



## IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal Decree/2002/788/TA/Bharatpur

1. Smt. Gomti daughter of Nathi wife of Hoti Lal by caste Mali R/o Chhapar Mohalla, Kumher District Bharatpur (deceased) - name deleted.
2. Smt. Kiran daughter of Nathi wife of Parbhathi by caste Mali R/o Chhapar Mohalla, Kumher District Bharatpur
3. Smt. Mukut daughter of Nathi wife of Niroti by caste Mali R/o Chhapar Mohalla, Kumher District Bharatpur
4. Smt. Neeto daughter of Nathi wife of Heero by caste Mali R/o Helak Darwaja, Kumher District Bharatpur
5. Smt. Son daughter of Nathi wife of Gopal by caste Mali R/o Mohalla Surajpole, District Bharatpur
6. Smt. Lachi daughter of Nathi wife of Man Singh by caste Mali R/o Mohalla Surajpole, District Bharatpur
7. Smt. Budho daughter of Nathi wife of Brijlal by caste Mali R/o Mohalla Surajpole, District Bharatpur

...Appellants/defendants

Versus

Tikam son of Nathi by caste Mali resident of Village Mudia Gandhar, Tehsil Wair, District Bharatpur.

...Respondents/Plaintiff

.....

**D.B.**

**Shri V.Srinivas, Chairman**  
**Shri Shankar Lal Sharma, Member**

Present:

1. Shri N.K.Goyal, Counsel for the appellants
2. Shri Satish Pareek, Counsel for the respondent.

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**JUDGMENT**

Dated: 20-2-2018

The appellants have filed this 2nd appeal in the Board of Revenue under Section 224 of the Rajasthan Tenancy Act against the judgment and decree of the learned Settlement Officer-cum-Revenue Appellate Authority, Bharatpur dated 29.9.2001 passed in appeal No:124/2000 and against the judgment and decree of the learned Assistant Collector, Wair dated 25.8.1993 whereby the appeal was allowed and the judgment and decree of learned Trial Court was set aside and the suit of plaintiff for declaration was decreed.

2. The appellants/defendants plead that the plaintiff/respondents filed a suit in respect of khasra no.212 of area 31.2 bighas in village Mudia, Gandhar

of Tehsil Wair on the ground that he is in possession of the land since the time of his father late Shri Nathu and defendants have no concern regarding the land in dispute. The suit was dismissed by the trial court vide judgment and decree dated 25.8.1993. Aggrieved by the judgment & decree of trial court dated 25.8.93 the plaintiff filed first appeal before Settlement Officer-cum-Revenue Appellate Authority, Bharatpur which was allowed vide judgment and decree dated 20.9.2001 and the suit of the plaintiff for declaration and permanent injunction was decreed. Aggrieved against the judgment and decree of the 1st appellate court dated 20.9.2001 this 2nd appeal has been filed. The appellants plead that judgment & decree of the 1st appellate court dated 20.9.2001 is against the law, facts and principles of natural justice. The land in question is self acquired land of late Shri Nathi and therefore as per provisions of Section 8 of the Hindu Succession Act, the defendants/appellants have equal share and the plaintiff has only 1/8th share of total land. The appellants pleaded that the learned Settlement Officer-cum-Revenue Appellate Authority, Bharatpur has erred in deciding the appeal on the ground that the land in question was ancestral land. Further the appellants pleaded that no notice of hearing was received by the defendants and that the learned Settlement Officer-cum-Revenue Appellate Authority, Bharatpur has allowed the appeal without any notice on the appellants.

3. The learned counsel for the appellants Shri N.K.Goyal pleaded that the Settlement Officer-cum-Revenue Appellate Authority, Bharatpur has decided the case ex-parte and summons were not served on the appellants. He pleaded that appellant No.1 Smt. Gomti be deleted from the suit, which is permitted. He also pleaded that delay should be condoned and submitted the following citations:

2002 RRD page 101 "**Code of Civil Procedure, Order 5 Rules 17 to 20-**

Second appeal against order of R.A.A. Ex-parte order passed against defendants without observing the provisions enumerated in Order 5 Rules 17 to 20- Application for setting aside the ex-parte order filed under Order 9 Rule 7 CPC was dismissed on the same day and suit was decreed after hearing plaintiff - No personal service effected on appellant Nos.1 & 2- Provisions of Sections 58 to 60, L.R.Act were not followed- The principles of natural justice and the rule of Audi Alteram Partem not followed - Judgment and decree passed by Asstt. Collector and R.A.A. set aside and case remanded back to the trial court with directions.

2002 RRD Page 404 "**Code of Civil Procedure, Order 5 Rules 17 to 20-**

Revision against order of R.A.A.- Held service of summons has been made by affixing the summons without any order of the court- Service of summons is not according to the procedure enumerated in Order 5 Rule 17 to 20 - Statement of process server not recorded in respect of service - Order of R.A.A. not erroneous - Case remanded to trial court with directions.

