



RAJASTHAN HIGH COURT
**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 205/2023

1. Narayan S/o Late Shri Madhulal, Aged About 50 Years, Tara Khedi, Tehsil Kapasn, District, Chittorgarh. Present Residing At Ochadi, Tehsil And District Chittorgarh.
2. Smt. Sosar D/o Late Shri Madhulal W/o Bhagwanlal, Aged About 62 Years, Ochadi, Tehsil And District Chittorgarh.

----Petitioners

Versus

1. Heera Lal S/o Nathu Lohar, Maharana Pratap Colony, Nimbaheda Road, Chittorgarh.
2. Indra Kumar S/o Late Shri Madhulal, Maharana Pratap Colony, Nimbaheda Road, Chittorgarh.
3. The Tehsildar, Chittorgarh.

----Respondents

For Petitioner(s) : Mr. Rajat Rajpurohit
Mr. Prashant Tatia
For Respondent(s) : Mr. Sanjay Mathur

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI

Judgment

Reportable

Reserved on 26/07/2023

Pronounced on 22/08/2023

1. This writ petition under Articles 226 & 227 of the Constitution of India has been preferred claiming the following reliefs:

"It is therefore, most respectfully prayed that this instant writ petition, may kindly be allowed and the impugned judgment and decree dated 17.08.2022 passed by the learned Board of Revenue, at Annexure 6, and the judgment and decree dated 19.10.2011 passed by the learned Sub-Divisional Officer, at Annexure -4, may kindly



*be quashed and set-aside, and the suit filed by the plaintiffs/
petitioners may kindly be allowed, in the interest of justice.*

*Any other order or direction, which this Hon'ble Court
deems it just, fit and proper to pass in the present set of
facts and circumstances, may kindly be passed in the favour
of petitioners."*



2. As per the pleaded facts, one Shri Madhulal (father of the petitioners-plaintiffs) had ownership, khatedari and possession of six khasras bearing nos.947, 948, 1024, 1025/1, 1028/1 and 1030 measuring 2.72 hectares in total, and after the death of their father, the petitioners-plaintiffs approached the concerned revenue authority for entering their names in the revenue records, on the basis of intestate succession; however, the officer concerned refused to entertain the application pertaining to such request.

2.1 Subsequently, the petitioners-plaintiffs filed a suit for declaration of khatedari under Sections 88 & 188 of the Rajasthan Tenancy Act, 1955 (*hereinafter referred to as 'Act of 1955'*) and permanent injunction against the respondents-defendants before the learned Sub Divisional Officer (SDO), Chittorgarh; the same was opposed by respondent no.2 (alleged step-brother of petitioners-plaintiffs) and his mother (Smt. Magni) claiming themselves to be the sole legal heirs of Late Shri Madhulal; no Natha marriage ever took place between the mother of petitioners-plaintiffs (Smt. Dhapu) and Shri Madhulal, and moreover, Khasra nos. 1024, 1025, 1028/1 and 1030 were sold by Late Shri Madhulal during his lifetime, and Khasra nos. 947 and 948 were purchased by the respondent no.1.



2.2 Thereafter, the learned SDO vide the impugned judgment and decree dated 19.10.2011 dismissed the suit, and while deciding issue no.5 on the application of respondent no.1, held that the power to decide the matter pertaining to legal heirs vests with the civil courts and not with the revenue courts.

2.2.1. The said issue no.5 reads as under:

"आया वादीगण श्रीमती धापुबाई सोसरबाई नारायण माधुजी जाट के वारिसान है, जिनका तय किया जाना राजस्व न्यायालय का क्षेत्राधिकार का नहीं होने से वाद सिविल न्यायालय के विचारणीय होने से निरस्त योग्य है— जिम्मे प्रतिवादी"

2.3. Aggrieved by the impugned judgment and decree of the learned SDO, an appeal was preferred by the petitioners-plaintiffs before the learned Revenue Appellate Authority (RAA) and vide the judgment and decree dated 05.07.2012, the learned RAA set aside the judgment & decree passed by the learned SDO, while holding the petitioners-plaintiffs as Khatedar of khasra nos. 947 and 948; it was further held that the aforementioned issue no.5 was a mixed question of facts and law and the averments of respondent no.2 and his mother based on an unregistered Will were not maintainable.

2.4 In consequence, respondent no.1 preferred a second appeal under Section 224 of the Rajasthan Tenancy Act before the learned Board of Revenue (BoR) for Rajasthan, Ajmer wherein vide the impugned judgment and decree dated 17.08.2022, the judgment and decree passed by the RAA was set aside and the judgment passed by learned S.D.O. was upheld. Hence, the present petition has been preferred claiming the afore-quoted reliefs.





