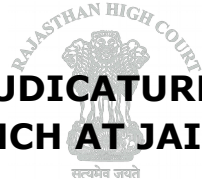




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 9798/2016

1. Amar Chand S/o Moolchand,
2. Rampal S/o Nanga (Since Deceased) through his legal representatives:-
 - 2/1. Omprakash S/o Rampal,
 - 2/2. Jeetram S/o Rampal
 - 2/3. Hiralal S/o Rampal
 - 2/4. Sukhpal S/o Rampal
 - 2/5. Ramesh S/o Rampal
 - 2/6. Kamla W/o RampalAll are resident of Village Ahmadganj, Tehsil Peeplu, District Tonk, Rajasthan

----Petitioners

Versus

1. Jitendra S/o veerumal, R/o District Tonk, Rajasthan
2. Ashok Kumar S/o Veerumal R/o District Tonk, Rajasthan
3. Surendra S/o Veerumal
4. Rekha D/o Veerumal, (Name deleted on 21.10.2021 by Hon'ble Court)
Minor through brother Jitendra S/o veerumal, R/o District Tonk, Rajasthan
5. Kaushliya D/o Veerumal, Minor through brother Jitendra S/o veerumal, R/o District Tonk, Rajasthan

----Respondents/Applicants

6. Madan Lal S/o Moolchand R/o village Ahmadganj Tehsil Peepli
7. Hazari S/o Rugha
8. Ghansi S/o Nanda
9. Devkaran S/o Nanda
10. Prabhu S/o Ganesh
11. Ramesh S/o Ganesh (Since deceased)
12. Ghanshyam S/o Ganesh
13. Shyoji S/o Bhairu
14. Jagdish S/o Bhairu
15. Babulal S/o Ramdev (since deceased)
16. Prabhu S/o Gyarsa (since deceased)
17. Rughnath S/o Ghasi
18. Ramchand S/o Laadu
19. Ramprasad S/o Ganesh
20. Prabhu S/o Harnath
21. Satya Narayan S/o Jela (since deceased)
22. Sukhlal S/o Ramkaran (since deceased)
23. Prahlad S/o Bhoora
24. Moolchand S/o Bhoora,
25. Jangli S/o Harnath
26. Ranglal S/o Bheewan
27. Genda S/o Bheewan
28. Ramjeelal S/o Jaggnath
29. Kana S/o Kalyan
30. Rughnath S/o Kalyan (since deceased)
31. Bajranga S/o Ramdev (since deceased)
32. Arjun S/o Mangilal
33. Prakash S/o Bardha (since deceased)
34. Nanda S/o Harbaksh
35. Jagdish S/o Harbaksh
36. Kishan S/o Bajranga





37. Gopal S/o Laloo

38. Moolchand S/o Bhoora

All are residen of Ahmadganj, Tehsil Peeplu, District Tonk

39. Gram Panchayat Sandeda, Tehsil Peeplu, District Tonk

----Performa Respondent/Non-applicant

For Petitioner(s) : Mr. Gajendra Singh Rathore

For Respondent(s) : Mr. Pradeep Kumar Choudhary

HON'BLE MR. JUSTICE SAMEER JAIN**Order****Reportable****Reserved On: 13/02/2023****Pronounced On: 29/03/2023**

1. Present petition is filed under Article 227 of Constitution of India against the order dated 29.06.2016, passed by learned Board of Revenue (BOR) Ajmer in Revision/6763/2011, whereby revision-petition filed by the respondents was allowed. The matter pertains to Mutation Entry No. 192 dated 20.04.2002, passed by the Gram Panchayat, Sandeda, Tehsil Peeplu, District Tonk.

2. It is submitted by learned counsel for the petitioners that the disputed land in question measuring 29 Bigas 11 Biswa belonged to ancestors of petitioner and the performa respondents, but in the records, the said land was wrongly entered in the name of one Veerumal S/o Relumal Sindhi, by the department of settlement in Samvat 2028. Thereafter, mutation No. 192 dated 20.04.2002 was wrongly opened in favour of the respondents as legal successors of Veerumal S/o Relumal without proper enquiry of the legal successors and against the provisions of Rajasthan Land Revenue Act, 1956 and also against the provisions of Section 42 of the Rajasthan Tenancy Act, 1955.



3. Learned counsel for the petitioners submitted that the appeal against the same, preferred by the petitioners, before Sub Divisional Officer (SDO), Piplu, Tonk, was allowed and the matter was remitted back to the Tehsildar, Piplu to decide the matter afresh after inquiring about legal successor of Veerumal S/o Relumal, vide order dated 28.12.2005. Against the said order, respondents preferred an appeal before the Additional Divisional Commissioner (ADC), Ajmer and after hearing both the sides, the said appeal was dismissed vide order dated 23.09.2011. Against the same, respondents preferred a revision before Board of Revenue. During pendency of revision, two applications were filed by the petitioner dated 04.03.2013 and 23.11.2015. In application dated 04.03.2013 it was averred that as the order dated 28.12.2005 was never successfully challenged, in pursuance thereto, the Tehsildar has concluded the investigation and passed fresh orders and therefore the revision has become infructuous. In application dated 23.11.2015, it was averred that some of the non-applicants therein have died and therefore the revision stands abated.

4. Learned counsel for the petitioners further submits that one application (dated 31.05.2016) was also filed by the respondent averring that the suit for declaration, filed by the petitioners, having Suit No. 60/2003 was decided against the petitioner vide order dated 17.05.2010 and the appeal against the same was also dismissed vide order dated 04.05.2016. Learned counsel for the petitioner contends that merely relying upon the application filed by the respondents, and without considering the merits of the applications filed by the petitioners, the BOR



reversed the concurrent finding, allowed the revision-petition and passed order against dead persons.

