

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal/Decree/TA/6034/2013/Pali.

1. Bhanwariya s/o Jodhiya
2. Mangliya s/o Jodhiya
3. Shankarlal s/o Hameera
4. Chunnilal s/o Hameera
5. Jetharam s/o Hameera
6. Gerki w/o Hameera
7. Mohni d/o Hameera
8. Narbada d/o Hameera
9. Multan s/o Jodhiya
10. Chouthai w/o Bheeka
11. Ratnaram s/o Bheeka
12. Ashok s/o Gokal
13. Sohni w/o Gokal
14. Vimla d/o Gokal
15. Sahayta d/o Gokal
16. Babulal s/o Bheeka
17. Pulki d/o Bheeka
18. Geeva wd/o Jawana
19. Chelaram s/o Jawana
20. Shravanram s/o Jawana
21. Ramesh s/o Jawana
22. Jeetaram s/o Jawana
23. Ashok s/o Jawana
24. Sua d/o Jawana
25. Santosh d/o Jawana
26. Mogli d/o Jawana and Minor through Natural Guardian Mother Giva wd/o Jawana
27. Amraram s/o Jairup
28. Kanaram s/o Jairup
29. Tejaram s/o Ummedaram
30. Bhanwri d/o Ummedaram and w/o Babulal
All Chokidar by caste, rs/o Mandla, Tehsil Sojat and Distt. Pali.

...Appellants.

Versus

1. Sohanaram s/o Thaniya
2. Nemaram s/o Thaniya
3. Tariya s/o Thaniya

4. Mangilal s/o Thaniya
All Sirvi by caste, rs/o Mandla Tehsil Sojat Distt. Pali.
5. Keshri d/o Thaniya and w/o Kanji r/o Shekhawas Tehsil Marwar Junction
Distt. Pali.
6. Kishna s/o Birma
7. Geniya s/o Gomla
8. Chuniya s/o Ummeda
9. Tikam s/o Ummeda
10. Kaliya s/o Ummeda
11. Narayan s/o Ummeda
12. Shyam s/o Ummeda
13. Bhundaram s/o Jasiya
14. Prakash s/o Pukhiya
15. Teejki wd/o Ummeda
16. Sita d/o Jodiya
17. Tulsai w/o Pukhiya
18. Bhundaram s/o Pukhiya
19. Panki d/o Pukhiya
20. Dakhudi d/o Pukhiya
21. Maina d/o Pukhiya
22. Khinwda s/o Kaliya
23. Nainiya s/o Kaliya
24. Navla s/o Puniya
25. Hajari s/o Puniya
26. Andai wd/o Mangiya
27. Rampal s/o Mangiya
28. Kevaliya s/o Mangiya
29. Chotiya s/o Mangiya
30. Bhomiya s/o Mangiya
31. Pushpa d/o Mangiya
32. Sugni Devi w/o Narayan
33. Manju d/o Narayan
34. Kachudi d/o Narayan
35. Lalaram s/o Narayan
36. Omprakash s/o Narayan
37. Jaski d/o Narayan
38. Gavri d/o Narayan
39. Gajri d/o Narayan
40. Navliya s/o Puniya
41. Devli w/o Ramla
42. Naina s/o Ramla
43. Raja s/o Ramla
44. Prakash s/o Ramla

45. Hajariya s/o Puniya
46. Pukhiya s/o Motiya
47. Ganeshram s/o Motiya
48. Lakshmanram s/o Motiya
49. Surjarma s/o Motiya
50. Chunki w/o Motiya
All Sirvi by caste, rs/o Mandla, Tehsil Sojat, Distt. Pali.
51. State of Rajasthan through Tehsildar, Sojat.

... Respondents.

D.B.

Shri Mohan Lal Nehra, Member

Shri Rajinder Kumar, Member

Argued by :

Shri G.S. Lakhawat, counsel for the Appellants.

Shri Rakesh Arora, counsel for the respondents.

J U D G M E N T

Dated : 02-01-2019

Per Shri Rajinder Kumar, Member

1. This second appeal has been preferred against the judgment and decree dated 06.09.2013 of the learned Revenue Appellate Authority, Pali whereby the first appeal no. 65/11 of the appellants/defendants was dismissed.
2. Facts of the case mentioned in the memo of appeal in nutshell are that the father of the plaintiffs/respondents filed a suit for recovery of possession of the disputed lands against the father of the defendants/appellants. The said suit was contested by the defendants/appellants by filing written statement alleging that they are in physical cultivatory possession of the disputed lands since the time of Jagirdari as tenants. A patta was also issued by the Jagirdar in favor of the forefathers of the defendants/appellants. The plaintiffs/respondents are not in physical occupation of the suit lands. After the framing of issues, the said suit was abated by the trial court. Assailing the order of

abatment, an appeal was filed in the court of the learned Revenue Appellate Authority Pali which came to be accepted with a direction to the trial court to re-admit the suit to its original number and decide the same afresh after giving opportunity of leading evidence to the parties. In the meantime, the defendants/appellants had also filed a suit for declaration, correction of record and permanent injunction in the trial court. Thereafter, the trial court consolidated both the suits and vide judgment and decree dated 21.09.2011 decreed the suit of the plaintiffs/respondents. Assailing the said judgment and decree, the defendants/appellants filed appeal in the court of the learned Revenue Appellate Authority, Pali and the same was dismissed vide impugned judgment and decree dated 6.09.2013. Hence, this second appeal.

