

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal/LR/1229/2005/Jodhpur

1. Hari Ram son of Gopa Ram
2. Gopa Ram son of Rugnath Ram

Both by caste Vishnoi residents of Uttari Dhani (Lohavat) Tehsil Falodi Distt. Jodhpur.

...Appellants.

Versus

1. Palu daughter of Koshala Ram
2. Lachi daughter of Koshala Ram
3. Hadmani daughter of Koshala Ram
4. Keshu daughter of Koshala Ram

All by caste Vishnoi residents of Uttari Dhani (Lohavat) Tehsil Phalaudi Distt. Jodhpur.

...Respondents.

S.B.

Shri Ravi Dangi, Member

Present:-

Shri Dungar Singh Rathore, counsel for the appellants.

Date: 03.01.2023

J U D G M E N T

This appeal has been filed under section 76 of the Rajasthan Land Revenue Act, 1956 against the judgment of the Additional Divisional Commissioner, Jodhpur dated 21.12.2004 in appeal No. 41/04.

2. Heard the counsel for the appellants as none appeared on behalf of the respondents despite registered AD notices being sent to them.

3. The counsel for the appellants reiterated the facts mentioned in the memo of appeal and argued vehemently that both the judgments of the learned Additional Divisional Commissioner dated 21.12.2004 and of learned Tehsildar dated 23.03.2004 were against the facts and law and thus needs to be set aside and the mutation No. 1512 needs to be restored. The will was executed way back in 1986 and on basis of which the mutation was attested. The will need not be registered as it is the last wish of the testator. The rejection of the will can be done by the civil court. The will was duly attested. The respondent No. 1 to 4 had filed compromise in favour of the appellants before the learned Tehsildar, which depicts that the will was rightly executed in favour of the appellant. The land was self-acquired land of late Kaushala Ram and he had all the right to make a will.

The appellant Hari Ram resided with and looked after Kaushala Ram and his wife and was in possession of the disputed land.

4. Considered the arguments of the learned counsel for the appellants and perused the material available on record.

5. To begin with, in gram Lohavat Vishawas, the khasra Nos. 1336, 1337, 1338, 1339, 1340, 1344, 1347, 1348, 1349, 1350, 1351, 1352, 1353, 1533, 1707, 1335, 1342, 1341, 1343, 1345 and 1346 area 507 bigha and 19 biswa, Kaushala Ram son of Ganesh Ram along with others was the recorded khatedar.

On Kaushala Ram's demise, mutation No. 1512 dated 04.12.1989 was attested on the basis of the will. However, on appeal by the present respondent No.1 to 4 before the learned Additional Collector, Jodhpur, the appeal was accepted and whereby the mutation No. 1512 was set aside and the matter was remanded to the Tehsildar Phalaudi.

On remand, the learned Tehsildar, Phalaudi, vide his judgment dated 23.03.2004 ordered that mutation be attested in favour of respondent No. 1 to 4. Aggrieved by it, the appellants preferred an appeal before the learned Additional Divisional Commissioner. However, the same was rejected vide his judgment dated 21.12.2004.

The operative part of the judgment of the learned Additional Divisional Commissioner reads as follows:-

“हमनें दोनों पक्षों की बहस पर मनन किया एवं पत्रावली का अवलोकन किया। पत्रावली पर वसीयतनामों की फोटोप्रति उपलब्ध है, उसके अवलोकन से विधिवत कोई वसीयतनामा निष्पादित होना नहीं माना जा सकता है। उक्त वसीयतनामा साबित भी नहीं करवाया गया है। जहां तक पक्षकारान के बीच राजीनामा होने का प्रश्न है। तहसीलदार की पत्रावली पर राजीनामों का प्रार्थना पत्र पेश किया हुआ है, जो किसी अधिकारी द्वारा तस्दीक किया हुआ नहीं है। मृतक की पुत्रियां उसकी प्रथम श्रेणी की उत्तराधिकारी हैं। इस तरह के राजीनामों के जरिये यदि भूमि अपीलकर्ताओं के नाम दर्ज कर दी जाती है तो यह बिना किसी वैध हस्तांतरण पत्र के अप्रत्यक्ष रूप से खातेदारी अधिकारों का हस्तांतरण होगा जिसे न्यायोचित नहीं माना जा सकता है। अपीलार्थीगण मृतक कोशलाराम के प्रथम श्रेणी के उत्तराधिकारी भी नहीं हैं। इस कारण वर्तमान मामले में इस तरह के राजीनामों के प्रार्थना पत्र एवं पक्षकारान की सहमति के आधार पर अधिकारों का हस्तांतरण करने की अनुमति नहीं दी जा सकती

है। तहसीलदार ने मृतक के प्राकृतिक उत्तराधिकारियों के नाम नामान्तकरण का जो आदेश दिया है उसमें किसी प्रकार के हस्तक्षेप की हम आवश्यकता नहीं समझते हैं। ”

The will on the basis of which the mutation No. 1512 was attested was set aside by the order of Additional Distt. Collector, Jodhpur vide his judgment dated 08.04.1993 and the matter was remanded to Tehsildar, thereafter, both the learned courts below gave judgments against the appellants.

The will on the basis of which the appellant No. 1 claim his right is a unregistered one, which was not duly proved. Four witnesses have deposed on behalf of respondent No.1 to 4 and denied the execution of the will. Moreover, no evidence was produced on behalf of the appellants and even the original will was not filed by the appellants. The compromise is not duly attested. The class I heir of the deceased Kaushala Ram are his four daughters viz. respondent No. 1 to 4. The challan filed by S.H.O Police Station, Lohawat reveals the possession on the disputed land of respondent No. 1 to 4. Moreover, the appellant Hari Ram is not the class I heir of the deceased Kaushala Ram and without any instrument in favour of the appellants, the right in immovable property cannot be transferred. Looking to the concurrent judgments and the reasoning given therein we find there is no illegality in the impugned judgment and thus the appeal deserve and is hereby rejected.

All application(s), if any, pending, also disposed of accordingly.

Pronounced in open court.

(Ravi Dangi)
Member