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IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

1. Appeal/LR/11304/2000/Dausa.

1. Smt. Phoola Devi daughter of late Shri Jansi wife of Shri Birdhichand caste Mali resident of Deewan Ki Kothi, Kasba Lalsot Tehsil Lalsot Distt. Dausa.
2. Smt. Bachchi daughter of late Shri Jansi wife of Shri Budharam caste Mali resident of Tuntyawali Dhani, Tehsil Lalsot Distt. Dausa.

...Appellants.

Versus

1. Ramesh Chand son of Shri Chhitar caste Mali resident of Khatwa Tehsil Lalsot Distt. Dausa.
2. Smt. Kamali daughter of late Shri Jansi wife of Bhajan Lal caste Mali resident of Bandhawala Ki Dhani, Lalsot Tehsil Lalsot Distt. Dausa.

...Respondents.

2. Appeal/LR/11305/2000/Dausa.

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...Respondents.

S.B.

Shri Rajinder Kumar, Member

Present:-

Shri Hemant Sogani, counsel for the appellants.

Shri Atma Ram, counsel for the respondents.

J U D G M E N T

Date: 19.02.2019

1. These second appeals have arisen out of the common judgment dated 22.5.2000 of the learned Additional Divisional Commissioner, Jaipur dismissing the first appeals No. 17/98 and 18/98 filed by the appellants and confirming the orders dated 2.4.1998 and 16.5.1998 of the learned Tehsildar, Tehsil Lalsot Distt. Dausa. By the said order dated 2.4.1998 the learned Tehsildar has ordered to sanction mutation of the disputed lands in favour of the respondent No.1 and vide order dated 16.5.1998, the mutation was sanctioned accordingly.

2. Facts of the case mentioned in the memo of appeals are that the disputed lands situated in village Khatwa, Tehsil Lalsot were the khatedari lands of the deceased Jansi son of Narayan Mali. After his death on 21.1.1998, an application was filed by one of his daughters, namely, Smt. Kamli, the respondent No. 2 in the court of Tehsildar, Lalsot. It was mentioned in the said application that the deceased Jansi had no biological son, therefore, he adopted the respondent No. 1 in his lifetime and also executed a 'will' of his lands in favour of the respondent No.1. Therefore, a prayer was made to sanction mutation of the lands of the deceased in favour of the respondent No. 1. The appellants were also made party to the said application. However, the learned Tehsildar without issuing any notice to the appellants proceeded ex-parte against them and vide impugned orders sanctioned the mutation in favour of the respondent No.1 in the manner indicated above. Aggrieved against the said orders, the appellants unsuccessfully filed separate appeals in the court of learned Additional Divisional Commissioner, Jaipur. Hence these second appeals.

3. I have heard the learned counsels.

4. On behalf of the appellants, it was urged that in her application dated 10.3.1998, the respondent No. 2 has specifically stated that the appellants reside in their matrimonial homes in villages Deewan Ki Kothi and Toontyawali Dhani. But the learned Tehsildar sent notices of the appellants at their parental address, meaning thereby that

appellants were not heard before sanctioning the mutations in favour of the respondent No.1. The learned counsel also submitted that the respondent No. 1 is not the adopted son of the deceased Jansi. On 14.1.1998, no will was executed by the deceased in favour of the respondent No.1, as alleged by him. Therefore, the learned Tehsildar committed material illegalities in sanctioning the mutation in favour of the respondent No.1. Therefore, a prayer was made to accept the appeals and set aside the impugned judgment/ orders of the courts below.

