

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal Decree/TA/171/2018/Bhilwara.

Smt. Nathi daughter of late Chaturbhuj wife of Bheru Lal caste Dhakar
resident of Village Buti, Tehsil Kotdi Distt. Bhilwara.

...Appellant.

Versus

1. Smt. Sohani daughter of late Chaturbhuj wife of Bhagirath caste Dhakar
resident of village Buti, Tehsil Kotdi Distt. Bhilwara.
2. Smt. Sunder daughter of late Chaturbhuj wife of Ganga Ram caste
Dhakar resident of village Paroli Tehsil Kotdi Distt. Bhilwara (deceased)
through LRs:-
2/1 Bhagchand son of Smt. Sunder caste Dhakar resident of Paroli
2/2 Smt. Indra Devi daughter of Smt. Sunder wife of Bhagchand caste
Dhakar resident of Village Sepa Tehsil Jahajpur Distt. Bhilwara.
3. Smt. Kalli daughter of late Chaturbhuj wife of Sonarain caste Dhakar
resident of village Muhla Tehsil Shahpura Distt. Bhilwara.
4. State of Rajasthan through Tehsildar, Kotdi Distt. Bhilwara.

...Respondents.

D.B.

**Shri Pankaj Naruka, Member
Shri Ravi Dangi, Member**

Present:-

Shri Raghvendra Singh, counsel for the appellant.

Shri Madan Lal Gurjar for the respondent No.1.

Date : 23-09-2021

J U D G M E N T

This second appeal has been filed under section 224 of the Rajasthan Tenancy Act, 1955 against the judgment and decree dated 4.12.2017 passed by Settlement Officer-cum-Revenue Appellate Authority, Bhilwara in appeal No. 22/2016.

2. Facts apposite giving rise to this second appeal are detailed as under:-

That one Chaturbhuj son of Bheru Dhakar was the recorded khatedar of 72.12 bigha of land in village Buti, Patwar Halka Bishnia, Tehsil Kotri of Distt. Bhilwara.

Chaturbhuj passed away in 1980 leaving behind four daughters viz. Nathi/ plaintiff/ appellant, Sohani/ Defendant No. 1/ Respondent No.1, Sunder/ Defendant No.2/Respondent No.2 and Kalli/ Defendant No.3/ Respondent No.3.

The entire disputed land after the demise of Chaturbhuj entered in the name of Sohani/ defendant No.1/ respondent No.1 on 15.4.1982 vide mutation No. 191.

To this Nathi filed a suit before the Sub-Divisional Officer, Jahajpur under section 53A, 88, 89, 92A, 188 of the Rajasthan Tenancy Act claiming one-fourth share in the disputed araji to each of the four daughters. The suit was registered on 18.12.2004. Defendants No. 2 and 3 filed the written statements admitting the 'sajra' and being self acquired land of Chaturbhuj they pleaded that the entire disputed land is in the cultivatory possession of defendant No. 1 and she is the recorded khatedar and pleaded no objection to it. Defendant No. 1 claimed the entire disputed land and pleaded that plaintiff and defendant No. 2 and 3 have no right due to the vasiyatnama/ tehrir dated 6.6.1968 inscribed in her favour by her father. There being no male child to Chaturbhuj she as per the mutation No. 191 dated 15.4.1982 is the sole rightful claimant. She although admitted to the fact that the plaintiff and defendant No. 2 and 3 are also the daughters of Chaturbhuj. She further pleaded that she looked after her father and in cultivator possession and due to adverse possession, she is the sole owner of the disputed arajis.

