

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal/Decree/TA/2261/2001/Barmer.

1. Khet Singh s/o Shri Sagat Singh
2. Bheem Singh s/o Shri Sagat Singh
3. Tejpal Singh s/o Shri Mokham Singh
4. Jhunjar Singh s/o Shri Mokham Singh
5. Abhay Singh s/o Shri Mokham Singh
6. Shom Singh s/o Shri Jhand Singh

All Rajput by caste, Sakin Magra Tehsil Shiv Distt. Barmer.

.....Appellants.

VERSUS

1. State of Rajasthan.
2. Umaram s/o Phusaram
3. Pokarram s/o Phusaram
4. Mahakanwar wd/o Kamal Singh
5. Tansingh s/o Kamal Singh
6. Khangar Singh s/o Kamal Singh
7. Hemsingh s/o Kamal Singh
8. Mal Singh s/o Kamal Singh

All Jat by caste, Sakin Magra Tehsil Shiv Distt. Barmer.

..... Respondents.

D.B.

Shri R.K. Jaiswal, Member
Shri Rajinder Kumar, Member

Argued by:-

Shri Khadag Singh, counsel for the Appellants.

Shri V.P. Singh, Govt. Advocate for the Respondent no. 1.

None on behalf of the other Respondents.

J U D G M E N T

Date: 31-10-2018

Per Shri Rajinder Kumar, Member

1. This second appeal arises out of the judgments and decrees dated 26-09-19947 passed by the trial court of Assistant Collector (H.Q) Barmer in Revenue Suit No. 256/94 and the judgment and decree dated 24-11-2000 passed by the Revenue Appellate Authority, Barmer in Appeal no. 11/95. By the impugned judgments and decrees, the said suit and first appeal of the plaintiffs/appellants were dismissed.
2. The facts leading to the present controversy in brief are that the aforesaid suit was filed by the original plaintiff Jhand Singh against the State Govt., Uma Ram, Pokar Ram and Kamal Singh. In his aforesaid suit, the original plaintiff Jhand Singh alleged that he is continuing in cultivatory possession of the land bearing khasra no. 2146 measuring 91 bigha situated in Village Ranasar as its khatedar since the time of his father. However, at the time of settlement, the Settlement Authorities issued 'Parcha Lagaan' of this land in the name of Khera s/o Shoba r/o Rana. The aforesaid Khera migrated to Pakistan and the dsputed land was declared as 'Khalsa' and thereafter, it was alloted to the defendants whereas neither Khera nor the defendants had ever remained in cultivatory possession of this land. The plaintiff made a prayer to declare the said land as his khatedari land. The defendant no. 1 and defendants no. 2 and 3 submitted separate written

statements alleging that the suit land has never remained in cultivatory possession of the plaintiff or his father. This land was the khatedari land of the aforesaid Khera. After he migrated to Pakistan, this land was declared as 'Khalsa' and then it was allotted to the defendants. A prayer was made to dismiss the suit. The trial court framed as many as 7 issues. In support of his pleadings, the plaintiff examine 6 witnesses. The defendants examined Patwari Halka Uda Ram as DW1. After hearing the arguments, the trial court dismissed the plaintiff's suit vide judgment and decree dated 26-09-1994. Feeling aggrieved the plaintiffs/appellants preferred first appeal in the court of learned Revenue Appellate Authority, Barmer, which also came to be dismissed vide judgment and decree dated 24-11-2000. Hence this second appeal.

3. We have heard learned counsels.
4. On behalf of the appellants, it was argued that in support of his version, the plaintiff examined six witnesses. All of them had corroborated that the fact that plaintiff is continuing in possession of the suit land since the time of his father. The evidence of these witnesses was corroborated by the revenue record and partition deed. In rebuttal the contesting defendants did not step into the witness box. The statement of Halka Patwari Uda Ram DW1 was got recorded by the State Government. He has given his statement only on the basis of the record available in his office. But the learned trial court dismissed the plaintiff's suit in an illegal manner. The trial court misdirected itself in ignoring the cardinal principle of law that in Revenue matters, the plaintiff is required to prove his case only on the basis of probabilities. Here the plaintiff corroborate his version with sufficient oral and documentary evidence, which remained unrebutted. Even the local Commissioner has given his report proving the possession of the plaintiff over the suit land. The defendants no. 1 and 2 have also not made allegation that they were illegally dispossessed from the suit land by the plaintiff. The trial court has also given a finding that the

