

W.R.

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal Decree/TA/3386/2003/Nagaur.

Gumanaram s/o Chandra Ram, Caste Jat, r/o Village Alakhpura Tehsil
Didwana, Distt. Nagaur.

-----Appellant.

VERSUS

1. Mangla Ram s/o Purna Ram
2. Bega Ram s/o Arjun Ram
3. Bhanwara Ram s/o Pema Ram deceased through LRs:-
 - 3/1. Rupa Devi wd/o Bhanwara Ram
 - 3/2. Santosh d/o Bhanwara RamCaste Jat rs/o Village Alakhpura Tehsil Didwana Distt. Nagaur.

-----Respondents.

D.B.

Shri R.K. Jaiswal, Member

Shri Rajinder Kumar, Member

Argued by:-

Shri Yogendra Singh, counsel for the Appellant.

S/sh. Khadag Singh and Siyaram Chaudhary, counsels for the
Respondent no.3/1 and 3/2.

JUDGMENT

Date: 12-07-2018

Per Shri Rajinder Kumar, Member

1. This second appeal under section 224 of the Rajasthan Tenancy Act, 1955 has been preferred against the judgment and decree of the learned Revenue Appellate Authority, Nagaur, whereby the first appeal of the appellant/plaintiff was dismissed.
2. The facts leading to this controversy are that two revenue suits were filed in trial court. The first suit (no. 143/84) was filed by the

present appellant against the respondents herein seeking the relief of permanent injunction and in the alternate for possession of the disputed land. The second suit (no. 110/93) was filed by the respondents against the appellant herein seeking the relief of permanent injunction. Both the suits pertain to twenty bigha land comprising khasra no. 20 in Village Alakhpura. The parties were put to trial and after recording their evidence, the trial court vide its order dated 2-12-2001 consolidated both the suits. Vide judgment and decree dated 23-03-2001, the trial court dismissed the suit filed by the appellant/plaintiff and also restrained him from interfering in the peaceful possession of the respondent/defendant Bhanwara Ram over the disputed land. The appeal filed by the present appellant before the learned R.A.A, Nagaur was also dismissed vide judgment and decree dated 20-05-2003. Hence, this second appeal.

3. We have heard learned counsels for the parties.
4. On behalf of the plaintiff/appellant, the following arguments were advanced:-
 - (i) The suit was filed by plaintiff in the court of competent jurisdiction of 'Assistant Collector' Didwana. The suit was decided by learned Additional District Collector, who had no jurisdiction to try the same as per Schedule III of the Rajasthan Tenancy Act, 1953. Therefore, the judgment and decree of trial court is a nullity.
 - (ii) The plaintiff/appellant and his counsel were absent on the date of hearing of the suit. Therefore, the trial court ought to have dismissed the suit in default of the appearance of the plaintiff by taking recourse to the provisions of Order IX C.P.C.

The trial court committed an illegality in deciding the suit on merits.

- (iii) The trial court did not frame appropriate issues in the suit and also did not give findings on the basis of pleadings of the plaintiff. The judgment of trial court is not in accordance with the provisions of Order 20 Rule 5 C.P.C.
- (iv) The oral and documentary evidence of the plaintiff sufficiently proves that the plaintiff/appellant is the khatedar of the disputed land. The trial court gave the findings beyond pleadings of the parties.
- (v) It is not established on record that the disputed land has been purchased by Bhanwara Ram.
- (vi) The trial court had no jurisdiction to decree the suit filed by Bhanwara Ram merely by consolidating both the suits.
- (vii) The first appellate court also did not advert its mind towards the above factual and legal infirmities committed by the trial court and illegally dismissed the first appeal. The judgment of the first appellate court is also not in accordance with the provisions of Order 41 Rule 31 C.P.C.

Therefore, a request was made to accept the appeal and set aside the judgments and decrees of the courts below. It was also prayed to decree the plaintiff/appellant's suit. In support of the arguments, learned counsel placed reliance on the following citations:-

- (i) 2003 (2) RRT 1395 [Ramchandra Vs Parvati]
- (ii) 2004 (2) RRT 1083 [Kanaram & ors Vs Smt. Kamla]
- (iii) 2017 RRD 170 [Bhanwar Lal & ors Vs Mandir & ors]
- (iv) 2018 (1) RRT 389 [Mangi Lal Vs Murti Mahadev Mandir]

In the above cases, it was held by the Board of Revenue that the District Collector had no jurisdiction to try suit for declaration and permanent injunction. Therefore, the impugned judgments and decrees of the trial court and first appellate court were set aside and the matter was remanded to the trial court of Assistant Collector to decide the same afresh.