3. Learned counsel for the petitioners-plaintiffs submitted that as per community customs, Natha marriage took place between Smt. Dhapu and Shri Madhulal and the petitioners-plaintiffs were born out of the said wedlock; however later on, relationship was established between their father and Smt. Magni and respondent no. 2 was born; thus both the petitioners-plaintiffs and respondent no. 2 are legal heirs of the Late Shri Madhulal, and thus, the name of petitioners-plaintiffs ought to be recorded in the revenue records for the aforementioned Khasra nos. on the basis of intestate succession.

3.1. It was further submitted that upon an application of Order 14 Rule 5 of CPC filed by respondent no.1, the issue no.5 was framed as an additional issue, while the same was not required as the issue regarding jurisdiction of revenue courts in dealing with the matter of legal heirs was already framed as issue no.2 and even the learned RAA has observed in its judgment and decree that the question of deciding legal heirs is not limited to the question of law, but is a mixed question of both law and fact.

3.2. It was also submitted that the respondent no.2 and his mother had not raised any objection with regard to the fact of the petitioners being the legal heirs; however, the respondent no.1 filed the above application even when he clearly had no locus to move the same.

3.3 Learned counsel further submitted that the respondent no.2 and his mother had placed an unregistered Will before the learned SDO which was executed by Late Shri Madhulal on 29.03.1999; however it was also an admitted fact that Shri Madhulal had



expired on 05.12.1998, and thus, their claim of being successors in relation to the disputed property fell short. In furtherance, reliance was placed on the explanation of Section 207 (2) of the Act of 1955 to contend that the above mentioned issue could be determined by the revenue courts, and that, there was no need to approach the Civil Courts for the same.

3.4. Learned counsel to fortify the submissions placed reliance on the following judgments:

(a) *Ratanlal & Ors. v. Gram Panchayat & Ors.*, (S.B. Civil Revision Petition No. 111 of 1972, decided on 22.04.1977) passed by Hon'ble High Court of Rajasthan.

(b) *Smt. Jhinka v. Addl. Commissioner (Admin I) Devi Patan Division Gonda and Ors.*, (Misc. Single No. 36462 of 2019, decided on 02.01.2020), passed by Hon'ble High Court of Allahabad.

3.5. In support of the above submissions, the attention of this Court was also drawn towards the order passed in *Kishan Singh v. Deep Chand*, (Appeal No. 124/Bharatpur of 1973, decided on 27.09.1977), by Board of Revenue, Rajasthan, Ajmer.

4. On the other hand, learned counsel for the respondents, while vehemently opposing the submissions made on behalf of the petitioners, submitted that the petitioners-plaintiffs do not have any right over the disputed property as no Natha marriage ever took place between the mother of petitioners-plaintiffs and Late Shri Madhulal and that the learned SDO in its order has observed that Smt. Dhapu worked as a worker on the land of Late Shri Madhulal as was mentioned in the document (sale deed of agricultural land).



4.1. It was further submitted that as per Section 207 of the Act of 1955, only those applications are heard and determined by a revenue court which are of the nature as specified in the Third Schedule. In furtherance, reliance was placed upon Section 242 of the Act of 1955.

4.2. Learned counsel placed reliance on the judgment rendered by the Hon'ble Apex Court in the case of *Jitendra Singh v. The State of Madhya Pradesh & Ors.*, (SLP (c) No. 13146 of 2021, decided on 06.09.2021).

5. Heard the learned counsel for the parties as well as perused the record of the case alongwith the judgments cited at the Bar.

6. This Court observes that the petitioners-plaintiffs preferred an application before the concerned revenue authority to record their names in the revenue records for the above mentioned Khasras on the basis of the intestate succession; however, the same was refused; thus, a suit was instituted for declaration of the Khatedari rights and for injunction before the learned SDO, wherein the petitioners-plaintiffs claimed themselves to be the legal heirs of deceased Shri Madhulal; however, the learned SDO observed that the question of legal heirs was to be decided by the civil courts, and thus, the same did not come under the jurisdiction of the revenue courts; being aggrieved thereby, the petitioners-plaintiffs preferred an appeal before the learned RAA and the same was allowed, while observing that the respondents could not substantiate their claims of being the legal heirs and the question of legal heirs was in fact a mixed question of fact and law; respondents thereafter, preferred an appeal before the



learned BoR and the same was allowed vide the impugned judgment, and the judgment and decree of the learned RAA was thus set aside, while upholding the order of the learned SDO.

