Chandarya and anr. Vs. Mohan and ors.

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SooperKanoon Citation : sooperkanoon.com/764598

Court : Rajasthan

Decided On : May-05-2009

Reported in : 2009(3)WLN56

Judge : Mohammad Rafiq, J.

Appellant : Chandarya and anr.

Respondent : Mohan and ors.

Disposition : Petition allowed

Judgement :

Mohammad Rafiq, J.

1. This writ petition has been against the order passed by Assistant Collector and Acting City Magistrate Lalsot dt. 30.04.1992 by which declaratory suit filed by the petitioners was dismissed as having abated and the order of the Board of Revenue dt. 30.10.2000 by which appeal of the respondents was allowed and the order of the Revenue Appellate Authority 30.08.1994 by which order of Assistant Collector and Acting City Magistrate Lalsot was set-aside, was reversed.

2. Learned Counsel for the petitioners has argued that petitioners when they originally filed suit for declaratory relief, Mohan, Bheru and Kalyan have themselves applied for becoming the party under Order 1 Rule 10 CPC. Initially,

petitioners contended that Bheru died issueless and his wife also died therefore no legal heirs were required to be impleaded. But when they filed appeal for temporary injunction, against the order passed by the Assistant Collector and Acting City Magistrate Lalsot, they impleaded his two daughters as party. Considering this fact, Revenue Appellate Authority set-aside the order of abatement and accepted prayer of the petitioners to implead two daughters of Bheru as his legal representatives and remanded the matter for decision on merit. Board of Revenue erred in interfering with the order passed by the Revenue Appellate Authority. It is contended that even otherwise suit cannot be dismissed as having abated in toto because even after death of Bheru, two other defendants were available and suit could be continued as against remaining two who were originally impleaded as defendants.

3. Learned Counsel for the respondents has opposed the writ petition and submitted that order of the Board of Revenue is perfect, legal and reasonable which does not warrant any interference.

4. Having heard learned Counsel for the parties and perused the material on record, I find that the Revenue Appellate Authority has taken a reasonable approach in the matter by holding that once two daughters of Bheru were impleaded as party in appeal and at one stage of proceedings, they were brought on record as his legal representatives, it was not proper to dismiss the suit as having abated and it therefore set-aside order of abatement and remanded matter to the ACM for deciding it on merit. On facts also, it is evident that deceased Bheru was impleaded as defendant on his own application filed under Order 1 Rule 10 CPC and was not impleaded as defendant by the petitioners. Suit in any case could not have been taken as abated for the mere reason of the death of one of the defendants because nature of the relief that was claimed by the petitioners was in the shape of declaration and could not be said to be indivisible relief. Board of Revenue was not justified in interfering with the order passed by the Revenue Appellate Authority.

5. In the result, this writ petition is allowed. Judgment of Board of Revenue dt. 30.10.2000 (Ann.5) and that of the Assistant Collector and Acting City Magistrate

Lalsot dt. 30.04.1992 (Ann.3) are set-aside and the judgment of the Revenue Appellate Authority dt. 30.08.1994 (Ann.4) is restored. Assistant Collector and Acting City Magistrate Lalsot shall proceed to decide the matter on merits.