3. We have heard the learned counsels.
4. On behalf of the appellants, it was argued that the patta of the disputed lands was issued by the Thikana in the year 2014 and thereafter the said land was not legally declared as government land. This land was also not given to any other person by the Thikana. Therefore, on the basis of a writing written on plain paper, the courts below have erred in holding that the appellants had abandoned their rights over the suit lands. It was also not proved by the respondents that the forefathers of the appellants have ever executed such a document. The witnesses produced by the respondents, namely, Raghunath Singh PW1, Prem Raj PW2, ShivDan Singh PW3, Fateh Singh PW6 and Abhay Singh PW7 have not proved that the respondents were the khatedars of the disputed lands. They also failed to prove that the disputed lands were ever relinquished by the predecessor of the appellants. In view of this, the findings of the trial court on issue no. 1 are based on conjectures and surmises. The respondents did not lead any evidence to prove that they were ever in physical possession of the disputed land. On the contrary, the appellants had never left the possession over the disputed lands. Therefore, the respondents failed to prove issue no. 2 also. In view of this, the suit filed by the respondents was beyond period of limitation. The respondents also did

not produce any evidence to prove as to how the patta issued by the Marwar State was liable to be cancelled by the Bojat Thikana. There was equally no evidence to prove as to how the Thikana Bojat was competent to accept the relinquishment of the disputed lands from the forefather of the appellants. The learned trial court gave a finding that the respondents are the khatedar of the disputed lands by illegally placing reliance on section 171 of the Marwar Land Revenue Act. In view of this, the findings of the trial court on issue no. 6 are also incorrect and against the legal and factual aspects of the case. The learned trial court laid undue influence on the fact that suit of the appellants does not bear the signature of all the plaintiffs/appellants. This was at the most irregularity and not an illegality. The operative para of the impugned judgment is also *ex-facie* illegal because the learned trial court directed the appellants to hand over possession of the disputed lands within a period of 15 days otherwise the same will be recovered through the interference of the Police. The learned trial court also did not pass any effective decree in respect of the suit filed by the appellants. The learned first appellate court also committed illegality in dismissing the appeal of the appellants arbitrarily and by a contradictory judgment. Therefore, a prayer was made to accept the appeal, set aside the impugned judgments and decrees and to decree the suit filed by the appellants. In support of the aforesaid arguments, the learned counsel relied upon the following citations:-

- I. Chiranji Lal Vs Chhedi Lal (1988 RRD 705):- In this case it was held by the Board of Revenue that concurrent findings of facts of the courts below would be liable to be set aside, if the same are based on misreading of evidence.
 - II. Sugaria Vs Revar Nath (1985 RRD 22):- In this case, it was held that a mere defect of procedure of not signing the plaint by one of the plaintiffs would not be fatal to suit and it could be cured by amendment even at the appellate stage.
5. Learned counsel for the respondents vehemently opposed the aforesaid submissions. According to him, there is no illegality or

perversity in the concurrent findings of both the courts below. He has also argued that the suit filed by the appellants was dismissed by the trial court whereas the suit of the respondents was decreed. Therefore, it was mandatory for the appellants to file two separate appeals in the court of the learned Revenue Appellate Authority and in this Board also. The single appeal filed by the appellants would attract the bar of res-judicata. Therefore, this appeal is also liable to be dismissed.

6. In rebuttal of the above arguments, the learned counsel has relied upon 1986 RRD 660 'Chunni Lal Vs. Bheru Lal':- In that case it was held that once the court has ordered consolidation, there is amalgamation of two suits in one suit from the date of the order of consolidation and they are to be decided as if they were one suit.
7. We have given our thoughtful consideration to the rival submissions and perused the record carefully.
8. The courts below have concurrently held that the patta of the disputed land was issued in favor of the respondents after a relinquishment deed of the disputed land was executed by the appellants. These findings of facts are based on oral and documentary evidence of the parties, including the judgment [Ex25] passed by the Civil Court. The learned trial court, after examining the evidence at length at page no. 52 of the judgment, has passed the order of dismissal of suit filed by the appellants and at page no. 53, on order for decreeing the suit of the respondents was passed. Therefore, there is no force in the contention of the appellants that the suit filed by them was not decided by the trial court. The learned first appellate court has also, after re-appreciating the evidence, confirmed the findings of the trial court. We have failed to find out any perversity or illegality in the well considered judgments of the courts below.
9. In the instant case, the appellants preferred only one appeal in the court of the learned Revenue Appellate Authority whereas two suits

were decided by the trial court by a common judgment. The failure of the appellants to prefer two separate appeals would, in our considered opinion, attract the applicability of the principle of res-judicata. Section 11 CPC operates against the appellants on facts which are patent from a bare perusal of the judgments of the courts below. Therefore, the single appeal filed by the appellants in the court of the learned Revenue Appellate Authority as well as in this Board was barred by the other decree which remained unreversed and was binding upon the appellants. Reliance can be placed upon the judgment passed by the Hon'ble Supreme Court in AIR 1993 S.C. 1202 'Premier Tyre Ltd Vs Kerala State Road Transport Corporation' in the following terms:-

"where no appeal is filed, as in this case from the decree in connected suit it has the same effect of non filing of appeal against a judgment or decree. That the finality of finding recorded in the connected suit, due to non filing appeal, precludes the Court from proceeding with appeal in other suit."

In view of the above legal propositions, the single appeal filed by the appellants was barred by res-judicata and hence on this count also the present appeal deserves to be dismissed. No question of law, muchless substantial question of law is involved herein.

10.Hence, this appeal is dismissed.

Pronounced.

(Rajinder Kumar)
Member

(Mohan Lal Nehra)
Member

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