5. Learned counsel for the respondents vehemently opposed the above submissions. He submitted that the impugned orders/ judgment of the courts below have been passed after considering all the factual and legal aspects of the case. The concurrent findings of the courts below are neither perverse nor illegal. Therefore, the same are not required to be interfered with. The appellants herein had full knowledge of the mutation proceedings and still they did not make any objection thereto. The respondent No. 1 was adopted by the deceased Jansi in his lifetime. The later had also executed a will of his lands in favour of the respondent No.1. All the procedural formalities were duly complied with by the learned Tehsildar before sanctioning the disputed mutation in favour of the respondent No.1. The learned first appellate court has endorsed the findings of the learned Tehsildar in this regard. All the factual and legal points raised on behalf of the appellants were duly considered by the court below. The appellants are not in possession of the disputed lands. It is the respondent No. 1 alone who is occupying the same as its recorded khatedar. Therefore, a prayer was made to dismiss the appeals.

6. I have given my thoughtful consideration to the rival submissions and perused the record carefully.

7. The record reveals that on the death of the khatedar Jansi, the mutation proceedings were initiated at the instance of one of his daughters, namely, Smt. Kamli who is respondent No. 2 in these appeals. The respondent No. 1 Ramesh Chand and both the appellants were also arraigned as parties to that application. In the said

application, a prayer was made to sanction the mutation in favour of the respondent No. 1 on the premise that he is adopted son of the deceased and a will was also executed by the deceased in favour of the respondent No. 1. The order passed by the learned Tehsildar does not speak that any notice was issued to the appellants before sanctioning the disputed mutation. However, there is a categorical finding of the learned first appellate court in this regard that in the mutation proceedings, no notice was issued to the appellants. The said finding of the learned first appellate court remains unchallenged. Therefore, there can be no denial of the fact that two of the real daughters of the deceased khatedar remained unheard in the said proceedings. The procedural fairness demands that the decision maker must provide adequate opportunities to the affected parties to present their case and respond to the evidence and arguments advanced by the other party. This requirement is the outcome of the principle of '*Audi Alteram Partem*'. The other face of the coin is that this requirement would fulfill the criteria that the decision maker is independent and unbiased. In this case, the principle of '*audi alteram partem*' was ignored.

8. Although mutation of land in the revenue record does not create/ extinguish title nor has it any presumption of truth yet it is the backbone of the record of rights. Therefore, the law casts a duty on the officer sanctioning mutation to hear the affected parties before passing any effective order in that regard. But the manner in which the mutation proceedings are conducted leave a much to be desired. A large number of revenue, civil and criminal litigation could be avoided and a lot of litigation expenses of the poor agriculturists could be saved, if the mutation proceedings are ordinarily conducted by the revenue officials strictly in accordance with law. This case is one of the example in which the mutation proceedings have been sanctioned without following the due process of law. In the instant case the parties are involved in litigation for almost a decade only due to the lapse of the concerned Tehsildar for not hearing the appellants at the relevant time. Not only this, when the learned Additional Divisional Commissioner, Jaipur returned a categorical finding at page 4 of his judgment that the appellants have not been given opportunity of

hearing by the Tehsildar, it was his duty to immediately remit the matters to his subordinate to pass the judgment in accordance with law. However, the learned first appellate court even after noticing the procedural lacunae, endorsed the findings of the Tehsildar on merits in an illegal manner. The said procedural lacuna left by the Tehsildar was not of the formal nature. On the contrary, it went to the root of the matter, thereby, vitiating the entire mutation proceedings. An order passed in the back of the appellants, who were the real daughters of the deceased khatedar and party to the mutation application, is no order in the eyes of law. In such circumstances, I am left with no other option except to allow these appeals.

9. Resultantly, the appeals in hand are allowed. The impugned judgment dated 2.4.1998 and the order dated 16.05.1998 of the learned Tehsildar and the impugned judgment dated 22.5.2000 of the learned Additional Divisional Commissioner, Jaipur are set aside. The matter is remitted back to the Tehsildar for passing the order afresh after giving opportunity of hearing to all the concerned parties in accordance with law. The said proceedings shall be concluded by the Tehsildar on or before 31st May 2019. It is made clear that nothing stated hereinabove shall be deemed to be an expression on the merits of the controversy.

Pronounced.

(Rajinder Kumar)
Member