

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

**Appeal Decree/TA/4004/2003/Jaisalmer**

Kadar Khan (deceased) through LRs:-

1. Jamin Khan son of Kadar Khan (deceased) through LRs:-

1/1 Mst. Jami widow of Jamin Khan

1/2 Neke Khan son of Jamin Khan

1/3 Hurekha son of Jamin Khan

2. Adrim Khan son of Kadar Khan

3. Megam Khatun wife of Kadar Khan

4. Fauza son of Kadar Khan

5. Sabu Khan son of Kadar Khan

All by caste Musalman residents of Jamela Tehsil Pokran Distt.  
Jaisalmer.

...Appellants.

Versus.

1. Akhe Singh son of Jawahar Singh

2. Megh Singh son of Jawahar Singh

3. Chandan Singh son of Jawahar Singh

4. Mehtab Singh son of Jawahar Singh

All by caste Rajput residents of Jamela Tehsil Pokran Distt.  
Jaisalmer.

5. State of Rajasthan through Tehsildar, Pokaran.

...Respondents.

**D.B.**

**Shri Ramnivas Jat, Member**

**Shri Ravi Dangi, Member**

Present:-

Shri Dunichand Dhidariya, counsel for appellants.

Shri Amritpal Singh, counsel for respondents.

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Date:-10.10.2022

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

The instant appeal has been filed under section 224 of the Rajasthan Tenancy Act, against the judgment and decree dated 30.07.2003 passed by the Rajasthan Appellate Authority, Barmer camp Jaisalmer.

2. Heard the learned counsels.

3. The counsel for the appellants reiterating the facts mentioned in the memo of appeal argued that the judgment and decree of the learned first appellate court deserves to be rejected. His main plank of argument being that the first appeal was squarely limitation barred as it was filed on 07.03.2002 against the judgment and decree dated 10.06.1960 after a span of 42 years although, the knowledge of the judgment and decree dated 10.06.1960 was very much within their knowledge on 26.06.1984. Secondly, on 15.09.1984 a suit was filed by the legal representatives of Jawahar Singh, in which written statement was filed but was dismissed in default on 06.09.1990. Jawahar Singh passed away in 1965-66 and was very much alive when the judgment and decree was passed in 1960. The compliance of Order 41 Rule 3(A) of the Civil Procedure code was not made by the first appellate court. Thus, prayed to accept the appeal and set aside the judgment and decree of the first appellate court. To support of his contention, the learned counsel cited the 2019 RBJ 184 'Devendra Vs. Madho Singh'.

4. *Per contra*, the counsel for the Respondents No. 1 to 4 argued vehemently that before the learned trial court a suit was filed which bore suit No. 37/60 was filed on 01.06.1960 and on the same day written statement was filed. It was registered on 10.06.1960 and on the same day judgment was passed by the learned trial court. Apart from this, the suit was filed for deceased Jawahar Singh son of Suraj Singh by one stranger Govind Das son of Shankar Singh. The judgment was passed in a hurried manner. Govind Das had no locus to file the suit on behalf of a deceased person, hence the judgment passed by the learned trial court was ab initio null and void and nonest, hence there is no limitation to file an appeal against such judgment. Thus, prayed to reject the instant appeal.

5. Considered the arguments of the learned counsels and perused the material available on record.

6. To begin with, a suit under section 88 of Rajasthan Tenancy Act bearing No. 37/60 was filed before Assistant Collector, Pokaran having the title Jawar Singh son of Suraj Singh Vs. Jaggu, Fauja, Kadar sons of Nabbu was filed by Govind Das son of Shanker Singh. On 01.06.1960 itself, the written statement was filed and on 10.06.1960, the suit was registered and the judgment was passed.

Aggrieved by it, an appeal was preferred on 13.02.2002, bearing Appeal No. 36/2002. The judgment was passed on the said appeal on 30.07.2003 by the Revenue Appellate Authority, Barmer, camp Jaisalmer. Aggrieved by the said judgment and decree dated 30.07.2003, the instant appeal has been preferred.

7. Learned first appellate court while exercising the discretion allowed the application under section 5 of the Limitation Act. It has been considered that suit and written statement is filed on the very same day and registered the suit and passed the impugned judgment dated 10.06.1960 on the same day and plaint itself says that plaintiff has died and the suit has been filed in the name of the deceased without impleading the minor legal representative and the plaint has been signed by one stranger Govind Das. Notice has not been issued and served and without even registering of the suit, the written statement was filed.

8. In the above facts and circumstances, there is no illegality or infirmity while condoning the delay and discretion exercised by the first appellate court need not to be interfered in this appeal. Case law cited on behalf of the appellant does not support his case.

9. Learned first appellate court also rightly reversed the judgment, passed by the learned trial court in the light of the above mentioned reasons. The first appellate court rightfully threadbare each and every facts and circumstances and material available on record, which needs not to be interfered with in this appeal.

10. There is no illegality or infirmity in the impugned judgment passed by the learned first appellate court. Hence, the appeal deserves and is hereby rejected.

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

Pronounced in open court.

(Ravi Dangi)  
Member

(Ramnivas Jat)  
Member