

अहमदाबाद
जुम की
जारी हुई

अज अदालत सहायक कलक्टर एवं उपखण्ड अधिकारी शिव बमुकाम शिव

(पीठासीन अधिकारी श्री प्रताप सिंह, आई.ए.एस)

वादीगण	बनाम	प्रतिवादीगण
1. ऐलाखां उर्फ एलियास खां पुत्र भाई खां 2. मोहम्मद पुत्र भाईखां जाति मुसलमान निवासी पोषमा तहसील गडरारोड़ जिला बाड़मेर		1. सरपंच ग्राम पंचायत झणकली 2. सरपंच ग्राम पंचायत फोगेरा तहसील गडरारोड़ 3. मुरीद अली पुत्र उस्मान जाति मुसलमान निवासी गोलियार तहसील चौहटन जिला बाड़मेर 4. रमदान पुत्र नूरा 5. जादम पुत्र नूरा 6. नूरा पुत्र मिश्री जाति मुसलमान निवासी पोषमा तहसील गडरारोड़ जिला बाड़मेर 7. शाखा प्रबन्धक बीसीसीबी शाखा शिव जिला बाड़मेर

अधिवक्तागण -अपीलान्ट वकील - श्री चेतनराम सारण उपस्थित

उत्तरदातागण वकील - बृजमोहन कुमावत एडवोकेट उपस्थित

राजस्व अपील अन्तर्गत धारा 75 राजस्थान भू राजस्व अधिनियम 1956 विरुद्ध नामान्तकरण

संख्या 13 वर्ष 1975 जो उत्तरदाता संख्या 1 ग्राम पंचायत झणकली द्वारा पारित किया गया।

वाद संख्या 08/2019

निर्णय

दिनांक 12.12.2019



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- 1) The present appeal is filed under S.75 of the Rajasthan Land Revenue Act 1956. The impugned order is a mutation (mutation no. 13) attested by the then gram panchayat Jhanakli, in the year 1971.

The appellants contend that the land in question (Khasra no. 9 and Khasra no. 17) belonged to their father Bhaikhan. Bhaikhan died in the year 1971. The impugned mutation was attested to record the names of Bhaikhan's successors in the revenue records and while doing this, respondent no. 6 got his name also entered in the revenue records. Hence, the present appeal.

- 2) The appellants have also filed an application u/s 5 of the Limitation Act 1963 contending that they came to know about the mutation and the entries in revenue records only on 28.05.2019 and they have filed the appeal within the limitation period after they got to know about the mutation in question.

Reliance has been placed by the appellants on the judgments mentioned below.

- a) Shiobai & Ors vs Simbhu & Ors – Board of Revenue, Rajasthan

“It was held that if mutation was attested without hearing all the heirs of deceased Mannu, such order is void ab initio and it can be set aside at any time and question of limitation does not arise.”

- b) Saroj Devi vs State of Raj. – Revision no. 31/Pali of 93

“Audi Alteram Partem – Order passed without hearing the affected party is illegal and can be set aside at any time.”

- c) Girja Bai vs Smt. Nathi Bai & Ors – Revision no. 36 & 38/Kota of 90

“Order ab initio illegal, void and without jurisdiction passed without notice to affected party cannot be sustained.”

- d) Kanni Ram vs Smt. Daku Bai & Ors – 2013 (1) RRT 473

“Appeal filed after 34 years of attesting mutation. No notice was given to the non-petitioner before attesting mutation. The delay in filing appeal was condoned & appeal was treated in limitation.”

- 3) Respondents no. 3 to 6 filed a written reply to the application u/s 5 of the Limitation Act and prayed for deciding the question of limitation first. Respondents state that the appellants themselves had sold Khasra no. 9 on 12.12.1978 and part of Khasra no. 17 on 28.11.1979 through a registered sale deed. Even those registered sale deeds are more than 40 years old. The mutation appeal has been filed after a delay of 48 years and the appellants have not provided a sufficient cause for not preferring the appeal within the limitation period.

The respondents have placed reliance on the judgments mentioned below.

- a) State of Rajasthan vs Bhim Singh & Ors – Board of Revenue



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b) Murlidhar vs Ghewar Chand & Ors – Board of Revenue

“Courts below not found sufficient cause for condonation of delay. Appeal against mutation filed after 30 years. Board of Revenue condoned the delay.”

c) State of Rajasthan & Ors vs Mishrilal Sharma – D.B. Civil Special Appeal no. 598 of 1996

“Delay not explained satisfactorily. Appeal is time barred & also have no merits and & liable to be dismissed.”

d) Smt Madhuribai vs Grasim Industries Ltd. – Madhya Pradesh High Court

“First appellate court did not commit any error in dismissing the appeal as time barred. I hold that the first appellate court held proper inquiry and gave proper opportunity to the appellant to show cause explaining the delay.”

e) State of Rajasthan vs Sh. Mangal Singh & Ors – D.B. Special Appeal (Writ) No. 448 of 1997

f) State of Rajasthan vs Girishi Kumar – Board of Revenue Appeal no. 10/Dholpur of 2001.

g) Pemadevi vs Jaluram & Ors – 2019 (1) RRT 648

“Mutation proceedings cannot be used to change entries made in revenue records 28 years ago.”

