

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal No.519/2003/TA/Bharatpur :

1. Abdul Rahman S/o Navi Khan, Mev
2. Nizer Khan S/o Bhikha (Deceased), through legal representatives :-
 - 2/1. Ameen } sons of Nizer Khan
 - 2/2. Ahmed alias Emed }
All Mev by caste, residents of Village Levda, Tehsil Kama,
District Bharatpur.
 - 2/3. Ahmedi S/o Nizer Khan, Mev, R/o Village Levda, Tehsil Kama,
District Bharatpur; at present R/o Village Tirvad, Tehsil
Punhana, District Gurgaon, Haryana.
 - 2/4. Bhanwari D/o Nizer Khan, Mev, R/o Village Levda, Tehsil
Kama, District Bharatpur; at present R/o Village Singar, Tehsil
Punhana, District Gurgaon, Haryana.
 - 2/5. Samiri W/o Nizer Khan, Mev, R/o Village Levda, Tehsil Kama,
District Bharatpur.

... Appellants.

Versus

1. Suleman } sons of Nasib Khan
2. Ishaq }
By caste Mev, residents of Village Levda, Tehsil Kama, District
Bharatpur.

... Respondents.

D.B.

**Shri R.K. Jaiswal, Member
Shri Rajinder Kumar, Member**

Argued by :

Shri Anil Sharma : counsel for the appellants.

Shri Virendar Singh Rathore : counsel for the respondents.

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J U D G M E N T

Dated : 30.10.2018

Per Shri Rajinder Kumar, Member :

1. This second appeal has been preferred under Section 225 of the Rajasthan Tenancy Act, 1955 [In short 'the Tenancy Act] against the judgment dated 22.11.2002 of the learned Revenue Appellate

Authority, Bharatpur : Camp- Deeg passed in Appeal No. 123/2001, whereby the judgment & decree passed by the trial court of Sub Divisional Officer, Kama decreeing the plaintiffs/appellants' suit was set aside and the matter was remanded to the trial court for deciding the same afresh after giving reasonable opportunity of leading evidence to the parties.

2. The facts leading to the present controversy in nutshell are that the present appellants filed a suit under Sections 88, 89, 188 of the Rajasthan Tenancy Act against the respondents in respect of the land bearing khasra no. 1088, 1088 min and 1094 measuring 7 bigha 13 biswa situated in Village Levda Tehsil Kama District Bharatpur. In the plaint, it was alleged by the plaintiffs that they are in cultivatory possession of the disputed lands as sub-tenants since prior to the commencement of the Tenancy Act, however, the said land came to be recorded in the tenancy of the defendants-respondents in the revenue record. Therefore, a prayer was made to declare them as khatedars of the disputed land. The defendants-respondents contested the suit and the learned trial court after trial, decreed the suit of the plaintiffs vide judgment & decree dated 31.3.2001. Feeling aggrieved, the defendants-respondents preferred an appeal in the court of learned R.A.A., Bharatpur : Camp- Deeg and vide judgment dated 22.11.2002, the appeal was partly accepted and the suit was remanded to the trial court as aforesaid. Hence, the plaintiffs/appellants have preferred this second appeal.
3. The question of law involved in the present appeal is whether the learned first appellate court committed illegality in remanding the case to the trial court in contravention of the provisions contained in Order 41 Rule 22 of the Code of Civil Procedure, particularly when the entire evidence was available before it for deciding the appeal on its own merits ?
4. We have heard learned counsels for the parties.

