

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

**Appeal Decree No.4438/2003/TA/Kota :**

State of Rajasthan, through Tehsildar, Ramganjmandi, District Kota.

... **Appellant.**

**Versus**

1. Vimla Bai W/o Prahlad Kumar, by caste Meena
2. Gauri Shankar S/o Kanhaiyalal, by caste Gurjar  
residents of Ramganjmandi, Tehsil Ramganjmandi, District Kota.

... **Respondents.**

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**D.B.**

**Shri Manoj Kumar Nag, Member**

**Shri Rajinder Kumar, Member**

**Argued by :**

Shri Pushpendra Singh Naruka : Deputy Govt. Advocate for the State.

Shri Purna Shanker Dashora : counsel for the respondents.

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

**Dated : 26-03-2019**

**Per Shri Rajinder Kumar, Member :**

1. This second appeal under Section 224 of the Rajasthan Tenancy Act, 1955 is preferred against the judgment and decree dated 31.7.2003 of the learned Revenue Appellate Authority, Kota passed in first appeal No. 55/03.
2. Facts of the case in nutshell are that the plaintiff/ appellant filed an application under Section 175 of the Rajasthan Tenancy Act, 1955 against the present respondents and one Shri Sukh Lal S/o Gendi Lal (since deceased) in respect of the lands bearing khasra no. 2417 (2.14 bigha) and 2418 (10.05 bigha) total measuring 12.19 bigha situated in Village Khairabad Tehsil Ramganjmandi District Kota. It was alleged in the application that the deceased Sukh Lal was the khatedar tenant of the disputed lands. He belonged to the category of Scheduled Tribe and the disputed lands were purchased by respondent no. 2 from him in the name of his daughter-in-law Smt. Vimla Bai Gurjar whereas in

the sale deed, the caste of Vimla Bai was wrongly mentioned as 'Meena'. In this way, the said sale of the disputed lands is contrary to the provisions of Section 42(b) of the Rajasthan Tenancy Act, 1955. It was further alleged in the application that respondent no. 2 Gauri Shankar is in physical possession of the disputed lands. Therefore, a prayer was made to evict the respondents no. 1 and 2 from the disputed lands and to make entry of the disputed lands in the revenue record in the name of the State Government as 'Sewai Chak.' This application of the plaintiff/ appellant was registered as a regular suit by the trial court on 17.9.2001. The respondents no. 1 and 2 appeared through their counsels and submitted reply to the suit. A report was received on the notice of the defendant no. 3 Sukh Lal to the effect that he had since expired and therefore, the learned trial court vide order dated 22.01.2003 directed the Tehsildar, Ramganjmandi to submit a list of the legal representatives of the deceased defendant no. 3 Sukh Lal. The said list was not received by the learned trial court upto 20.5.2003. Therefore, on 22.5.2003, the learned trial court heard both the learned counsels for the parties and vide judgment dated 02.6.2003, the suit of the State Government was decreed and the disputed lands were directed to be recorded in the revenue record in the name of the State Government as Sewai Chak lands and both the defendants/ respondents were ordered to be evicted therefrom. Feeling aggrieved, the defendants/ respondents preferred an appeal in the court of the learned Revenue Appellate Authority, Kota. The learned first appellate court vide judgment and decree dated 31.7.2003 accepted the said appeal and dismissed the suit of the plaintiff/ appellant. Hence, this second appeal.

3. It is borne out from the record that the learned trial court neither framed any issue in the suit nor recorded the evidence of the parties. The learned trial court also proceeded to decide the suit without bringing on record the legal representatives of the deceased defendant no. 3 Sukh Lal. A letter was sent by the trial court to the learned Tehsildar Ramganj Mandi for the first time on 12.03.2003 to submit a list of the legal representatives of the deceased defendant no. 3 but

without giving a reasonable opportunity to the plaintiff to bring on record his Legal Representatives, the suit was decreed on 22.05.2003.

4. Therefore, the questions of law involved in the instant appeal are :-
  - (1) Whether the learned trial court is wrong in decreeing the suit of the plaintiff/ appellant without affording an opportunity of producing evidence to the parties and, therefore, the principle of natural justice have been violated ?
  - (2) Whether the learned trial court is wrong in deciding the suit without giving reasonable opportunity to the plaintiff appellant for bringing on record the legal representatives of the deceased defendant no.3.
  - (3) Whether the first appellate court is also wrong in accepting the appeal by ignoring the vital factual and legal aspects involved in this case ?
5. We have heard the learned counsels for the parties.
6. On behalf of the plaintiff/ appellant, it is submitted that there is voluminous documentary evidence on record from which it is proved that the disputed lands of the person of the category of Scheduled Tribe were purchased by the respondent no.1 Smt. Vimla Bai by impersonating herself to be a lady of the category of the Scheduled Tribe. No reasonable opportunity of bringing on record the legal representatives of the deceased defendant was given by the trial court to the plaintiff/ appellant. The learned first appellate court, merely on the basis of the averments of the sale deed, dismissed the suit of the plaintiff/ appellant. The learned first appellate court has ignored the other material placed on record by the plaintiff/ appellant. Therefore, a prayer is made to accept the appeal, set aside the impugned judgment of the learned Revenue Appellate Authority and to maintain the judgment and decree passed by the learned trial court.
7. Learned counsel for the respondents vehemently opposed the above submissions. At the outset, he submitted that a First Information Report was lodged against both the respondents under Sections 420,

