

W.R.**IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER****1.Appeal Decree/TA/6870/2002/Hanumangarh**

Nazar Singh (deceased) son of Shri Mal Singh through his following legal representatives:-

1. Naseeb Kaur wife of late Nazar Singh
2. Gurjeet Singh
3. Baljeet Singh sons of Late Nazar Sinngih Jat Sikh, residents of Araiawala Tehsil & District Hanumangarh.
4. Amarjeet Kaur
5. Paramjeet Kaur  
-daughters of Late Nazar Sinngih Jat Sikh resident of Ariawali Tehsil & District Hanumangarh.

...Appellants

Versus

1. Gurmeet Singh son of Shri Dalip Singh by caste Jat Sikh, resident of Village Ariawali, Tehsil & District Hanumangarh
2. Kuldeep Singh son of Late Shri Darshan Singh Jat Sikh resident of Village Fatehgarh Tehsil & District Hanumangarh.
3. The State of Rajasthan through Tehsildar, Hanumangarh as being landholder.

Respondents

**2.Appeal Decree/TA/6965/2002/Hanumangarh**

Gurmeet Singh son of Shri Dalip Singh by caste Jat Sikh resident of Village Ariawali, Tehsil & District Hanumangarh

...Appellant

Versus

1. Kuldeep Singh son of Late Shri Darshan Singh Jat Sikh resident of Village Fatehgarh Tehsil & District Hanumangarh.
2. Nazar Singh (deceased) son of Shri Mal Singh through his following legal representatives:-
  - 1.Naseeb Kaur wife of late Nazar Singh
  - 2.Gurjeet Singh
  - 3.Baljeet Singh  
-sons of Late Nazar Sinngih Jat Sikh resident of Araiawala Tehsil & District Hanumangarh
  - 4.Amarjeet Kaur

5.Paramjeet Kaur

-daughters of Late Nazar Sinngn Jat Sikh residents of  
Araiawala Tehsil & District Hanumangarh –

3. The State of Rajasthan through Tehsildar, Hanumangarh as  
being landholder

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**D.B.**

**Shri Praveen Gupta, Member**

**Shri Rajinder Kumar, Member**

Present :-

1. Shri N.K.Goyal, Counsel for the appellants
2. Shri Satveer Singh and Shri Manish Pandiya, Counsels for the  
respondents.

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**JUDGMENT**

**Dated 14-1-2019**

**Per – Shri Rajinder Kumar, Member**

1. These appeals under Section 224 of the Rajasthan Tenancy Act, 1955 have been preferred against the judgment and decree dated 27.11.2012 of the learned Revenue Appellate Authority, Hanumangarh, whereby the first appeal preferred by the defendant no.1 Kuldeep Singh against the judgment and decree of the trial court dated 20.12.2001 was accepted. By the said judgment, the learned trial court had decreed the plaintiff suit for declaration and permanent injunction.

2. The appeal no.2002/6870 has been preferred by the defendant no.2 Nazar Singh and the appeal no.2002/6965 has been preferred by the plaintiff Gurmeet Singh.

3. Facts leading to these cases in brief are that the aforesaid suit was filed by the plaintiff Gurmeet Singh in the trial court seeking the above reliefs in respect of the lands situated in Chak no.22 and comprised of stone no.115/334 kila no.6,7,14 to 17, 24 and 25 (total 08 bighas) of Village Ariawali. The suit was contested by the defendant No.1 Kuldeep Singh whereas a consent written statement was submitted by the defendant no.2 Nazar Singh. The learned trial court after framing the issues had put up the parties to trial. After recording their evidence, the learned trial court decreed the plaintiff's suit vide judgment dated 20.12.2001. Being aggrieved, the defendant no.1

preferred an appeal in the court of learned Revenue Appellate Authority, Hanumangarh, which was accepted vide judgment dated 27.11.2002 and the suit of the plaintiff Gurmeet Singh was dismissed.

