

W.R.**IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER****Appeal /TA/6947/2002/Bharatpur**

1. Munshi s/o Pyarelal deceased through LRs.
 - 1/1 Rambhuli wd/o Munshi
 - 1/2 Mahendra Singh s/o Munshi
 - 1/3 Bhagwan Singh s/o Munshi
 - 1/4 Sukha s/o Munshi
 - 1/5 Kani s/o Munshi
 - 1/6 Babu Singh s/o Munshi
 - 1/7 Bhag Singh s/o Munshi
 - 1/8 Bhagwati d/o Munshi
 - 1/9 Ramshri d/o Munshi
 2. Must. Sirdari wd/o Guru Dayal
 3. Soran s/o Guru Dayal
 4. Dashrath s/o Guru Dayal
- By Caste Jat, Residents of Village Roniza Tehsil Nadbai, Distt. Bharatpur.

.....Appellants.**VERSUS**

1. Karan s/o Jodha
 2. Bhanga s/o Jodha
 3. Teji s/o Karan
 4. Moti s/o Karan
 5. Jal Singh s/o Karan
 6. Jagdish s/o Bhanga
- By Caste Jat, Residents of Village Roniza Tehsil Nadbai, Distt. Bharatpur.

.....Respondents.**Appeal /TA/6948/2002/Bharatpur**

1. Munshi s/o Pyarelal deceased through LRs.
 - 1/1 Rambhuli wd/o Munshi
 - 1/2 Mahendra Singh s/o Munshi
 - 1/3 Bhagwan Singh s/o Munshi
 - 1/4 Sukha s/o Munshi

- 1/5 Kani s/o Munshi
 1/6 Babu Singh s/o Munshi
 1/7 Bhag Singh s/o Munshi
 1/8 Bhagwati d/o Munshi
 1/9 Ramshri d/o Munshi
 2. Must. Sirdari wd/o Guru Dayal
 3. Soran s/o Guru Dayal
 4. Dashrath s/o Guru Dayal
 By Caste Jat, Residents of Village Roniza Tehsil Nadbai, Distt. Bharatpur.

.....Appellants.

VERSUS

1. Karan s/o Jodha
 2. Bhanga s/o Jodha
 By Caste Jat, Residents of Village Roniza Tehsil Nadbai, Distt. Bharatpur.
 3. Sub Registrar Nadbai Tehsil Nadbai Distt. Bharatpur.

.....Respondents.

D.B.

Shri Mohanlal Nehra, Member
Shri Rajinder Kumar, Member

Present:-

Shri S.P Singh, counsel for the Appellants.

Shri Ashok Agrawal, counsel for the Respondents.

JUDGMENT

Date: 03-07-2018

Per Shri Rajinder Kumar, Member

1. These second appeals arise out of common judgment dated 28-11-2002 passed by learned Revenue Appellate Authority, Bharatpur in Appeals no. 53/99 and 54/99, whereby the appeals preferred by the respondents 1 and 2, namely, Sh. Karan and Bhanga against the judgments and decrees passed in Revenue Suit no. 82/90 and 127/90 were set aside and both the suits were remanded to the trial court of SDO, Bharatpur to decide the same afresh after giving opportunity of leading evidence and hearing to the parties.

2. The facts leading to the present controversy are that two suits [No. 82/90 and 127/90] came to be filed in the trial court. The suit no. 82/90 was filed by the present respondent no. 1 and 2 against Sh. Munshi, Guru Dayal and the Sub-Registrar, Tehsil Nadbai under sections 88, 89 and 188 of the Rajasthan Tenancy Act, 1955.

The suit no. 127/90 was filed by Sh. Munshi and Guru Dayal against Karan, Bhanga, Teji, Jagdish, Moti and Jal Singh under section 188 of the Rajasthan Tenancy Act, 1955. After the death of Sh. Munshi and Guru Dayal, their LRs are before us. The land in dispute bears khasra no. 163 (measuring 1 bigha 02 biswa) situated in Village Roniza Tehsil Nadbai.

The plaintiffs of suit no. 82/90 stated in their plaint that the suit land was given by Sh. Pyare Lal to their father Sh. Jodha Ram on lagan for cultivation sometimes prior to the Samvat 2012. Shri Jodha Ram cultivated the land upto Samvat 2036 as 'Shikami tenant' but in the Revenue Record, his name was recorded as 'Shikami tenant' only in the Samvat 2031. After death of Shri Jodha Ram, the plaintiffs are cultivating the land as 'Shikami Tenants'. The defendants have no concern over the disputed land. Therefore, a request was made to order correction of revenue record showing the plaintiffs as khatedars of the disputed land.