468, 466, 471, 120(B) and 193 of the Indian Penal Code and after investigation, the police submitted chargesheet against both of them. The learned criminal court acquitted both the respondents of the aforesaid offences vide judgment dated 23.3.2018. The said judgment of the criminal court had attained finality. In addition to the copy of the aforesaid judgment, the copies of the electoral lists of the years 1998, 2000 and 2004 have also been submitted by the respondents by way of additional evidence in this appeal. Therefore, a prayer has been made to accept the said application and take on record all these four documents. The learned counsel also argued that the trial court decreed the suit in an illegal manner merely on the basis of assumptions by ignoring this fact that when after thorough investigation chargesheet was filed against Smt. Vimla Bai Gurjar, then how it can be said that she had impersonated herself to be a lady of the category of the Scheduled Tribe. Even otherwise, after acquittal from the aforesaid offences, the plea of doing forgery or impersonation falls on the ground. The learned first appellate court, therefore, rightly dismissed the suit of the plaintiff/ appellant by observing that the contravention of the provisions of Section 42(b) of the Rajasthan Tenancy Act, 1955 is not made out. A prayer is, thus, made to dismiss this appeal.

8. We have given our thoughtful consideration to the rival submissions and perused the records carefully.
9. The respondents have made a prayer to take on record the copy of the judgment dated 23.3.2018 passed by the criminal court. This document has come into existence very recently and the same is a certified copy obtained from the criminal court. The other documents, namely, the Electoral lists are also certified copies of the original and there is no allegation that the same are either forged or fabricated. Looking to the facts and circumstances, these documents are taken on record.

**Legal Question No. (1) :**

10. It is revealed that the application submitted by the State Government in the trial court was registered as a 'regular suit' and therefore, after the submission of written statement by the respondents no. 1 and 2, it was mandatory for the trial court to frame issues in the matter and to give opportunity of producing evidence to both the parties. However, the learned trial court committed material illegality in not adopting this procedure. Therefore, the principles of natural justice have been violated. The matter in dispute pertains to the alleged contravention of the provisions of Section 42(b) of the Rajasthan Tenancy Act, 1955. This provision was enacted in the larger interests of the weaker sections of the society and a casual approach shown by the learned trial court in deciding the suit is not appreciable. Therefore, this legal question is decided accordingly in favour of the plaintiff/ appellant.

**Legal Question No. (2) :**

11. The record further reveals that an information regarding the death of the deceased defendant no. 3 was for the first time received in the trial court on his summons on 22.01.2003. It is not known whether the original defendant no. 3 had expired during the pendency of the suit or he was already dead on the date of the institution of suit. Be that as it may, the learned trial court sought a list of the legal representatives of the deceased defendant no. 3 from the concerned Tehsildar by writing a letter for the first time on 12.03.2003. However, before the same could be received, the learned trial court decided the suit in a haste manner and thus committed a material illegality. In its judgment, the learned trial court has illegally held that the legal representatives of the deceased defendant no. 3 vendor are not necessary parties. In fact, no effective decree could have been passed in this case without impleading the legal representatives of the defendant no. 3 as party defendants. The learned trial court proceeded to decide the suit with a wrong approach. Hence, this question is also decided accordingly in favour of the plaintiff/ appellant.

**Legal Question No. (3) :**

12. Both the above factual and legal aspects of the case were brought to the notice of the learned first appellate court by the present respondents also in their first appeal. However, the learned first appellate court instead of remanding the matter, accepted the first appeal in its entirety and dismissed the suit of the plaintiff/ appellant in an illegal manner. This approach of the learned first appellate court is perverse and therefore, the judgment and decree passed by it is also liable to be set aside. The third legal question is decided accordingly in favour of the State Government.
13. Resultantly, the appeal in hand is accepted, the judgment and decree dated 31.7.2003 of the learned Revenue Appellate Authority, Kota and the judgment and decree dated 02.6.2003 of the learned trial court are set aside and the matter is remanded to the learned trial court for deciding the suit afresh in accordance with law after bringing on record the legal representatives of the deceased defendant no. 3 on record. The learned trial court is directed to expedite the trial of the suit.

Pronounced.

**(Rajinder Kumar)**  
Member

**(Manoj Kumar Nag)**  
Member

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