3. On this, seven issues were framed and after evidence judgment was passed by learned lower court on 13.1.2016, in which issue No. 1 to 3 and 6 were decided in favour of the plaintiff, issue No. 4 was partially decided in favour of both the plaintiff and the defendant and issue No. 5 was decided against the defendant and the following judgment was passed:-

“मौजा बूती पटवार मण्डल बिशनिया स्थित आराजी न. 8,12,13,14,15,16,17, 18, 19, 20, 21, 22, 23, 27, 55, 56, 81, 94, 105, 355, 359, 416 तथा आराजी न0 9 एवं 10 कुल किता 24 कुल रकबा 57.15 बीघा भूमि जो वर्तमान में प्रतिवादिया संख्या 1 के पक्ष में अभिलिखित है तथा वाद प्रस्तुती समय वादग्रस्त कुल रकबा 72.12 बीघा होने से वादिया को उपरोक्त 72.12. बीघा में 1/4 तथा इसी अनुसार प्रतिवादिया संख्या 2 के उत्तराधिकारी 2/1 एवं 2/2 को 1/4 तथा प्रतिवादिया संख्या 3 के पक्ष में क्रमशः 1/4 अर्थात् उपरोक्त तीनों को वर्तमान रकबा 57.15 बीघा में प्रत्येक के हिस्से में 18.03 बीघा भूमि का प्रत्येक को खातेदार काश्तकार घोषित किया जाता है। सोहनी का 72.12 बीघा कुलिया हिस्से में से 14.17 बीघा भूमि डूब में आने से तथा प्रतिवादिया संख्या 1 सोहनी देवी द्वारा उसका मुआवजा अकेले ही उठा लेने से उसकी 1/4 दर्ज योग्य भूमि में से उपरोक्त 14.17 बीघा भूमि कम किये जाने के आदेश दिये जाते हैं।

इस प्रकार प्रतिवादिया संख्या 1 के पक्ष में 57.15 बीघा में से 3.06 बीघा भूमि ही दर्ज रेकार्ड किये जाने के आदेश दिये जाते हैं। तदनुसार विभाजन प्रस्ताव बनाकर पेश करने हेतु तहसीलदार कोटड़ी को लिखा जावे एवं आदेश मुताबिक पालनार्थ तहसीलदार कोटड़ी को डिक्री मुर्तीब की जाकर जारी हो।”

4. Aggrieved by it Sohani/ defendant No. 1 filed an appeal before the Settlement Officer-cum-Revenue Appellate Authority, Bhilwara who by Judgment dated 04-12-2017 allowed the appeal and set aside the judgment and decree dated 13.1.2016 and passed the following judgment:-

“अतः अपील अपीलार्थी स्वीकार की जाकर अधीनस्थ न्यायालय द्वारा पारित निर्णय एवं डिक्री दिनांक 13-1-2016 को निरस्त किया जाता है एवं अपीलार्थीया सोहनी देवी को मौजा ग्राम बूती पटवार हल्का बिशनिया तहसील कोटड़ी स्थित आराजी नम्बर 6 लगायत 10 व 12 लगायत 23 व 27, 55, 56, 81, 94, 105, 355, 359 व 416 कुल कित्ता 24 रकबा 72 बीघा 12 बिस्वा भूमि का खातेदार काश्तकार घोषित किया जाता है। पर्चा डिक्री मूर्तिब की जावे।”

Aggrieved by it, this second appeal before the Board by Nathi/ plaintiff.

5. Heard the arguments of both the learned counsels.

6. The counsel for the appellant Nathi vehemently argued that the ‘tehrir’ dated 6.6.1968 on Re. 1/- stamp paper if read as a whole, by no way of imagination can be said to be ‘vasiyat’. Secondly, the mutation No. 191 dated 15.4.1982 was not attested on the basis of the document dated 6.6.1968 but on the false plea of respondent No. 1/ Sohani that she is the sole legal heir of the deceased. Thus, all the four daughters are the legal heirs of the deceased Chaturbhuj and thus, accordingly the said disputed land be divided among the four daughters as per the Hindu Succession Act. He has cited the judgments AIR 2015 (SC) 1139, 2011 (3) DNJ 1154, 2011-12 RRT 607 ‘Mathai Samuel and ors. Vs. Eapen Eapen (dead) by Lrs and ors.’ and AIR 2019 (SC) 1154 in support of his contentions.