4. It is noticeable that the learned trial court had decided issues no.3 to 5 and 7, 8 against the plaintiff. Therefore, he preferred cross objections under Order 41 Rule 22 C.P.C. in the first appellate court on 23.01.2002. A cross objection was also filed by the defendant no.2 Nazar Singh in the first appellate court stating therein that he never appeared in the trial court either personally or through counsel and thus the consent written statement was submitted by any other person impersonating him. The learned first appellate court was not, however, impressed by the cross-objections filed by the plaintiff Gurmeet Singh and the defendant no.2 Nazar Singh. Hence it led to the filing of these two separate appeals by them.

5. The following questions of law arise for determination of these appeals :-

(i) Whether the learned first appellate court failed to appreciate the fact that defendant no.2/appellant, Nazar Singh had no knowledge of the pendency of the suit in the trial court and he was impersonated by some other person and thus, material irregularity was committed by the first appellate court in dismissing the cross objections of the defendant no.2/appellant ?

(ii) Whether the learned first appellate court committed illegality in not considering the cross objections of the plaintiff-appellant submitted by him on the findings of the trial court pertaining to issues no.3,4,7 and 8 ?

6. We have heard the learned counsels.

7. On behalf of the defendant no.2/appellant Nazar Singh, learned counsel has submitted that the learned first appellate court committed gross illegality in dismissing the cross objections filed by the defendant no.2/appellant. He argued that the trial court has passed the decree against the defendant no.2/appellant on the basis of *consent written statement* dated 11.11.1986 whereas he never submitted the said written statement on 11.11.1986 or before that date. On 11.11.1986, he was not present in Hanumangarh and was present on his official duty at Chhambjodia in Jammu and

Kashmir in at Army Headquarters. Therefore, the judgment and decree was procured against the defendant no.2/appellant by playing fraud on the trial court. This fact was submitted before the first appellate court by filing was objection to the appeal. He specifically pleaded in cross objection that he came to know of the passing of the judgment & decree of the trial court when notices of the first appeal were received by him. Therefore, he engaged his counsel and filed the aforesaid cross objections mentioning therein that no notice or summon was served upon him by the trial court and he had no knowledge of any suit filed by Gurmeet Singh in the court and he never filed any consent written statement. Learned counsel also submitted that the defendant no.2/appellant is an Ex-soldier of Army and he does not know Hindi at all. He knows only Urdu, Punjab and Angal language and always signs in Angal language. Therefore, his signatures on consent written statement are forged. In support of his contentions that on 11.11.1986, the defendant no.2/appellant was present on duty, a certificate issued by the commending officer of the Army was also submitted by the defendant no.2 appellant. The court committed jurisdictional error in dismissing the cross objections on technical grounds. A decree obtained by playing fraud on court can be set aside at any time, whenever the same comes to the knowledge of the court. Learned counsel also submitted that during the pendency of the suit before the trial court, the defendant no.2/appellant Nazar Singh filed an application that a case in respect of the land in question filed by Gurmeet Singh is pending and case should be decided after calling him so that the facts may be brought to the notice of the court but there is no mention of the said application in the judgment and decree of the trial court or first appellate court. Therefore, the learned counsel made a prayer to accept the appeal and set aside the judgments and decrees of the courts below.

8. On behalf of the plaintiff-appellant, it was vehemently submitted that the learned trial court rightly decided issues no.1,2,5,6 and 9 in favour of the plaintiff appellant and illegally decided the remaining issue in favour of the defendant no.1 Kuldeep Singh. Assailing the findings of the trial court on issue nos.3,4,7 & 8, the plaintiff appellant preferred cross objections under Order 41 Rule 22 CPC in the first appellate court. But the learned court below did not take into consideration the aforesaid cross objections in the impugned judgment. On the contrary, while deciding these issues the court below observed

that since the plaintiff-appellant has not filed any appeal against the findings of the trial court on these issues, therefore the said findings on issues no.3,4,7 & 8 were maintained by the first appellate court. In this way, the learned court below has committed illegality in ignoring the cross-objections of the plaintiff-appellant. Therefore, he made a prayer to remand the appeal to the first appellate court to decide the same afresh after considering the cross objections of plaintiff-appellant. On merits also, the learned counsel has assailed the findings of the first appellate court to be perverse and illegal.

