

# RAJASTHAN HIGH COURT

Sent Kaur

Vs.

Board of Revenue

Civil Special Appeal No. 1083 of 1997  
(Rajesh Balia and Sunil Kumar Garg, JJ.)

17.10.2003

## JUDGEMENT

**Rajesh Balia, J.**

1. Legal representatives of respondent No. 13 have been served. None have opposed. The application dated 14-7-1999 is therefore, allowed. The name of respondent No. 13 Murti D/o Gurdutt Singh and Wife of Gurdev Singh be deleted and in place of her name the legal representatives named in the application be substituted as respondent No. 13/1 to 13/4.
2. We have heard learned counsel for the parties.
3. This appeal is directed against the judgment of learned Single Judge dated 16-9-1997 dismissing the Writ Petition No. 3779/1989 filed by the appellant.
4. A preliminary decree was passed in the suit filed by the respondents for partition on 17-8-1971 which was confirmed in first appeal. A second appeal was filed before the Board of Revenue and the Board of Revenue vide its order dated 30th Nov., 1981 confirmed the preliminary decree for partition. No further proceedings were taken to challenge the said order dated 17-8-1971 while the appeal was pending before the Board of Revenue and final decree for partition was also passed.
5. It is only after execution was laid, the first appeal was preferred by the present appellants in December 1983 against the final decree with an application for condoning the delay alleging that they had no knowledge about the decree until notices of execution proceedings were received for evicting them from the property.
6. The learned Revenue Appellate Authority vide its judgment dated 20th March,

1984 did not accept the explanation furnished by the appellants that he had no knowledge about the decree earlier than the proceedings for execution were taken out. We have also taken notice that the preliminary decree has remained unchallenged for long time and Board of Revenue has passed an order dated 13- 11-1981. He has filed the appeal against the preliminary decree only on 17-9- 1976. In that circumstances, it is not possible to believe that he has no knowledge about final decree passed on 8-10-1971.

7. In these circumstances, the appeal against final decree preferred after such an inordinate delay was not entertained on the ground of limitation and the same was dismissed. The Board of Revenue dismissed the second appeal against the judgment dated 20th March, 1984 in the first instance on 11-4- 1989. While dismissing the appeal the Board of Revenue has observed that the appellant has not preferred any application for explanation of 12 years delay in filing the appeal.

8. The order dated 11-4-1989 passed by the Board of Revenue was challenged by way of filing writ petition before this Court. The said writ petition was disposed of on 25-5-1989 with the observations that the petitioners may move a review application before the Board of Revenue, if the fact stated is alleged to be incorrect.

9. Thereafter, the petitioners moved a review application before the Board of Revenue which was dismissed by the Board of Revenue on 7-9-1989. The petitioners again preferred writ petition No. 3779/1989 challenging the order passed in the review application out of which this appeal has arisen.

10. The learned Single Judge has found no merit in the writ petition and has dismissed the same. As per the order of the learned Single Judge, the contention raised before him was that no mention has been made in the order of Board of Revenue about the application under Section 5 of the Indian Limitation Act. The said contention was not countenanced by the learned Single Judge and it was noticed that though the order did not specifically mention that the application was moved by the petitioners under Section 5 of the Indian Limitation Act, but the same appears to have been taken into consideration by the Board of Revenue while dismissing the review application. For this purpose, it referred to the Board of Revenue's order by which it has agreed with the finding recorded by the Revenue Appellate Authority. Hence, this appeal.

11. We are of the opinion that the order passed by the learned Single Judge does not call for any interference. The facts mentioned about speaks clear and loud for themselves that this appeal is pursued to deny the fruit of litigation in which not only a

preliminary decree but final decree has also been passed long ago in 1971. While the petitioner was pursuing the preliminary decree, he has not chosen to go against the final decree perhaps hoping that if the preliminary decree fails, the final decree founded on such preliminary decree shall automatically (sic). In that hope when the final decree was put to execution, only then he filed an appeal and moved an application under Section 5 of the Limitation Act along with condoning the delay.

12. We are of the opinion that the proceedings are clear and leaves no room of doubt that this was only to avoid and to defeat the final decree passed in 1971.

13. As a result, the appeal fails and is hereby dismissed with costs which is quantified to Rs. 5,000/-.

Appeal dismissed.