

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

**Appeal Decree/TA/2338/2003/Alwar.**

State of Rajasthan through Sub-Divisional Officer, Bansur Distt.  
Alwar.

.....Appellant

VERSUS

1. Samundra Singh
2. Balveer Singh
3. Man Singh
4. Hukam Singh
5. Raghuveer Singh
6. Subhash
7. Hawa Singh

ss/o Ramlal, All Jatan by caste, rs/o Bhakharwal Tan Rampur  
Tehsil Bansur Distt. Alwar.

..... Respondents.

**D.B.**

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

**Argued by:-**

Shri V.P. Singh, Government Advocate for the Appellant.

Shri J.K. Pant, counsel for the Respondents.

**J U D G M E N T**

**Date: 29-10-2018**

*Per Shri Rajinder Kumar, Member*

1. This second appeal has been preferred by the State of Rajasthan against the judgment and decree dated 12-09-2002 of the learned Revenue Appellate Authority Alwar passed in appeal no. 75/2002. By the impugned judgment, the learned first appellate court set

aside the judgment and decree dated 10-04-2002 passed by Assistant Collector, Bansur and decreed the suit of the plaintiffs/respondents declaring them khatedars of the land bearing khasra no. 4016.

2. The facts of this case in nutshell are that the respondents filed the aforesaid suit with the allegations that they are in possession of the disputed lands since the time of their forefathers as its khatedars and the Settlement Department entered the disputed land as Charagah in the Revenue record without any legal authority casting cloud over the rights of the plaintiffs. The defendant/appellant contested the suit and the learned trial court dismissed the said suit on 10-04-2002. Feeling aggrieved the plaintiffs/respondents preferred first appeal in the court of learned Revenue Appellate Authority Alwar. During the pendency of said appeal, an application was filed by the plaintiffs/respondents under Order 41 Rule 27 CPC with a prayer to take on record three documents, namely, 'Khevat Khatonis of Samvat 2012', 'Khatoni Bandobast of Samvat 2021' and 'Khasra Parivartan' pertaining to the disputed land. In the said application, the plaintiffs/respondents specifically submitted that the learned trial court has dismissed their suit for not producing these documents on record and therefore, they have obtained certified copies of these documents on 10.07.2002. The said application was accepted by the learned first appellate court on 29.08.2002. It is pertinent that the plaintiffs/respondents were not directed to prove the said documents by producing oral evidence and even the defendants/appellants were also not afforded any opportunity to lead rebuttal evidence. After hearing the arguments, the learned Revenue Appellate Authority, Alwar accepted the appeal of the plaintiffs/respondents mainly relying upon the aforesaid documents produced as additional evidence. Feeling

aggrieved, the State Government has preferred the instant second appeal.

3. The question of law involved in this appeal is whether the first appellate court committed an illegality in relying upon the documents produced by the plaintiffs/appellants as additional evidence without getting the said documents proved by oral evidence and without affording the defendant/appellant an opportunity of rebutting the same and in this way the judgment of the learned first appellate court suffers from the material illegality ?
4. We have heard the learned counsels.
5. On behalf of the appellant, it has been argued that the impugned judgment and decree was passed on 12-05-2002 and this appeal was filed by the appellant on 13-05-2003. The period of limitation of filing this appeal was 90 days. Thus, there has been a delay of about 9 months in filing this appeal. The said delay was not intentional. It has occurred on account of the procedural formalities and due to administrative exigencies sufficient reasons have been submitted in the application for delay condonation. Therefore, a prayer has been made to condone the delay. He also argued that after taking additional evidence on record, the trial court ought to have given an opportunity to the appellant to lead evidence in rebuttal. The suit of the plaintiffs/respondents was dismissed by the learned trial court for not producing relevant documentary evidence and the plaintiffs/respondents should not have been permitted to fill up the lacunas. Even otherwise, after taking the said documents on record, the plaintiffs/respondents must have proved the same by leading oral evidence. The defendant/appellant must have also been given reasonable opportunity to rebut the same. Having failed to do so, material illegality has been committed by the learned first appellate court in reversing a well considered

judgment of the trial court. Therefore, the prayer has been made to accept the appeal and set aside the impugned judgment.

6. On behalf of respondents, it is argued that revision is hopelessly time barred and there is no sufficient ground to condone the delay. On merits, it is argued that the suit of the plaintiffs/respondents was proved by oral and documentary evidence and to further corroborate their case, additional evidence was submitted in the first appellate court. The disputed land is the khatedari land of the plaintiffs/respondents and thus, the impugned judgment is legal. A prayer has been made to dismiss the appeal.
7. We have given our thoughtful consideration to the rival submissions and perused the record carefully.
8. The record reveals that after excluding the stipulated time for filing the second appeal, there has been a delay of about 9 months in preferring this appeal. To condone the same, an application under Section 5 Limitation Act, 1963 has been submitted along with the affidavit of the Officer-in charge. It is not borne out that the said delay is either intentional or inordinate. The delay appears to have occurred on completion of procedural formalities and in administrative exigencies. Hence, the delay has been satisfactory explained. Delay is, therefore, condoned.
9. A perusal of the trial court judgment reveals that the suit of the plaintiffs/respondents was dismissed for not leading relevant documentary evidence in support of their version and that is why the plaintiffs/respondents submitted an application to produce additional evidence to corroborate their version in the first appellate court. The said application came to be accepted by the first appellate court on 29.08.2002. The appropriate procedure after accepting the said application was to afford the

defendant/appellant an opportunity to lead rebuttal evidence and also to require the plaintiffs /respondents to prove the said documents by producing oral evidence. The oral evidence could have been either recorded by the first appellate court itself or the matter could have been remanded to the trial court for the purpose. However, without following the said procedure, the first appellate court accepted the appeal mainly relying upon the aforesaid documents. The judgment and decree passed by the first appellate court without adhering to the aforesaid procedure suffers from material illegality and is required to be set aside.

10. Resultantly, the appeal filed by the defendant/appellant is accepted and the impugned judgment of the Revenue Appellate Authority, Alwar is set-aside. The plaintiffs' suit is remanded to the trial court to re-admit the same to its original number and to decide the same afresh after affording the defendant/appellant a reasonable opportunity of producing documentary evidence in rebuttal of the documents submitted by the plaintiffs/respondents. Then both the parties shall be free to produce oral evidence also to prove their respective documents. Thereafter, the trial court shall decide the suit in accordance with law within six months positively. The parties shall appear in the trial court on 18-12-2018.

Pronounced.

(Rajinder Kumar)  
Member

(R.K. Jaiswal)  
Member