In the suit no. 127/90, the plaintiffs stated that the disputed land is under their cultivation as khatedars and the defendants are bent upon to illegally include this land in their field. Therefore, a request was made to restrain them by way of permanent injunction.

3. Both the above suits were consolidated by the trial court. After completion of pleadings of the parties, their evidence was recorded and vide judgment dated 04-06-1999, the suit no. 82/90 filed by the present respondents no. 1 and 2 was dismissed whereas the suit no. 127/90 filed by the present appellants was decreed for permanent injunction. Feeling aggrieved, the respondents no. 1 and 2 filed two appeals no. 53/99 and 54/99 in the Court of Revenue Appellate Authority and vide judgment dated 28-11-2002, the same were accepted in the aforesaid manner. Hence, these appeals.
4. We have heard learned counsels for the parties.

5. Learned counsel for the appellants has submitted that the trial court had passed a well considered judgment decreeing the suit of the appellants and dismissing the suit of the respondent no. 1 and 2. The learned first appellate court accepted the appeals in an illegal manner and remanded the suits for *de-novo* trial without application of judicial mind. Entire material was available with the learned first appellate court, therefore, in place of remanding the matters, the first appellate court should have itself decided the appeals on merits. The findings of the learned first appellate court are perverse. The remand order was not at all necessary. Therefore, a request has been made to set aside the impugned judgment.
6. Learned counsel for the respondent no. 1 and 2 has supported the judgment passed by learned R.A.A. Bharatpur. He has argued that in the facts and circumstances of the case, the remand order was found justified and no illegality has been committed by the learned first appellate court in remanding the same to the trial court for *de novo* trial. Therefore, a request has been made to dismiss the appeals.
7. We have pondered over the submissions made before us and perused the record carefully.
8. The substantial question of law involved in this second appeal is whether the judgment of the learned R.A.A Bharatpur in remitting the matter to the trial court for *de novo* trial was necessary?
9. There are mainly two provisions in the Code of Civil Procedure, 1908, which empower the first appellate court to remand a suit to the Court of first instance. The first provision is contained in Order XLI Rule 23 (as amended by the Hon'ble Rajasthan High Court) and the second provision is contained in Rule 23-A. Before proceeding further, It would be apposite to quote here the above said provisions:-

"23. Remand of case by Appellate Court.- Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, or where the Appellate Court while reversing or setting aside the decree under appeal, considers it necessary in the interests of justice to remand the case, it may by order remand the case, and may further direct what issue or issues shall be tried in the case so

remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, with direction to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; the evidence, if any, recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand."

"23-A. Remand in other cases.- *Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a re-trial is considered necessary, the Appellate Court shall have the same powers as it has under Rule 23."*

In view of the above provisions, a remand of suit is possible in three contingencies:-

- (i) The Court of first instance has disposed of the suit on a preliminary point and the decree is reversed in appeal.
- (ii) The appellate court while reversing or setting aside the decree under appeal considers it necessary in the interest of justice to remand the case.
- (iii) The Court of first instance has disposed of the suit otherwise than on a preliminary point and the appellate court considers a re-trial of the suit as necessary.

10. The above provisions do not authorize the appellate court to remand a case merely because it considers that the reasoning of the trial court in some respects is wrong. In the present case, the learned first appellate court had remanded the suits in their wholesale holding that though the father of respondents, namely, Pyare was recorded khatedar yet the father of the appellants, namely, Jodha, was in possession of the suit land as per revenue record. After giving the aforesaid findings, the learned first appellate court set aside only the 'judgment' of the learned trial court without setting aside the 'decree' passed in above suits. The approach of the learned first appellate court in passing the impugned judgment and remanding the matter to the Court of first instance for *de novo* trial is not as per the scheme of the Code of Civil Procedure, 1908. It appears that the learned first appellate court has set aside the judgment of the trial court only for the sake of remand without considering the provisions contained in the Code of Civil Procedure, 1908 regarding remand of suits. The first appellate court is also a court of facts and all the required material

in this case was available before the learned R.A.A to decide the appeal on merit one way or the other. As a matter of fact, there was no scope of remanding the matter. It ought to have considered the various aspects of the case mentioned in the judgment of the trial court and also whether the same ought to be confirmed or reversed or modified. We are of the view that the remand by the learned first appellate court was not necessary, therefore, the substantial question of law framed above is answered accordingly. The impugned judgment being wholly erroneous, requires to be set aside with a direction to the learned first appellate court to decide the appeals on their own merits.

11. Resultantly, the appeals filed by the appellants are allowed and the impugned judgment of R.A.A. Bharatpur in both the appeals are set aside with the direction to re-admit the appeals to their original numbers and decide the same on their merits after giving reasonable opportunity of hearing to the concerned parties.

Pronounced.

(Rajinder Kumar)
Member

(Mohan Lal Nehra)
Member