7. This Court further observes that though the revenue courts can adjudicate the matter of khatedari rights and decide the same; however, in the present case, before the issue of Khatedari rights can be settled, the issue of legal heirs needs to be dealt with, as it is amply clear, after perusing the decisions of the revenue authorities below, that the very question of who, between the petitioner-plaintiffs and the respondent no.2, is the legal heir(s) of Late Shri Madhulal, or whether all of them are the legal heirs, is yet to be decided.

8. This Court further observes that Section 207 of the Act of 1955 provides for suits and applications cognizable by revenue court and only those which are specified in the third schedule of the Act of 1955 are to be dealt with by the revenue court; though a suit for declaration of a tenant's right comes under the Third Schedule, however, a suit for determining the legal heirs does not.

Section 207 of the Act of 1955 is reproduced as hereunder:

"207. Suits and applications cognizable by revenue court only—

(1) All suits and application of the nature specified in the Third Schedule shall be heard and determined by a revenue court.

(2) No court other than a revenue court shall take cognizance of any such suit or application or of any suit or application based on a cause of action in respect of which any relief could be obtained by means of any such suitor application.



Explanation— *If the cause of action is one in respect of which relief might be granted by the revenue court, it is immaterial that the relief asked for from the civil court is greater than, or additional to, or is not identical with, that which the revenue court could have granted.*”

9. This Court further observes that Section 208 of the Act of 1955 provides for the application of Code of Civil Procedure, 1908. The relevant portion is reproduced hereunder:

"208. Application of Civil Procedure Code— *The provisions of the Code of Civil Procedure, 1908 (Central Act V of 1908), except:*

(b) provisions applicable only to special suits or proceedings outside the scope of this Act, and

.”

Thus from a bare perusal of the above Section, it is clear that the Code of Civil Procedure will apply in the proceedings wherein the Act of 1955 is not applicable, and which suits and applications are to be adjudicated by the revenue court has been specifically provided in the Third Schedule, as per the Section 207 of the Act of 1955.

10. This Court is conscious of Section 9 of Code of Civil Procedure, 1908 which provides that the Courts have jurisdiction to try all suits of civil nature. The said Section 9 is also reproduced as hereunder:

"9. Courts to try all civil suits unless barred-

The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.



[Explanation I].--A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

[Explanation II].--For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.]”

Thus from a bare perusal of the above Section it is clear that all suits of civil nature the cognizance of which is not expressly or impliedly barred shall be adjudicated by a civil court of competent jurisdiction.

11. This Court is also conscious of the judgment rendered by the Hon'ble Apex Court in the case of **Jitendra Singh (supra)**; relevant portion whereof is reproduced as hereunder:

“6.As per the settled proposition of law, if there is any dispute with respect to the title and more particularly when the mutation entry is sought to be made on the basis of the will, the party who is claiming title/right on the basis of the will has to approach the appropriate civil court/court and get his rights crystalised and only thereafter on the basis of the decision before the civil court necessary mutation entry can be made.”

12. This Court is further conscious of the judgment rendered by the Hon'ble Apex Court in **Sawarni v. Inder Kaur, (1996) 6 SCC 223**; relevant portion whereof is reproduced as hereunder:

“7.Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. The learned Additional District Judge was wholly in error in coming to a conclusion that mutation in favour of Inder Kaur conveys title in her favour. This erroneous conclusion has vitiated the entire judgment.”



13. This Court thus observes that it is a settled proposition of law that mutation entries in the revenue record are only for a fiscal purpose and does not create any title/ownership right in favour of the person in whose name the mutation entry has been made; further, in the present matter, the question of legal heirs is yet to be decided, and thus, in accordance with the judgment rendered in the case of ***Jitendra Singh (supra)***, this Court is of the opinion that for proper adjudication of the present matter, it is absolutely necessary that the same be preferred before a civil court of competent jurisdiction to decide the question of legal heirs of deceased Shri Madhulal before approaching the revenue authorities for mutation in the revenue records.

14. The judgments cited at the Bar on behalf of the petitioners also do not render any assistance to their case.

15. Thus, in light of the aforesaid observations and looking into the factual matrix of the present case, this Court does not find it a fit case so as to grant any relief to the petitioners in the present petition.

16. Consequently, the present petition is dismissed. All pending applications stand disposed of.

(DR. PUSHPENDRA SINGH BHATI), J.

SKant/-