

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 4994/1998

Smt. Mohini Bai D/o Shri Prabhu Lal W/o Shri Babu Lal aged about 62 years, R/o Village Morana, Tehsil Deegod, District Kota (Raj.).

-----Petitioner

Versus

- 1. Board of Revenue, Ajmer (Raj.)
- 2. Jagannath (Deceased) S/o Shri Mathura Lal through Legal Representatives
 - 2.1 Smt. Gulab Bai (wife), R/o Village Morana, Tehsil Deegod, District Kota(Raj.)
 - 2.2 Shiv Prasad S/o Shri Jagannath R/o Village Morana, Tehsil Deegod, District Kota (Raj.)
 - 2.3 Nand Bihari Gautam S/o Shri Jagannath, R/o Village Morana, Tehsil Deegod, District Kota (Raj.)
- 3. State of Rajasthan through SDM, Kota (Raj.)

-----Respondents

For Petitioner(s)	:	Mr.Vishwajeet Mantri with Ms.Bismaad Kaur
For Respondent(s)	:	None present

JUSTICE ANOOP KUMAR DHAND

Order

23/07/2025

- 1. By way of filing this writ petition, a challenge has been led to the impugned judgment and decree dated 04.12.1985 passed by the Assistant Collector, Kota as well as the subsequent judgment dated 20.09.1993 passed by the Revenue Appellate Authority (for short, "the RAA") and 15.06.1997 passed by the Board of Revenue (for short, "the Board").
- 2. By passing the impugned judgment and decree dated 04.12.1985, the suit filed by the plaintiff-respondent No.2 (for

short, "the respondent") against the defendant-petitioner (for short, "the petitioner") under Sections 53 and 88 of the Rajasthan Tenancy Act, 1955 was decreed.

3. Learned counsel for the petitioner submits that the aforesaid suit was submitted by the respondent against the petitioner for partition of the subject land which was opposed by the petitioner by way of filing written statement and it was alleged in the written statement that the respondent was adopted by one Ganpat and therefore, after his adoption by Ganpat, he has no right in the property of his biological father-Mathura Lal. Counsel submits that on the basis of the pleadings mentioned in the plaint as well as in the written statement, several issues were framed including Issue No.2 whether "the respondent-Jaganath went in adoption of Ganpat, biological father of the Nathulal at the age of 8 years and whether after such adoption, he has no relations with the defendants family, i.e., Mathuralal?" Counsel submits that as per Section 239 of the Act of 1955, this issue should have been sent to the Civil Court for deciding the same on merits, the Revenue Court has no power and jurisdiction to decide the issue of adoption, but even then, the Issue No.2 was decided against the petitioner and it was held that in absence of any documentary evidence and only on the basis of oral evidence, it cannot be believed that the respondent went in adoption. Counsel submits that such a finding recorded by the Revenue Court is not tenable in the eyes of law and the same is contrary to the provisions contained under Section 239 of the Act of 1955. But overlooking the material aspect of the matter, the three Courts below have decided this issue against the petitioner. Counsel submits that the

finding so recorded by the three Courts below are not sustainable and are liable to be quashed and set aside.

4. In support of his contentions, he has placed reliance upon the judgment passed by the Division Bench of this Court in the case of **Laxman Singh Vs. Sayar Singh & Ors.** while deciding **D.B. Special Appeal Writ No.493/2020** on 07.10.2024 and the judgment passed by the Andhra Pradesh High Court in the case of **Nalla Venkateshwarlu Vs. Porise Pullamma & Anr.** reported in **AIR 1994 Andhra Pradesh 87**. Counsel submits that in view of the submissions made hereinabove, the impugned judgment passed by the Courts below are liable to be quashed and set-aside.

