies intestate, the interest in his holdings shall devolve in accordance with the personal law to which he was subjected to at the time of his death. By mere application of the Hindu Succession Act, 1956 the law applicable on the relevant date, the property of Jeewan Singh devolved upon the petitioner being the sole survivor an adopted son. Thus, it is irrelevant whether on the date of filing the suit, the petitioner was recorded as a tenant or not. The relevant point is whether he was entitled to be tenant or not and if he was in possession of the land in dispute on the said date and his possessory rights were invaded or threatened to be invaded, the suit was maintainable at his behest. The substantial right of the petitioner cannot be defeated on technicalities.

13. In *Noorduddin v. Dr. K.L. Anand* : (1995)1SCC242 , the Apex Court observed as under:

The object of law is to meet out justice. Right to the right, title or interest of a party in the immovable property is a substantive right. But the right to an adjudication of the dispute in that behalf is a procedural right to which no one has a vested right. The faith of the people in the efficacy of law is the saviour and succour for the sustenance of the rule of law. Any weakening like in the judicial process would rip apart the edifice of justice and create a feeling of disillusionment in the minds of

the people of the very law and courts. The rules of procedure have been devised as a channel or a means to render substantive or at best substantial justice which is the highest interest of man and almanac (Sic) for the mankind. It is a foundation for orderly human relations. Equally the judicial process should never become an instrument of oppression or abuse or a means in the process of the court to subvert justice.

(emphasis added)

14. Similarly in *Collector, Land Acquisition, Anantnag and Anr. v. Mst. Katiji and Ors.* : (1987)ILLJ500SC, the Apex Court observed as under:

When substantial justice and technical considerations are pitted against each others, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done...

15. It is a plain and simple case and suit ought to have been decreed considering the factum of possession with petitioner. Thus the case warrants review by this Court as there has been miscarriage of justice. 'Tribunals should be astute in the declaration of law or in its solemn judicial review or dispensation of justice to issue directions or mandamus against the law, constitutional comments or public policy.' (*State of Punjab v. G.S. Gill* : [1997]3SCR412)

16. Thus, it was a fit case, where, in the interest of justice, Board of Revenue ought not to have disturbed the order of the Appellate Authority which was based on sound principles of law and had served the cause of justice.

17. In the instant case, the only relevant issue to be determined was whether the petitioner was a tenant or not and its determination would depend upon the genuineness of the adoption deed. The adoption deed is a registered document. Therefore, under Section 16 of the Act, 1956, there is a presumption of being the adoption deed genuine and bonafide. This genuineness is to curtail too much evidence on the point of taking and giving ceremonies. Once, adoption deed has been signed by the natural and the adoptive father, the presumption of the adoption deed being genuine has to be given due weightage as Section 16 of the

Act, 1956 is a rule of evidence. Once the registered adoption deed is produced in the court, the court is bound to presume that the adoption has been made in compliance of the Act unless it is disproved. The said presumption is not merely a statutory presumption which can be rebutted in ordinary manner of rebuttal. This presumption has to be dislodged by disproving all the facts of adoption. The courts are bound to take the factum of adoption proved and onus is shifted on the other side to prove the contrary by disproving adoption. In the instant case, the respondents have not even tried to make any averment on the adoption deed. The finding recorded by the Board of Revenue that the original adoption deed was not produced before the court below is perverse and contrary to evidence on record. The S.D.O. as well as the Revenue Appellate Authority have recorded that the original adoption deed was produced before the S.D.O. and the copy of it was exhibited after seeing the original and the adoption deed was proved by Bhanwarlal, who was the signatory of the adoption deed being the natural father of the petitioner. The finding of fact recorded by the Board of Revenue to the effect that the adoption deed was not proved by any witness is also contrary to the evidence on record. Bhanwarlal natural father, Jeewan Singh adoptive father and one witness had signed the adoption deed. Jeewan Singh had died and Bhanwarlal, the natural father proved the adoption deed. The respondents did not produced any evidence whatsoever to disprove the factum of adoption. There was no necessity for the petitioner to examine any other witness. Thus, the finding recorded by the Board on this issue is perverse and it shows that the Board of Revenue has decided the case without applying its mind. The Board of Revenue has also erred in recording the finding on the factum of possession. No reason has been given for dislodging well reasoned finding of fact recorded by the Appellate Authority regarding the possession of the petitioner. The Board also failed to consider the effect of circulars issued from time to time by the Govt. to show the name of the person in possession, whose name appears in Jamabandi. The Board has also erred in recording the finding of fact that petitioner was grand son of Jeewan Singh. This finding is factually incorrect and not borne out from any document on record. The contesting respondents did not challenge the order of Board of Revenue passed in their revision on 14.9.79 contained in Ex.2 to the petition. The order of mutation dt. 28.7.76 had become final. It is unfortunate that

the Board of Revenue being the final authority on the revenue matters has decided the substantive rights of a minor in such a cursory manner and without any application of mind whatsoever. The well reasoned judgment and order of the Appellate Authority has been set aside by a sketchy decision without considering the relevant facts. There appears to be no reason whatsoever to pass such an impugned order. The findings recorded by the Board are perverse and do not get any support from the evidence on record.

18. Before parting with the case, it may be relevant to mention that the Court very much alive of its limitations to interfere with the findings of facts recorded by the Board. But interference is warranted for compelling circumstances as the Board side-tracked the real issue and decided the case without judicial frame of mind. Findings recorded by Board are perverse and conclusions have been made without adverting to the evidence on recorded as a consequence, substantial and grave injustice has resulted.

19. In view of the above, the writ petition succeeds and is accordingly allowed with costs throughout.