1996 RBJ Page 302 "**Code of Civil Procedure 1908, Order 5 Rules 17 to 20 -When service of notice is not proper.**

The notice issued to the petitioner returned unserved by the process server with note that the petitioner has sold away his land and shifted to Punjab. His address of Punjab was also given but no efforts were made to serve notice on the address of Punjab or notice through News paper or by registered post and passed ex-parte order. This is no ground for depriving a person from hearing. No one can be punished unheard. This is elementary principle of natural justice and when petitioner applied for setting aside the ex-parte decision it was rejected on ground of Limitation, when no notice served on him, then how can this application be held to be barred by Limitation. Hence, Board accepted revision and set aside the order of trial court.

The above citations are applicable on ex-parte proceedings and the appellants are hereby granted exemption in limitation period to file appeal. Further the learned counsel for appellant pleaded that the land is paternal land and Settlement Officer-cum-Revenue Appellate Authority, Bharatpur has held its ancestral land. Based on the above the learned counsel for appellants pleaded that the appeal be allowed.

4. The learned counsel for respondent Shri Satish Pareek pleaded that the respondent's father Shri Nathi died in 1990 and suit was presented in 1991. The Hindu Succession Act does not recognize rights of daughters till 2005. In this regard he cited judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 7217 of 2013 in which the Hon'ble Supreme Court has held that:-

1. "The only issue which has been raised in this batch of matters is whether Hindu Succession (Amendment) Act, 2005 (the Amendment Act) will have retrospective effect. In the impugned judgment (reported in AIR 2011 Kar. 78 Phulavati Vs. Prakash), plea of retrospectively has been upheld in favour of the respondents by which the appellants are aggrieved."

18. "Contention of the respondents that the Amendment should be read as retrospective being a piece of social legislation cannot be accepted. Even a social legislation cannot be given retrospective effect unless so provided for or so intended by the legislature. In the present case, the legislature has expressly made the Amendment applicable on and from its commencement and only if death of the coparcener in question is after the Amendment. Thus, no other interpretation is possible in view of express language of the statute. The proviso keeping dispositions or alienations or partitions prior to

20th December, 2004 unaffected can also not lead to the inference that the daughter could be a coparcener prior to the commencement of the Act."

22. "In this background, we find that the proviso to Section 6(1) and sub-section (5) of Section 6 clearly intend to exclude the transactions referred to therein which may have taken place prior to 20th December, 2004 on which date the Bill was introduced. Explanation cannot permit reopening of partitions which were valid when effected."

23. "Accordingly, we hold that the rights under the amendment are applicable to living daughters of living coparceners as on 9th September, 2005 irrespective of when such daughters are born. Disposition or alienation including partitions which may have taken place before 20th December, 2004 as per law applicable prior to the said date will remain unaffected. Any transaction of partition effected thereafter will be governed by the Explanation."

Based on the above the learned counsel for appellants prays that the 2nd appeal be dismissed in favour of respondent/plaintiff and judgment and decree of learned Settlement Officer-cum-Revenue Appellate Authority, Bharatpur dated 20.9.2001 be affirmed.

5. We have examined the judgments of the learned Settlement Officer-cum-Revenue Appellate Authority, Bharatpur and trial court. In both courts ex-parte proceedings were decided. The learned trial court has recorded in its judgment that the appellant/defendants had submitted in the Gram Panchayat that following the death of their father the suit land be recorded in the name of their brother- the respondent/plaintiff. However, no mutual agreement was presented in the trial court. Hence, the learned trial court held that the suit cannot be decreed. The learned Settlement Officer-cum-Revenue Appellate Authority, Bharatpur has held that the Mutation no:104 dated 30.5.1991 is against the law and in his judgment has conferred khatedari rights on the appellants/defendants.

6. The citations submitted by the learned counsel for respondent is fully applicable in this case.

7. The Hindu Succession (Amendment) Act 2005 stipulates that from commencement of the amended Act of 2005 the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son. It is apparent that if sons under the old sections of Hindu Law were treated as coparceners since birth, the amended section recognizes the rights of daughter,

similarly. The amendment in the Hindu Succession Act comes into effect on and from 9th September, 2005 and the section cannot be applied retrospectively prior to the amendment when the legislature itself has specified the postenor date from which the Act comes into force. This is the judgment of the Hon'ble Supreme Court of India. The judgment and decree of the learned Settlement Officer-cum-Revenue Appellate Authority, Bharatpur dated 20.9.2001 precedes the Hindu Succession (Amendment) Act 2005. The findings are therefore sustainable in law.

8. The appeal is dismissed and the judgment and decree of learned Settlement Officer-cum-Revenue Appellate Authority, Bharatpur dated 21.9.2001 upheld.

Pronounced in open court.

(Shankar Lal Sharma)  
Member

(V.Srinivas)  
Chairman