plaintiff is in occupation of the suit land but it has made out a new case that his possession is that of a rank trespasser. Had the possession of the plaintiff been in the capacity of trespasser, eviction proceedings must have been initiated by the State Government against him. But admittedly, no such proceeding was initiated against him. The plaintiff preferred an appeal in the court of learned Revenue Appellate Authority and the said court also dismissed his appeal in an illegal manner. The first appellate court did not pass judgment on all issues. Therefore, the same is not in accordance with the provisions of Order 41 Rule 31 CPC. In this regard he has relied upon 2008 (15) RBJ 'Bajranga Vs Hari', 1999 (6) RBJ 200 'Chankri Vs Guqlal', 2007 (14) RBJ 249 'Rewadmal Vs Hanuman Sahai', 2007 (14) RBJ 368 'Sawai Singh Vs Ram Sarup'. Learned counsel has also argued that the intimation of the judgment and decree passed by the learned first appellate court was not timely given to the appellants by their counsel. In addition to it, the mother of the appellants had also expired in the meantime. Therefore, there was a delay of about 2 months in filing this appeal said delay may also be condoned. In this regard, he has relied upon 2004 (11) RBJ 286 'Apangshu Mohan Lodha & ors Vs State of Tripura'. In that case, it was held by the Hon'ble Supreme Court that power of condonation of delay is discretionary and it must be exercised liberally. Arguing his case further, learned counsel submitted that during the pendency of this appeal, subsequent developments have taken place and to bring the same on record, the appellants have submitted the copies of judgments dated 06.12.2017 passed by the District Collector, Barmer. From these judgments, it is clear that the allotment of the disputed land made in favour of the deceased Pokar Ram on 05.5.1967 has since been set aside and the disputed land has been entered in the Jamabandi as 'Siwai Chak' land. These judgments and Jamabandi would further corroborate the version of the appellants that they are in possession over the disputed land since long. Therefore, a prayer has been made to take these documents on

record as additional evidence and to accept the appeal of the plaintiffs/appellants.

5. Learned Government Advocate has vehemently opposed the above submissions. He has argued that the concurrent findings of facts of the courts below are neither illegal nor perverse. Therefore, there is no merit in the appeal. The appellants had been negligent in filing this appeal in time. No documents can be submitted in second appeal by taking resort to the provisions of Order 41 Rule 27 CPC. Therefore, a prayer is made to dismiss the appeal.
6. We have given our thoughtful consideration to the above submissions and perused the record carefully.
7. During pendency of this appeal, an application under Order 41 Rule 27 CPC was filed by the appellants to take on record the copies of judgments dated 06.12.2017 passed by the District Collector, Barmer in Applications No. 18/2013 and 19/2013 by way of additional evidence. It is revealed from a perusal of these judgments that the said submitted were preferred in the court of the District Collector, Barmer by the present appellant Tej Pal seeking to challenge the allotments of the disputed lands made in favour of the respondents Pokar Ram and Uma Ram on 05.5.1967. It is also revealed from the said judgments that the respondents no. 2 and 3, namely Pokar Ram and Uma Ram had since expired a long time ago and their legal representatives, namely Mohini Devi and Babu Ram respectively were brought on record by the present appellant Tej Pal in both the said applications. It is also pertinent that in the application for leading additional evidence, the appellants have mentioned that the names of the Legal Representatives of the deceased respondents have also been deleted from the revenue record and this land has been recorded as Government land therein. These facts clearly reveal that the appellants were aware of the death of the respondents no. 2 and 3. In the instant appeal, the appellants have not

cared to file an application within the stipulated period of 90 days of the death of the respondents to take on record their legal representatives. The legal effect of the non-compliance of Rule 4(3) of Order 22 CPC came into operation resulting into abatement of this second appeal at the expiry of 90 days from the date of death of the deceased respondents.

8. In view of above, the present appeal is dismissed as having abated.

Pronounced.

(Rajinder Kumar)

Member

(R.K. Jaiswal)

Member