5. Learned counsel for the petitioners has relied upon the judgments of Apex Court reported in **2017 DNJ (SC) 415** titled **Gurnam Singh Vs. Gurbachan Kaur** and **2009 DNJ (SC) 244** titled as **T. Gnanavel Vs. T. S. Kanagaraj & Anr.** to submit that decree against dead person is nullity in the eye of the law.

6. *Per contra*, learned counsel for the respondents have relied upon order dated 17.05.2010 passed by the Trial Court in Suit No. 60/2003, wherein the suit for declaration filed by the petitioner was decided against the petitioner. Learned counsel for the respondents contends that once the Civil Court, being the competent authority, have adjudicated that the respondents are the valid legal successors and that once mutation no. 192-194-195 are held to be valid by the Civil Court, the orders dated 28.12.2005 and 23.09.2011 (which were challenged in the revision petition) becomes redundant. More so, when the appeal against the order dated 17.05.2010 was also dismissed vide order dated 04.05.2016. Learned counsel for the respondents further contends that as the matter was *sub judice* before the BOR, it hardly matters whether the Tehsildar has passed any order or not and in any case, mutation entry does not confer any right, title or interest in favour of any person and mutation entry in revenue record is only for fiscal purposes. In this regard, learned counsel relied upon Apex Court judgments reported in **(1997) 7 SCC 137: Balwant Singh & Anr. Vs. Daulat Singh (Dead) by Lrs. & Ors.**; **(2019) 3 SCC 191: Bhimabai Mahadeo Kambekar Vs. Arthur Import and Export Company & Ors.**; and **(2019) 13**



SCC 70: Ajit Kaur @ Surjit Kaur Vs. Darshan Singh (dead) through LRs & Ors.

Learned counsel for the respondents further submits that BOR was well aware about the death of some of the non-applicants therein, but in view of the order dated 17.05.2010, the BOR had rightly allowed the revision-petition as the *lis* in question was stale, and more so when all the contesting parties were already represented.

7. Heard the arguments advanced by respective sides, scanned the record of the writ petition, and considered the judgments cited at Bar.

8. It is trite law that there is limited scope of interference with a speaking order while exercising jurisdiction under Article 227 of Constitution of India. It is well settled principle of law that in the guise of exercising jurisdiction under Article 227 of Constitution of India, the High Court cannot convert itself into a court of appeal. It is equally well settled that the supervisory jurisdiction under Article 227 of Constitution of India extends to keeping the subordinate courts/tribunals within the limits of their authority and seeing that they obey the law. It has been held that though the powers under Article 227 are wide, they must be exercised sparingly and only to keep subordinate courts and tribunals within bounds of their authority and not to correct mere errors. Reliance in this regard can be placed on Apex Court judgment of **Mohd. Inam vs. Sanjay Kumar Singhal & Ors.:** **(2020) 7 SCC 327**. In the supervisory jurisdiction, the Court has to analyse whether there is some palpable/manifest error or some mistake apparent on record. However, it has to be presumed that



order passed by court or authorities below is justified, once it is passed after consideration of the facts and material on record.

9. In the case in hand, it is undisputed that the Civil Suit No. 60/2003 for declaration was decreed against the petitioners by the Trial Court vide order dated 17.05.2010. In the said order, issue no. 7 pertained to legal successor of deceased Veerumal and issue no. 8 pertained to validity of mutation nos. 192-194-195. Both the issues were decided against the petitioner by the Trial Court. The BOR had taken the said fact into consideration and rightly held that once the Trial Court has decided the issues, whether in favour of the petitioner or against the petitioner, the issue pending before BOR stands adjudicated. As proceedings before BOR are summary proceedings, once the rights of the parties were crystallized by the Trial Court, nothing survives in the revision and on this ground the revision was rightly allowed and the applications filed by the petitioner were dismissed.

10. The argument of the petitioner that Tehsildar has concluded *denovo* investigation and passed fresh order is also not tenable. It has been consistently held by the Hon'ble Apex Court, in a catena of judgments including the case of **Balwant Singh (supra)**, **Bhimabai Mahadeo Kambekar (supra)** and **Ajit Kaur (supra)**, that mutation entries do not have any presumptive value on the title of the land; that they only enables persons in whose favour entries are made to pay land revenue; that the mutation entries are fiscal in nature, they do not create or extinguish the title over such land and title of the land/property can only be decided by competent civil court. In the case in hand, learned BOR was correct in law in relying upon the dictum of Civil Court in



Suit No. 60/2003, wherein title and the succession qua deceased Veerumal was in question and after due analysis the same was decided by the competent Civil Court against the petitioner. Furthermore, even if any fresh order was passed by the Tehsildar, the same does not survive once the foundational/original order advertenting the remanded order is set aside by BOR. Even the argument of the petitioner that no order can be passed against dead persons is not made out in the facts and circumstances of the present case, specifically when the fact of death was on record, the contesting parties were duly reflected/represented and BOR merely disposed the revision in favour of the respondent in view of the order of Trial Court dated 17.05.2010.

11. In the opinion of this Court, the learned BOR has passed a well-reasoned speaking order and after consideration of material aspects, arrived at the only logical conclusion. This Court is in complete agreement with the reasoning adopted by the BOR. There is no violation of principles of natural justice and no palpable error has crept in the order of the BOR. The order impugned does not cause any prejudice to the petitioner, warranting interference under Article 227 of Constitution of India.

12. In light of the above, the present writ petition, being devoid of merits, is dismissed. Pending applications, if any, stands disposed of.

(SAMEER JAIN),J

Pooja /71