

W.R.

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal/Decree/TA/4782/2003/Sawai Madhopur.

1. Ramesh s/o Ramkishan
2. Harkesh s/o Ramkishan
3. Bati Lal s/o Ramkishan
4. Munesh s/o Ramkishan
5. Vijay Singh s/o Ramkishan
6. Mishri Devi wd/o Ramkishan

All Meena by Caste rs/o Piloda Tehsil Gangapurcity Distt. Sawai Madhopur

.....Appellants.

VERSUS

1. Gokul s/o Prasadi Lal, Caste Meena, r/o Piloda Tehsil Gangapur City, Distt. Sawai Madhopur.
2. State of Rajasthan through Tehsildar (Revenue) Gangapur City Distt. Sawai Madhopur.

..... Respondents.

D.B.

Shri Rajinder Kumar, Member

Shri Dhookalram Kaswan, Member

Argued by:-

Shri Pradeep Vishnoi, counsel for the Appellants.

Shri Sunil Pareek, counsel for the Respondents.

J U D G M E N T

Date: 12-09-2018

Per Shri Rajinder Kumar, Member

1. The first respondent Gokul filed a suit for partition against his brother Ramkishan (since deceased) in the court of Sub-Division Officer, Gangapur City for declaration of khatedari rights and separate possession of his half share in the suit land comprised in khasra no. 1905 (0.62 biswa), khasra no. 3095 (0.26 biswa), khasra no. 3579 (0.07 biswa), khasra no. 3582 (0.08 biswa), khasra no. 5571 (0.08 biswa), khasra no. 5572 (0.30 biswa), khasra no. 5591 (1.73 biswa), khasra no. 5582 (1.36 biswa), khasra no. 5606 (0.95 biswa) and khasra no. 5607 (0.56 biswa) situated in Village Peeloda. As per the plaint averments, the said land was ancestral land of the respondent no. 1 and the deceased Ramkishan. The suit was contested by the defendant Ramkishan and vide judgment dated 24-03-2003 the trial court decreed the suit directing a preliminary decree for partition be drawn in regard to half-half share of the plaintiff and defendant. Feeling aggrieved the legal representatives of the deceased defendant preferred an appeal, which came to be dismissed by the impugned judgment and decree dated 18-08-2003 of the learned Revenue Appellate Authority, Sawai Madhopur. Hence, this second appeal.
2. We have heard learned counsels for the parties.
3. On behalf of the defendant/appellants, it was urged that as per Revenue Record, the father of the plaintiff and original defendant was the khatedar tenant of only 18 bigha 3 biswa land and thus, the plaintiff was entitled to half share out of the same whereas the learned trial court granted half share to the plaintiff out of total land of 27 bigha 17 biswas. In this way, 9 bigha 14 biswa 'self acquired land' of the defendant has been illegally included in the impugned decree and thus, the defendant appellants have been illegally deprived of

their land. The plaintiff was required to stand on his own legs, thus, he must have proved how the entire land constituted the ancestral land of the parties. As it failed to prove its case, he was at the most entitled to a share from the land measuring 18 bigha 3 biswa only. His other argument was that the learned trial court did not record finding on each issue and disposed off the suit in a cursory manner. The first appellate court also dismissed the appeal without applying its mind towards the factual aspects of the case. It did not deal with all the issues and the evidence led by the parties before recording the findings and confirming the judgment of trial court. In support of his arguments, learned counsel relied upon the following citations:-

- (i) AIR 1965 S.C. 1506 'Brahma Nand Puri Vs Neki Puri' :- In this case it was held by the Hon'ble Supreme Court that in a suit for ejectment, the plaintiff has to succeed or fail on the title that he establishes and if he cannot succeed on the strength of his title, his suit must fail notwithstanding that the defendant in possession has no title to the property.
- (ii) 2011 (1) RRT 93 'Shyam Singh & or Vs Bhagwan Singh & or' :- In this case it was held by the Board that it is mandatory for the trial court to record finding on each issue. The first appellate court must also appreciate the evidence for recording finding different from that of the trial court.
- (iii) 2011 (2) RLW 1208 'Halia Vs State of Rajasthan'.
- (iv) 2004 (11) 330 'Radha Mohan Vs Rameshwar'.
- (v) 1990 RRD 262 'Daljeet Kaur Vs Amri Bai'.

In the above cases also, it was held by the Revenue Board that it is imperative for the court to pronounce its finding upon each issue separately and not on all the issues together.