5. None has put in appearance on behalf of the respondents in spite of service.

6. Heard and considered the submissions made at the Bar and perused the material available on record.

7. Perusal of the record indicates that a suit for partition was submitted by the respondent against the petitioner wherein it was mentioned that the subject land belonged to one Mathura Lal who had two issues, i.e., Prabhu Lal and Jaganath Lal, i.e. petitioner's father and respondent. It was the precise case of the petitioner in her written statement that the respondent-Jaganath Lal went in adoption of Ganpat who is real brother of the Mathura Lal.

8. As per Section 239 of the Act of 1955 if plea of propriety right is raised, then the same is liable to be determined by the Civil Court of competent jurisdiction. In such like situation, the Revenue Court shall frame an issue of such propriety right and

submit the record to the competent Civil Court for its decision on that particular issue.

9. The controversy involved in the present case is no more res integra as the same has already been set at rest by the Division Bench of this Court in the case of **Laxman Singh** (supra) wherein the Division Bench of this Court has held that the issue of adoption is not required to be decided and determined by the Revenue Court, the same is required to be decided by the competent Civil Court having jurisdiction.

10. It has been held by the Co-ordinate Bench of this Court in Para Nos.4 to 15 which read as under:-

"4. We find that the Board of Revenue and learned Single Judge both have concurrently held that once the legal status of the appellant as adopted son of late Phool Singh was disputed by the defendants in the revenue suit, it fell for decision making as to whether the appellant Laxman Singh was legally adopted son of Phool Singh.

5. Learned counsel for the appellant does not quarrel with the settled legal position that if the issue pertains to declaration of legal suits, the jurisdiction lies only with the Civil Court and not with the Revenue Court. His case seems to be that the issue did not arise for consideration before the Revenue Court.

6. We are unable to accept the submission of learned counsel for the appellant. It is undisputed that the suit was filed seeking declaration of khatedari rights, which, in turn, was fundamentally premised on claim of a legal status as adopted son of late Phool Singh. The defendants however, refuted this claim and the legal status. This accordingly, give rise to an issue

calling for determination. As the position of law in this regard stands well settled, in view of various decisions referred to by the learned Single Judge in its order, the jurisdiction with regard to declaration of legal status as to whether the appellant was legally adopted son of late Phool Singh lies exclusively with the Civil Court and the Revenue Court does not have jurisdiction. This legal position has been duly acknowledged under the statutory scheme of the Rajasthan Tenancy Act, 1955 (for short 'The act of 1955').

7. Therefore, to the extent of the finding recorded by the Board of Revenue and affirmed by the learned Single Judge that the jurisdiction with regard to declaration of legal status lies exclusively with the Civil Court and not the Revenue Court, we are not inclined to interfere with those orders.

8. However, there is considerable force in the submission of the learned counsel for the appellant that even if it was held by the Board of Revenue and learned Single Judge that the jurisdiction to declare legal status lies only with the Civil Court to the exclusion of Revenue Court, the proper course to be followed was to refer the issue for determination of the Civil Court, and after findings were returned, decide the revenue suit as revenue suit not only involves the determination of legal status but also other issues.

9. In this regard, it is relevant to refer to the provisions contained in Section 239 of the Rajasthan Tenancy Act, 1955 which reads thus:-

"239. Procedure when plea of proprietary right raised— (1) If in any suit or proceeding in a revenue court, a question of proprietary right in respect of land forming the subject matter of

such suit or proceeding is raised and such question has not previously been determined by a civil court of competent jurisdiction the revenue court shall frame an issue on the question of proprietary right and submit the record to the competent civil court for the decision of that issue only.

Explanation I. — A plea of proprietary right which is clearly untenable and intended solely to oust the jurisdiction of revenue court shall not be deemed to raise a question of Proprietary right within the meaning of this section.

Explanation II.— A question of proprietary right does not include the question whether such land is 'Khudhasht'.

(2) The civil court, after re-framing the issue, if necessary, shall decide such issue only and return the record together with its finding thereon to the revenue court which submitted it.

(3) The revenue court shall then proceed to decide the suit accepting the finding of civil court on the issue referred to it.

