

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal Decree/TA/3307/2003/Udaipur.

Smt. Dallu widow of Uda Ji Dangi resident of Lakadwas Tehsil Girva
Distt. Udaipur.

...Appellant.

Versus

1. Partha son of Devaji Dangi
2. Lakha son of Devaji Dangi
3. Pema son of Motiji Dangi
4. Bhaga son of Lakha Ji Dangi
5. Smt. Hudi wife of Parthaji Dangi

All residents of Lakadwas Tehsil Girva Distt. Udaipur.

...Respondents.

D.B.

**Shri Surendra Maheshwari, Member
Shri Ravi Dangi, Member**

Present:-

Shri Mukesh Jain, counsel for the appellant.

Date:23.08.2022

J U D G M E N T

This appeal has been filed under section 224 of the Rajasthan Tenancy Act, 1955 against the judgment and decree of the Settlement Officer-cum-Revenue Appellate Authority, Udaipur in appeal No. 186/2001(Udaipur Decree) dated 5.5.2003 having the title Partha and ors. Vs. Smt. Dallu and ors.

2. Heard the learned counsel for the appellant as none appeared on behalf of the respondents despite notices.

3. The counsel for the appellant/ plaintiff/ Dallu reiterated the facts made in the memo of appeal and argued that additional eleven more issues should have been framed. Secondly, the plaintiff's witness was closed on 6.2.2001 and her application to reopen plaintiff's witness was rejected on 3.3.2001 and on the same day defendant's witness was taken and defendant's witness was also ordered to be closed

and the case was listed for final arguments. Two applications under Order 6 Rule 5 and Order 1 Rule 10 of the Civil Procedure Code evenly dated 10.12.1996 and 26.8.1997 filed by the defendants have been left undecided by the learned trial court. The learned trial court did not draw the proceedings as per the law. That the learned first appellate court has not dealt with the issues framed and decided the counter claim without any issue being framed on counter claim. Apart from it, two appeals should have been filed before the learned first appellate court. Wala son of Deva was not a party to the proceedings, still the learned first appellate court made declaration in his favour. Thus, prayed to allow the appeal and to set aside the judgment and decree of the first appellate court.

4. Considered the arguments of the learned counsel for the appellant and perused the material available on record.

5. To begin with, Dallu/ plaintiff/ appellant filed a suit simplicitor under section 188 of the Rajasthan Tenancy Act before the learned Assistant Collector (HQ) Udaipur on 2.8.1996. On 10.12.1996 an application under Order 6 Rule 5 of the Civil Procedure Code was filed by the defendants No. 1, 2 and 4. Apart from this, an application under Order 1 Rule 10 of the Civil Procedure Code was filed by the defendants No. 1 and 2 on 26.8.1997.

On 26.8.1997 itself, the written statement was filed by the defendants No. 1 and 2 with a counter claim claiming one-third share each to the three sons of Deva viz. Partha, Lakha and Wala as plaintiff/ Dallu is not the legally married wife of Uda son of Deva.

On 5.8.2000, three issues were framed. However, on 6.2.2001, the plaintiff's witness was ordered to be closed and the application to reopen the plaintiff's witness was rejected by the learned trial court on 3.3.2001. On the same day, the defendant's witness were taken and the matter was fixed for final arguments. On 30.4.2001 an application for mauka commissioner was filed by defendant No. 1 and 2, but without any order on it, the judgment was passed on 30.4.2001 itself.

The issue No. 1 was decided in favour of the plaintiff while issue No.2 pertaining to permanent injunction was decided against the plaintiff, holding that a suit of division should proceed before granting injunction under section 188 of the Rajasthan Tenancy Act as injunction cannot be passed against recorded co-tenants. Aggrieved by it, an appeal was preferred before the learned first appellate court by present respondent No. 1 to 3. The appeal was allowed and decreed the counter claim and the three sons of Deva viz. Partha, Lakha (present respondents No. 1 and 2) and Wala were declared khatedar of one-third share each of the disputed land, although finding of the learned trial court on issue No. 1 was left undecided and the decree of learned trial court till rejecting the suit of the plaintiff was kept as it is.

Three issues were framed by the learned trial court which are as follows:-

1. आया वाद की कलम सं में से 1/4 भाग खाता सं. 205 आ.स. 650 रकबा 0.0200 है. में 1/4 भाग, खाता सं. 206 आ.स. 224 रकबा 0.0150 है में से 1/16वां भाग, खाता सं. 207 आ.स. 255 रकबा 0.0800 है. में 1/16 हिस्सा वादिया का होकर उसके कब्जे व खाते में है जिसकी वो अधिकारिणी है।

...वादिया

2. आया वादिया के हिस्से की उक्त वर्णित आराजीयात में प्रतिवादीगण आये दिन दखलंदाजी कर क्षति पहुंचाते है वादिया असहाय व बेवा है जिससे वादिया के पक्ष में व प्रतिवादीगण के विरुद्ध स्थाई निषेधाज्ञा आवश्यक है।

...वादिया

3. अनुतोष।

As far as the first appeal is concerned, no two appeals were filed before the learned first appellate court. Secondly, Wala son of Deva was not a party, still declaration was granted in his favour. Thirdly, the counter claim was decided without considering the finding given by the learned trial court on issue No. 1, the first appellate court decreed the counter claim. Thus, the judgment and decree passed by the learned first appellate court deserves to be set aside.

The suit was simplicitor for permanent injunction. However, the learned trial court granted declaration in favour of the plaintiff. Secondly, the counter claim was left undecided by the learned trial court and thirdly, the applications under Order 6 Rule 5, Order 1 Rule 10 and Order 26 Rule 9 of the Civil Procedure Code were left undecided by the learned trial court. This way, the judgment and decree of the learned trial court also deserves to be set aside.

Thus, in wake of the above discussion, the appeal is partially allowed, both the judgments and decrees of the learned trial court and learned first appellate court are set aside. The matter is remanded to the learned trial court to decide afresh as per the law after giving proper opportunity to the parties.

All application(s), if any, pending, also disposed of accordingly.

Pronounced in open court.

(Ravi Dangi)

Member

(Surendra Maheshwari)

Member