- (vi) AIR 2001 SC 2171= 2001 DNJ (SC) 3433 'Madhukar & ors Vs Sangram & or' :- In this case, it was held by the Hon'ble Supreme Court that sitting as a court of first appeal, it was the duty of the

High Court to deal with all the issues and the evidence led by the parties before recording its findings.

4. Learned counsel for the plaintiff/ respondent no. 1 opposed the above submissions. He has argued that the judgments and decrees of the courts below are perfect and justified. He further argued that both parties had adduced their evidence in the trial court fully knowing their case. The courts below also gave findings on all the factual aspect of the case. From the judgments of the courts below, it is clear that substantial compliance has been done with the provisions of Order 20 Rule 5 and Order 41 Rule 31 CPC. There are concurrent findings of facts of the courts below, therefore, the interference by this Board in second appeal is not required. A prayer was made to dismiss the appeal.
5. We have given our thoughtful consideration to the rival submission and perused the record carefully. We have also respectfully studied the law laid down in the cited cases.
6. One of the major thrust of the appellants in this appeal is that the judgments of the courts below suffer from the vice of procedural impropriety and illegality, as the same were passed in gross violation of the provisions of Order 20 Rule 5 and Order 41 Rule 31 CPC.
7. Order 20 Rule 5 CPC, on which great emphasis was laid on behalf of the appellants, says that a suit in which issues have been framed, the court shall state its findings/decisions with the reasons therefore, upon each separate issue unless the findings upon any one or more of the issues is sufficient for the decision of the suit.
8. A perusal of the trial court judgment in the instant case reveals that all the material facts were dealt with separately. The issues were also mentioned therein. All the relevant arguments canvassed on behalf of

the parties were also discussed. The oral and documentary evidence which surfaced on record was also meticulous considered. The trial court also assigned reasons for deciding the suit in the plaintiff's favor. The process of reasoning by which the trial court came to the ultimate conclusion and decreed the suit is reflected in the impugned judgment. To our mind, the judgment of the trial court is self contained and it clearly and succinctly decides all the factual and legal issues involved in the suit. Order 20 Rule 4 (2) CPC says that a judgment shall contain a concise statement of the case, the decision thereon and the reasons for such decision. Thus, no procedural illegality appears in the impugned judgment. There is nothing on the record to show that the defendants/appellants have been prejudiced in any way by failure of the trial court to record issue-wise findings in the judgment.

9. The main controversy before the learned trial court was regarding the share of the plaintiff in the disputed land and in this regard, the learned trial court has given specific finding that the plaintiff is entitled to half share out of the whole of the land described in the plaint and that the defendant has failed to prove that any of its part was his self-acquired property. The trial court also gave a specific finding that the dispute regarding recovery of money must be raised by the defendant in separate legal proceeding, if so advised. In this way, it would not be justified, in the peculiar facts and circumstances of the case, to set aside well considered judgment of the trial court.
10. In the like manner, the learned first appellate court has also considered and discussed the entire evidence in detail and its conclusions and findings are also supported by reasons. It is also a case of substantial compliance with the provisions of Order 41 Rule 31 CPC. The non-framing of points by the first appellate court has also not prejudiced the case of the defendant/appellant. Thus, the non-

compliance with the provisions of Order 41 Rule 31 CPC has not vitiated the judgment of the first appellate court and it is a valid judgment. Reliance in this regard is placed upon 2006 (4) SCC 224 'G. AmalorPavam & ors Vs R.C. Diocese of Madurai & ors'.

11. On merits of the controversy, there are concurrent findings of facts of the courts below that the entire suit land is the ancestral land of the plaintiff and the defendant. The defendant has not in fact pleaded in his written statement that any part of the suit land is his self acquired land. In view of this, the concurrent findings of the courts below are neither perverse nor illegal. In view of this, the said findings are binding on this Board sitting in 2nd appeal. No question of law has arisen in this appeal. Thus the appeal is liable to be dismissed.
 12. A word of advice for the learned trial courts and the first appellate courts is that they should comply with all the requirements of Order 20 Rule 5 and Order 41 Rule 31 CPC respectively in their judgments.
 13. Resultantly, the appeal in hand is dismissed. The Registry is directed to circulate copy of this judgment amongst the Revenue courts of the State for compliance after seeking necessary approval from the Chairman, Board of Revenue for Rajasthan, Ajmer.
- Pronounced.

(Dhookalram Kaswan)
Member

(Rajinder Kumar)
Member