9. We have given our thoughtful consideration to the above submissions and perused the record carefully.

10. The proceedings of the trial court would reveal that on 11.11.1986, a consent written statement was submitted by Nazar Singh. The consent of the written statement were read over to him in the presence of his lawyer, and he admitted the same to be correct. Nazar Singh was identified by the said lawyer also. In para no. 3 of the memo of appeal filed in this Board, it has been mentioned on behalf of the defendant no.2 appellant Nazar Singh that he neither received summons of this suit nor submitted any written statement on or after 11.11.1986. This stand taken by him runs contrary to the stand taken by him in the succeeding paragraph of the appeal memo, wherein it is mentioned that in the trial court he submitted an application to the effect that the suit should be decided after calling him. We have perused the said application and it is revealed from it that the defendant no.2-appellant Nazar Singh was aware of the pendency of the present suit and therefore, it cannot be believed that someone else impersonated him at the time of submitting the consent written statement. It is also pertinent that the aforesaid application was submitted by him after getting it typed and by affixing a proper court fee of Rs. 1/-. It goes to show that the said application was submitted in the trial court upon legal advise. After submitting the said application, the defendant no.2 appellant took no steps to participate in the further proceedings of the case. He submitted no application in the trial court that someone has impersonated him by filing consent written statement. In addition to it, the defendant-appellant no.2 did not send any notice to the lawyer who identified him in the trial court. He did not submit any complaint against the said lawyer in the Bar council in this regard. He did not file any

criminal complaint against the plaintiff for getting him impersonated as ultimately, it was the plaintiff who was to get the fruits of the decree.

11. The defendant no.2/appellant Nazar Singh placed on record a certificate dated 11.11.1986 issued by his Commander which only proves that on 11.11.1986 he was employed in Army. But it does not prove that on 11.11.1986, he was present at his duty place in Jammu and Kashmir. Therefore, on the basis of preponderance of probabilities, it is not established that the defendant no.2- appellant was impersonated in the trial court. As a matter of fact, the learned first appellate court committed no illegality in dismissing the cross-objections of the defendant no.2-appellant Nazar Singh. We endorse the findings of the learned first appellate court in this regard. The first question of law is answered against the defendant no.2 appellant Nazar Singh.

12. Coming to the second question of law, we find considerable force in the submissions of the leaned counsel for the plaintiff-appellant. In the first appellate court, the plaintiff-appellant submitted counter objections under Order XLI Rule 22 CPC. It is trite law that a respondent may not only support the decree but may also assail any adverse finding against him without filing any appeal or cross-objection. As per the said provision, a respondent can also assail any part of the decree either by filing a separate appeal or by filing a cross-objection. The words "respondent may object to decree as if he had preferred separate appeal" mentioned in Order XLI Rule 22 of the Code themselves indicate the intent of the said provision. If he chooses to file a separate appeal against any adverse portion of the decree, the period of limitation starts running from the date of the passing of such decree. If he chooses to file cross objections against the adverse portion of the decree, the law affords him additional advantage of filing such cross-objections within one month of the date of service on him of the notice hearing of appeal. Explanation to Order XLI Rule 22(c) further provides that a respondent feeling aggrieved by any adverse finding against him may also file a cross-objection against any portion of the decree that is appealed against. In the instant case, the plaintiff appellant filed the cross objections, under Order 41 Rule 22 CPC and the learned first appellate court failed to take into consideration the said cross objections and illegality held that in the absence of separate

appeal, the plaintiff cannot assail the finding on issue no.3,4,7 and 8. It was incumbent upon the first appellate court to deal with and decide the said cross objections as well while deciding the first appeal. Therefore, the judgment rendered by the first appellate court in the appeal of the plaintiff-appellant suffers from material illegality. The second question of law is accordingly decided in favour of the plaintiff-appellant.

13. Resultantly, the appeal filed by the defendant no.2/ appellant Nazar Singh is dismissed. The appeal filed by the plaintiff-appellant is partly allowed and the judgment and decree dated 27.11.2012 of the court first appellate court are set aside with a direction to the learned Revenue Appellate Authority Hanumangarh to re-register the appeal and decide the same afresh along with the cross objections filed by the plaintiff-appellant in accordance with law after hearing all the concerned parties. The parties shall appear in the first appellate court on 19.2.2019.

14. Pronounced in open court.

(Rajinder Kumar)  
Member

(Praveen Gupta)  
Member