Heard both the counsels.

4) Section 5 of the Limitation act 1963 reads as follows

“Extension of prescribed period in certain cases—Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period. Explanation.— The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section”.

It is clear from the title of the Section 5 itself that extension of prescribed period can only be done in ‘certain’ cases. Those certain cases are the ones mentioned in the body of the Section 5 – ‘if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period’.



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- 5) The respondents have produced certified copy of a registered sale deed of year 1978. An extract from the sale deed is reproduced below

□हम एलियास पीसरान भाईखान....खसरा न. 17 जिसमे हमारा 2/3 हिस्सा की भूमि है उसका बेचान...□

The appellants have contested that the sale deed was registered fraudulently by Respondent no. 6.

- 6) Another point raised by the appellants by citing precedents that the mutation order passed is void ab initio.

In this regard, it is pertinent to quote the observation of Hon. Supreme Court in M/S Deepak Agr Foods vs State Of Rajasthan And Ors – Civil appeal no. 4327-4328 of 2008. Hon. Court observed

“All irregular or erroneous or even illegal orders cannot be held to be null and void as there is a fine distinction between the orders which are null and void and orders which are irregular, wrong or illegal. Where an authority making order lacks inherent jurisdiction, such order would be without jurisdiction, null, non est and void ab initio as defect of jurisdiction of an authority goes to the root of the matter and strikes at its very authority to pass any order and such a defect cannot be cured even by consent of the parties. (See: Kiran Singh & Ors. Vs. Chaman Paswan & Ors.1). However, exercise of jurisdiction in a wrongful manner cannot result in a nullity - it is an illegality, AIR 1954 SC 340, capable of being cured in a duly constituted legal proceedings”

The Hon. Bombay High Court in Writ Petition no. 3249 of 1981(Madhavdas Damodardas Gujar And ... vs Mahadu Keru Raut) accepted the contention that

“Quite apart from that, it is not for a litigant to determine as to whether an order in question is void or otherwise, for that would lead to disastrous consequences. An order passed by a competent forum is a valid and binding order unless set aside or declared to be void by an authority legally empowered to do so. That exercise must be undertaken within the time-frame prescribed by the Limitation Act - if that time period is overstepped, the order assumes finality.....

If a contention is raised that the order is void, it will have to be pointed out to the competent forum within the period prescribed by the Limitation Act. In the absence of such a procedure being followed, the order assumes finality and the provisions of section 114 of the Indian Evidence Act, 1872 would clearly apply, namely, that it is presumed to be valid and binding. Parties act on these orders, rights and liabilities are created and extinguished as time passes on and it is for this reason that the order becomes unassailable.”



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- 7) The gram panchayat had jurisdiction to attest a mutation, if at all, as per the contention of the appellant, the gram panchayat did not follow the required procedure, by that fact itself the order does not become null and void in light of the observations made by the Hon. Supreme Court and the judgment of Hon. Bombay High Court. It would be an illegality, if it has occurred and the remedy would lie through the institution of a legal proceeding.

That being settled, the issue of limitation has to be decided first by the present court.

- 8) The appellants have challenged the mutation after a delay of 48 years. The reason given in the application is that they did not have knowledge of the impugned mutation.

The sale deeds presented by the respondents clearly show that a sale deed was registered by the appellants in year 1978. Section 32 of the Registration Act, 1908 reads as follows

“Persons to present documents for registration.—Except in the cases mentioned in [sections 31, 88 and 89], every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration-office,—

(a) By some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or

(b) By the representative or assign of such a person, or

(c) By the agent of such a person, representative or assign, duly authorized by power-of attorney executed and authenticated in manner hereinafter mentioned”

The court at present is not going into whether the procedure followed was faulty or not. A document is presented by the respondent and it has to be presumed that provisions of S. 32 of Registration Act would have been followed. Following the procedure would require either the person himself executing the document (which in this case is the appellant himself) or his recognized agent duly authorized by him. If the appellants are contesting that the document was fraudulently registered, the remedy to get it cancelled lies with a court of competent jurisdiction. A registered document, in force at the time of presentation to the court will be treated as such, i.e. in force.

- 9) It is also a fact that appellants are residents of the same village in which the land is situated. It is hard to reconcile the fact that they didn't know about a mutation which was attested by the gram panchayat of which they were residents and then 48 years passed. Also, the existence of a registered sale



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deed makes it hard to reconcile the delay of 48 years in preferring the appeal.

The general rule of limitation is based on the Latin maxim:

vigilantibus, et non dormientibus, jura subveniunt

(the vigilant, and not the sleepy, are assisted by the laws).

10) Certain principles were culled out by the Hon. Supreme court in Esha Bhattacharjee vs Mg.Commit.Of Raghunathpur Nafar (CIVIL APPEAL NOS.8183-8184 OF 2013). The court held in Para 15 that

“vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.”

Basd on the arguments cited on the facts of the case and the observations of the Hon. Supreme Court, the appeal filed after 48 years is hopelessly time barred. The arguments cited by the appellants are not considered sufficient cause as per S.5 of the limitation act and the appeal stands dismissed.



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