5. Learned counsels for the respondents have vehemently opposed the above submissions. They have argued that the judgments and decrees of the courts below are justified. The plaintiff/appellant took part in the proceedings of the trial court of Additional District Collector and now having remained unsuccessful to obtain the decree in his favor, he cannot raise the issue of jurisdiction of the trial court. The concurrent findings of facts of the courts below are not required to be interfered in the second appeal.
6. We have given our thoughtful consideration to the rival submissions and perused the record carefully. We have also respectively studied the law laid down in the above citations.
7. The following substantial questions of law are raised in this second appeal:-
 - (i) Whether the court of Additional District Collector had no jurisdiction to hear and decide the suit seeking reliefs of possession and permanent injunction under the provisions of Rajasthan Tenancy Act?
 - (ii) Whether the judgment and decree passed by the trial court of Additional District Collector, Nagaur suffers from inherent lack of jurisdiction and the first appellate court also did not advert its mind towards the illegality committed by the learned trial court, therefore, interference by this Board is required?
8. There is a plethora of judgments of this Hon'ble Board that the Additional District Collector had no jurisdiction to decide the suit for declaration and possession filed under section 183 and 188 of

the Rajasthan Tenancy Act, 1955. The suit can be heard only by the Assistant Collector in pursuance to entry no. 23 and 23 C of the Schedule III of the above Act. In the cases of Kana Ram (supra), Ram Chandra (supra) and Bhanwar Lal (supra), the suits were initially instituted in the courts of Assistant Collector and thereafter, the same were transferred by the concerned District Collectors to the courts of Additional District Collector. After final disposal of the cases, when the matters ultimately came before this Board in appeals, it was held that the court of Additional District Collector had no jurisdiction to decide such suits and thus, the matters were remanded to the trial courts of the Assistant Collector for deciding the same in accordance with law. The facts of the present case bear resemblance to the above decided cases. In the present case also the suit was instituted in the court of competent jurisdiction and thereafter, the same was transferred to the court of Additional District Collector, who lacked jurisdiction to decide the same.

9. Section 235 of the Act of 1955 authorizes the Collector to transfer any case from any revenue court subordinate to him and try such case himself or transfer the same to any subordinate revenue court competent to deal with it. Therefore, this section authorizes the District Collector to transfer a case to a court of competent jurisdiction only. The Additional District Collector lacked inherent jurisdiction to hear the present case. In *Hiralal Patni Vs Kalinath* [1962 (2) SCR 747], the Hon'ble Supreme Court held that competence of a court goes to the very root of the jurisdiction and where it is lacking, it is a case of inherent lack of jurisdiction. In *Subhas Mahadevasa Habib Vs Neemasa Ambassa Dharmdas* [2007 (13) SCC 650], the Hon'ble Supreme Court held that an inherent lack of jurisdiction makes a decree passed by that court one without jurisdiction and thus, void in law. In *Kiran Singh Vs Chaman*

Paswan AIR 1954 SC 340, it was held by Hon'ble Supreme Court that a defect of jurisdiction strikes at the very authority of court to pass any decree and such a defect cannot be cured even by consent of the parties. The invalidity of such a judgment could be set up whenever and wherever it is sought to be enforced or relied upon.

10. In view of above proposition of law, the conclusion is that the court of Additional District Collector had no jurisdiction to hear and decide the suit seeking reliefs of possession and permanent injunction under the provisions of Rajasthan Tenancy Act. Therefore, the judgment and decree passed by the trial court of Additional District Collector, Nagaur suffers from inherent lack of jurisdiction and the first appellate court also did not advert its mind towards the illegality committed by the learned trial court, therefore, interference by this Board is felt necessary. Both the substantial questions of law are answered in favor of the appellant. The appeal filed by the appellant/plaintiff deserves to be allowed.

11. Resultantly, the appeal filed by the appellant/plaintiff is allowed and the impugned judgments and decrees of the trial court and first appellate court are set aside. The matter is remanded to the concerned District Collector with a direction to send the record of the present case to the court of competent jurisdiction of Assistant Collector subordinate to him for its disposal in accordance with law from the stage the suit was transferred to the court of Additional District Collector.

Pronounced.

(Rajinder Kumar)
Member

(R.K. Jaiswal)
Member