

**IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER**

**Appeal/TA/10342/2003/DAUSA**

1. Kailash Prasad son of Prabhu Dayal Brahmin resident of Sedulai Tehsil Lalsot District Dausa (deceased) through his following legal representatives:-
    - 1/1. Mst. Kaushalya widow of Kailash Prasad
    - 1/2. Kamlesh Kumar son of Kailash Prasad
    - 1/3. Umesh Kumar son of Kailash Prasad
    - 1/4. Satish Chand son of Kailash Prasad- All are resident of Brahmin resident of Gram Sedulai Tehsil Lalsot presently residing at Gram Maharia Tehsil Lalsot district Dausa.
  - 1/5. Smt. Yogesh Kumari daughter of Late Kailash Prasad wife of Vinod Kumar Brahmin resident of Kasba Bassi Tehsil Bassi District Jaipur
2. Ramphool son of Chhitar by caste Mali resident of Gram Maharia Tehsil Lalsot District Dausa.

....Appellants/non-applicants

Versus

1. Kamlesh Kumar son of Narsingh Lal Brahmin resident of Maharia Tehsil Lalsot District Dausa.
2. The State of Rajasthan through Tehsildar Lalsot District Dausa
3. Patwari halka Gram Maharia Tehsil Lalsot District Dausa.

....Respondents

....Proforma respondents.

\*\*\*\*\*

**D.B.**  
**Shri V.Srinivas, Chairman**  
**Shri Modudan Detha, Member**

**Present:-**

Shri Hemant Sogani, Counsel for the appellants.

Shri J.P.Mathur, Counsel for the respondents.

\*\*\*\*\*

**JUDGMENT**

**Dated 6-7-2018**

The appellants have filed this 2<sup>nd</sup> appeal u/s 225 Rajasthan Tenancy Act 1955 against the order of the Settlement Officer cum Revenue Appellate Authority dated 11/2/2003 and the judgment and decree of Assistant Collector Lalsot dated 28/9/1998.

2. The brief facts of the case are the following. The suit land of village Mahariya, Tehsil Lalsot, District Dausa of khasra number 274 area 1 bigha 10 biswa, khasra number 276 of area 2 biswa, khasra number 277 of area 2 bigha 17 biswa khasra number 423 of area 14biswa and

khasra number 276/569 of area 1 bigha 5 biswa total 5 khasra numbers total area of 6 bigha 8 biswa was recorded in the khatedar tenancy of Jagannath s/o Lakshminarayan Brahman. Jagannath s/o Lakshminarayan wrote a will on 13/10/1978 in favour of Plaintiff – respondent Kamlesh Kumar and following the death of Jagannath on 6/2/1979 the Plaintiff- respondents claim khatedari rights on the suit land. The appellants-defendants plead that the Plaintiff-respondents have no rights on the suit land, as Jagannath had written an adoption deed on 13/12/1974. Therefore, after death of Jagannath he is khatedar tenant as the adopted son.

3. The appellants have filed a suit u/s 88, 188 of the Rajasthan Tenancy Act 1955 in the trial court of Assistant Collector Lalsot. In their written statement the appellant-defendants have pleaded that Jagannath had destroyed the will written on 13/10/1978. Jagannath also said that he had written an adoption deed on 13/12/1974 in which he adopted appellant no.1. The trial court framed 10 issues and following judicial process and arguments dismissed the suit on 28/9/1998. The appellants filed the first appeal in the court of Settlement Officer cum Revenue Appellate Authority and the first appellate authority remanded the case back to the trial court for a fresh hearing in the matter. Aggrieved by this order of the 1<sup>st</sup> appellate authority the appellants have approached the Board of Revenue in second appeal.

4. In his arguments before the Double Bench of the Board of Revenue the learned counsel for appellants pleaded that the order of the Settlement Officer cum Revenue Appellate Authority is against law and facts, and not consistent with the judicial process laid down in Order 41 Rule 24 Civil Procedure Code 1908. The 1<sup>st</sup> Appellate Court did not enunciate the grounds on which the case was remanded to the Trial Court. The appellants plead that he is the adopted sons of Jagannath and due adoption formalities were completed on 13/12/1974. The learned counsel for appellants has pleaded that the Settlement Officer cum Revenue Appellate Authority was wrong in remanding the case to the Trial Court and should have decided the case himself. In pursuance of his arguments, the learned counsel for appellants submitted the following citations: 2006 RRT 156, 2007 RRT 385, 2010 RRT 989 in which it has been enunciated that the appellate court should have decided the case on merits and remand is not justified.

5. The learned counsel for respondent said that the entire appeal is against the mutation which transferred rights to the respondent no.1. The godnama was void and the adopted child did not do enough for the father hence a will was written subsequently. The godnama need not be set aside by a civil court as it is a void document. In support of his arguments, the learned counsel for respondents submitted the following citations – 1984 RRD 51, 2011 RBJ 114, 2011 RBJ 250, 2011 RBJ 413 and 2017 RRT (1) 745. The learned counsel for respondents prayed that as the trial court has not given a clear finding, it is preferable that the entire case be heard afresh by the trial court rather than the Settlement Officer cum Revenue Appellate Authority.

6. We have heard the arguments and examined the case filed of the lower courts. Section 107 of Civil Procedure Code 1908 clearly lays down that the first Appellate Court shall have the power to determine a case finally, to remand a case, to frame issues and refer them for trial and

to take additional evidence or to require such evidence be taken. In the impugned case, it is important that the first Appellate Court of Settlement Officer cum Revenue Appellate Authority determine the case finally as such a determination by the Trial Court has been completed based on 10 issues that were framed. Therefore, we set aside the order of Settlement Officer cum Revenue Appellate Authority dated 11/2/2003 and direct that the 1<sup>st</sup> appellate court frame issues and take additional evidence if necessary and determine the case as per law.

Appeal is allowed

Pronounced in open court.

(ModudanDetha)  
Member

(V.Srinivas)  
Chairman