

**W.R.**

**IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER**

Revision/LR/12584/2004/Jodhpur

- 1- Umeda Ram(deceased) through his LR's
  - 1/1. Smt. Jhamku widow of late Umeda Ram by caste Peetal r/o Jhanwar Tehsil Luni Distt. Jodhpur.
  - 1/2. Rupa s/o late Umeda Ram by caste Peetal r/o Jhanwar Tehsil Luni Distt. Jodhpur.
- 2- Madha Ram s/o Prema Ram by caste Peetal r/o Jhanwar Tehsil Luni Distt. Jodhpur.

**....Revisionists.**

*Versus*

- 1- Birma Ram s/o Lala Ram by caste Peetal r/o Jhanwar Tehsil Luni Distt. Jodhpur.
- 2- Sanwal Ram s/o Lala Ram by caste Peetal r/o Jhanwar Tehsil Luni Distt. Jodhpur.
- 3- Shiva Ram s/o Lala Ram by caste Peetal r/o Jhanwar Tehsil Luni Distt. Jodhpur.
- 4- State of Government through Tehsildar, Luni.

**....Respondents.**

**S.B.**

**Shri Rajinder Kumar, Member**

**Present :**

Shri N.K Goyal, counsel for revisionists.

Shri Ajay Pal Didhariya, counsel for respondents no. 1 to 3.

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**Date: 02.01.2019**

**J U D G M E N T**

- 1- This revision petition u/s 84 of Rajasthan Land Revenue Act, 1956 is directed against the order dated 26-07-2004 of the Additional

Collector, Jodhpur passed in Review Application No. 23/97 filed by the revisionists.

2- Facts of the case in nutshell are that the contesting parties to this petition are cousin brothers. They are the descendants of one Shri Kisna (since deceased). He had two sons namely, Lala Ram and Prema Ram. The revisionists are the sons of late Shri Prema Ram whereas respondent no. 1 to 3 are the sons of late Shri Lala Ram. The deceased Shri Kisna was holding 123-05 bighas land comprised in khasra no.336, 367, 369 and 368 situated in village Jamdesar. Each of his sons became entitled to 1/2 -1/2 share in the said lands after the death of Shri Kisna. The deceased Prema Ram purchased 106.06 bighas land comprised in khasra no. 526 during his life time, which was his self acquired property. On 16.9.1975, both Prema Ram and Lala Ram made partition of disputed lands. As per agreement, the land of village Jamdesaz came to the share of Prema Ram and the land of village Jhanwar came to the share of late Lala Ram. On the basis of this agreement, mutation no. 182 dated 13-12-1975 was opened in favour of Prema Ram. After an inordinate delay of 19 years, the late Shri Lala Ram preferred an appeal in the court of Distt. Collector, Jodhpur which was allowed vide order dated 25-03-1997 and the matter was remanded to the trial court for deciding the same afresh. The present petitioners filed a review petition in the said court, which came to be dismissed by the Additional Collector, Jodhpur on 26-07-04. Hence, this revision petition.

3- I have heard learned counsels.

4- On behalf the revisionists, it was argued that the review petition was filed in the court of the Collector, Jodhpur and he alone was competent to hear the same. The Additional Collector, Jodhpur was not competent to decide the review petition even after its transfer by the Collector, Jodhpur. At the time of argument, the counsel for the revisionists was not present before the Collector, Jodhpur and his presence was wrongly marked by the appellate

court. In this regard, an affidavit was filed by the counsel for the revisionists himself in the court below. Therefore, the judgment impugned is not lawful. Even otherwise, a delay of 19 years was mechanically condoned without due application of mind and the matter was illegally remanded to the trial court. Therefore, a prayer was made to allow this revision petition and set aside the impugned judgments dated 25-03-97 and 26-07-04. In support of his submissions the learned counsel has relied upon a judgment passed by this Bench on 13-11-18 in the matter of State Vs Suraj Narain (Revision/Colo/4980/07/ Bikaner).

5- Learned counsel for the contesting respondents vehemently opposed the above submission. He argued that the impugned judgments are well considered judgments and the same were passed after due application of judicial mind by the officers concerned. No illegality has been committed therein. The file was transferred by the District Collector Jodhpur to the Additional District Collector due to change in the jurisdiction of area and hence, the Additional District Collector was competent to decide the review petition on merits, as both the courts had concurrent jurisdiction in this regard.

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

7- This revision petition has been preferred against the concurrent findings of the two courts below. The impugned judgment dated 26-07-04 of the Additional District Collector (Land Records) Jodhpur has been assailed mainly on three grounds. The first ground is that the Additional District Collector (Land Records) Jodhpur has no jurisdiction to decide the application for review of judgment passed by the District Collector, Jodhpur. The review application was transferred by the District Collector, Jodhpur to the Addl. Distt. Collector on 02-04-02 and the said application came to be decided by the transferee court on 26-07-04. Therefore, the revisionists initially took a chance of winning the case from the said

court and having failed, they have now taken the plea of want of jurisdiction. Such a plea ought to have been taken by the revisionists at the earliest possible opportunity. Therefore at this stage, such a plea is not tenable.

8- The second ground of attack of the impugned judgment is that at the time of hearing of original appeal, the counsel for the revisionists was not present in the court and his presence was wrongly marked in the judgment. This aspect has been elaborately discussed by the learned Additional District Collector in the impugned judgment. The learned lower court while dealing with the review application has specifically observed that the learned counsel for the revisionists was present in the court and his arguments were also considered by the court in judgment dated 25-03-97. It is pertinent that sanctity is attached to the judgments and orders passed by the courts and the facts recorded therein cannot be permitted to be rebutted by mere affidavit of any party or his counsel. Therefore, there is no force in the aforesaid argument also.

9- Now coming to the last argument of condoning the delay of nineteen years in submitting the appeal. In this regard, the learned first appellate court has given cogent reasons for condoning the said delay. Therefore, this Board does not feel it justified to interfere in the discretionary order of the court below.

10- In N.Balkrishnan Vs M.Krishna Murthey 1998(7) SCC123, the Hon'ble Supreme Court held that:-

*"One the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse."*

In the present case, it could not be shown that the discretion exercised by the appellate court was either arbitrary or perverse or on untenable grounds.

11- On behalf of the revisionists, reliance has been placed upon a judgment passed by me in Suraj Narain's case decided on 13-11-2018. In that case the delay was condoned by the appellate court in an arbitrary manner, as initially the said court took the view that the appeal of the appellant was liable to be dismissed on the ground of delay and thereafter, the said delay was condoned by imposing cost of Rs. 3000/-. The facts of that case are totally different from the facts of the present case. In the instant case, the delay has been validly condoned by the court below. Therefore, there is no illegality in the impugned judgments.

12- In view of the above, the revision petition is dismissed. The trial court is directed to expedite the hearing of the case.

Pronounced.

**(Rajinder Kumar)**  
**Member**