(4) An appeal from a decree of a revenue court passed in a suit in which an issue involving a question of proprietary right has been decided by a civil court under sub-section (2) shall lie to the court which having regard to the valuation of the suit, has jurisdiction to hear appeals from the court to which the issue of proprietary right had been referred.

(5) A second appeal from a decree or order passed by a civil court in appeal under subsection (4) shall lie to the High Court on any of the grounds mentioned in section 100 of the Code of Civil Procedure, 1908 (Central Act V of 1908)."

10. Sub-section (1) of Section 239 lays down the procedure to be adopted if any suit or proceedings in a Revenue Court, a question of proprietary right in respect of the land forming the subject matter of such suit or proceeding is raised and where such question has not previously been determined by a Civil Court or competent jurisdiction.

In such an eventuality, the Revenue Court is obliged to frame an issue on the question of proprietary right and submit the records to the competent Civil Court for the decision of that issue.

The Civil Court then, after re-framing the issue, if necessary, shall decide the issue only and return the records together with its findings thereon to the Revenue Court which submitted it. The provision contained in sub-section (3) further provides that the Revenue Court shall then proceed to decide the suit accepting the finding of Civil Court on the issue referred to it.

11. In view of the aforesaid statutory scheme, we are of the view that even if it was a case where the Revenue Court and the learned Single Judge arrived at a conclusion that the issue as to whether the appellant was legally adopted son of late Phool Singh was required to be decided by a Civil Court and fell outside the jurisdiction of Revenue Court, the procedure prescribed under sub-section (1) of Section 239 of the Act of 1955 was required to be followed. The Revenue Court was required to frame an issue and then refer the same to the Civil Court of competent territorial jurisdiction and await the return of record together with findings of the Civil Court.

12. Learned counsel for the respondents could not dispute this legal position and requirement of Section

239 of the Act of 1955 and the procedure to be followed.

13. Accordingly, though we are not inclined to interfere with the findings of the Board of Revenue and the learned Single Judge to the extent it held that the declaration of legal status could be a subject matter of consideration of Civil Court and not the Revenue Court, an issue was required to be framed and referred to the Civil Court which is not done. Therefore, this appeal is partly allowed.

14. The Revenue Court of Assistant Collector, Sikar is directed to frame appropriate issue with regard to declaration of legal status and refer forthwith the same to the Civil Court of competent jurisdiction and then decide the matter on the basis of the findings recorded by the Civil Court.

15. Since it is an old matter, the reference of dispute shall be made by the Revenue Court at first instance within a period of 30 days from the first date of hearing of the case before it. Parties are directed to appear before the Revenue Court of Assistant Collector, Sikar on 22.10.2024. Once the matter is referred to the Civil Court, it will be open for the parties to pray for expeditious disposal of the case by the Civil Court and return the finding along with the records for adjudication of all the issues pending consideration with regard to claim of khatedari rights of the appellant by the Revenue Board."

11. Since the issue involved in this writ petition has already been decided and set at rest, this Court finds no valid reason to take a different view.

12. Accordingly, the instant writ petition stands allowed. The impugned judgments passed by all the three Courts below stand

quashed and set-aside. The Revenue Court is directed to send the Issue No.2 with regard to declaration of the legal status of the respondent whether he is an adopted son of Ganpat or not to the competent Civil Court having jurisdiction.

13. Looking to the fact that the dispute pertains to the year 1984, it is expected from the competent Civil Court to decide this issue within a period of two months from the date of receipt of the Issue from the Revenue Court.

14. The parties are directed to appear before the Revenue Court of Assistant Collector on 20.08.2025.

15. Stay application and all pending application(s), if any, also stand disposed of.

16. Since the respondent has remained unrepresented before this Court and he is not aware about passing of this order, it is expected from the Revenue Court, Assistant Collector to issue notice to the respondents before sending the matter to the competent Civil Court for determination of Issue No.2.

(ANOOP KUMAR DHAND),J