7. **Per contra**, the counsel for the respondent No. 1/ Sohani submitted that due to the ‘vasiyat’ by her father in her favour, she is the sole rightful claimant of the entire disputed land. The mutation No. 191 dated 15.4.1982 was rightfully attested in her favour and the suit was filed by the appellant/ plaintiff Nathi in the year 2004. The two other daughters of Chaturbhuj, Sunder and Kalli in their written statements have given no objection to her

being rightful possessor and khatedar. He further argued that respondent No. 1 only looked after her father and performed his last rites. Nathi's marriage was also solemnized by respondent No.1. The respondent No. 1 dug up well and did 'pakka' construction also on the disputed arajis. Thus, the judgment and decree passed by the learned first appellate court is just and proper and as per the law and the second appeal filed by the appellant be dismissed. The learned counsel cited 1988 RRD 78 'State of Raj. Vs. Girdhar Lal', 1997 (4) RBJ 149 'Rang Lal Vs. Mst. Basanti', 2018 (2) RRT 948 'Mohammad Vs. Raju', 2010 RBJ 546 'Suraj Mal Vs. Adhyaksh Nagar Sudhar Nyas Ajmer', 1984 RRD 391 'Ishwar Purohit Vs. A.D. LBT, Jodhpur', 2003 RBJ 544 'Rambal Padamkar Patil (D) Vs. Rukmini Vishnu Vekhande' and 2002 RRD 280 'Kheta Vs. Raghunath Ram' in support of his contentions.

8. Heard the learned counsels, considered the arguments and perused the material available on record as well as the judgment of the learned first appellate court.

9. As per the provisions of Order 41 Rule 31 of the Civil Procedure Code, the first appellate court when reversing/ modifying any finding on any issue, has to deal with in its judgment issuewise.

The Hon'ble Supreme Court in its judgment AIR 2020 (SC) 925 'Malluru Mallappa Vs. Kuruvathappa' has held as follows:-

“19- It is clear on the above provisions and the decisions of this court that the judgment of the first appellate court has to set out points for determination, record the decision thereon and give its own reasons. Even when the first appellate court affirms the judgment of the trial court, it is required to comply with the requirement of Order XLI Rule 31 and non-observation of this requirement leads to infirmity in the judgment of the first appellate court. No doubt, when the appellate court agrees with the views of the trial court on evidence, it need not restate effect of evidence or reiterate reasons given by the trial court. Expression of a general agreement with the reasons given by the trial court would ordinarily suffice.

20- Keeping mind the above principles, let's examine the present case. As stated above, the issue relating to readiness and willingness of the plaintiff to perform his part of the contract an issue relating to limitation were held against the plaintiff and suit was accordingly dismissed. The appeal before the High Court involved both disputed questions of law and facts. The High Court without examination of any of these aspects has dismissed the appeal by cryptic order. The court below has neither reappreciated

the evidence of the parties, nor it has passed a reasoned order. The High Court has failed to follow the provisions of Order XLI Rule 31 of the CPC while deciding the appeal.....”

10. The learned trial court in its Judgment and decree dated 13.1.2016 has framed seven issues and decided the case issuewise. However, the learned first appellate court in its judgment and decree dated 4.12.2017 has not dealt with finding of any issue but reversed/ varied the judgment and decree of the trial court. It has not given the judgment issuewise nor framed any points of determination and no reason has been assigned to vary the findings of the learned trial court as has been envisaged under Order 41 Rule 31 of the Civil Procedure Code.

11. Therefore, the judgment and decree of the learned first appellate court is set aside and the matter is remanded to the first appellate court to decide the appeal afresh following the due process of law. Parties are directed to appear before the Settlement Officer-cum-Revenue Appellate Authority, Bhilwara on 12.10.2021. An endeavour shall be made by the learned first appellate court to decide the appeal as expeditiously as possible.

Pronounced in the open court.

(Ravi Dangi)
Member

(Pankaj Naruka)
Member