5. On behalf of the plaintiffs/appellants, it has been argued that the judgment of the learned R.A.A. is self-contradictory. While deciding issue no.1, the learned first appellate court has observed that the findings of the trial court on this issue are correct and thereafter the learned first appellate court has set aside the well considered judgment of the trial court in an arbitrary manner. The revenue record of the disputed land viz. khasra girdawaries of Svt. 2006-09, Svt. 2030 and Jamabandi of Svt. 2042-45 were placed on record of the trial court and from the said documents it was clear that the plaintiffs/appellants are recorded as sub-tenants of the disputed lands since the time of their father. In spite of this documentary evidence, the learned first appellate court committed illegality in remanding the matter to the trial court. In addition to it, the first appellate court has tried to create a new case in favour of the defendants-respondents by observing that the name of the plaintiffs/appellants does not appear in the annual register. There was no occasion for the learned first appellate court to place reliance upon the provisions of Section 19(1AA) of the Tenancy Act. On the contrary, the provisions of Section 19B of the Tenancy Act were attracted in this case, as the plaintiffs are in cultivatory possession of the disputed land since Svt. 2006. In these circumstances, the learned first appellate court committed a material illegality in observing that the revenue record pertaining to Svt. 2012 is not available on record. Therefore, a prayer has been made to accept the appeal, set aside the judgment of the learned Revenue Appellate Authority, Bharatpur : Camp- Deeg and to maintain the judgment and decree passed by the trial court.
6. Learned counsel for the defendants-respondents vehemently opposed the above submissions. He has submitted that the learned trial court committed material illegality in decreeing the plaintiffs' suit and the learned first appellate court considering the factual and legal position, rightly remanded the matter to the trial court for passing fresh judgment after giving opportunity of leading evidence to the parties.

7. After giving thoughtful consideration to the rival submissions and upon perusal of the record, it is revealed that the learned trial court has passed its judgment on merits of the controversy. The said judgment was not passed on any preliminary issue, but the learned first appellate court remanded the matter to the trial court for giving the parties an opportunity of leading further evidence in the matter. It is pertinent that none of the parties made any request to the learned first appellate court to permit them to lead additional evidence in the case. The powers of the first appellate court while deciding the first appeal have been explained by the Hon'ble Supreme Court in B.V. Nagesh and Anr. Vs. H.V. Sreenivasa Murthy (2010) 13 S.C.C. 53 in the following terms:-

"3. How regular first appeal is to be disposed of by the appellate Court/High Court has been considered by this Court in various decisions. Order XLI of C.P.C. deals with appeals from original decrees. Among the various rules, Rule 31 mandates that the judgment of the appellate Court shall state:

a) the points for determination;

b) the decision thereon;

c) reasons for the decision; and -

d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

4. The appellate Court has jurisdiction to reverse or affirm the findings of the trial Court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case therein is open for re-hearing both on questions of fact and law. The judgment of the appellate Court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put-forth and pressed by the parties for decision of the appellate Court. Sitting as a court of 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. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. [Vide Santosh Hazari vs. Purushottam Tiwari, (2001) 3 SCC 179 = JT (2001) 2 SC 407 and Madhukar and Others vs. Sangram and Others, (2001) 4 SCC 756].

5. In view of the above salutary principles, on going through the impugned judgment, we feel that the High Court has failed to discharge the obligation placed on it as a first appellate Court. In our view, the judgment under appeal is cryptic and none of the relevant aspects have even been noticed. The appeal has been decided in an unsatisfactory manner. Our careful perusal of the judgment in the regular first appeal shows that it falls short of considerations which are expected from the Court of first appeal. Accordingly, without going into the merits of the claim of both parties, we set aside the impugned judgment and decree of the High Court and remand the regular first appeal to the High Court for its fresh disposal in accordance with law."

8. Therefore, the first appellate court was competent to decide the appeal on its own merits. An order of remand of a case cannot be passed on *ipse dixit* of the court. This power of remand is governed by the provisions of the Code of Civil Procedure contained in Order 41 Rule 22 onwards. In our considered opinion, the present case was not covered under any of the said provisions requiring remand of the case. In addition to it, the learned first appellate court has given self-contradictory findings at page no. 4 of the judgment. On the one hand, the learned first appellate court has observed that the plaintiffs have not produced relevant revenue record and immediately thereafter it was observed that the finding of the learned trial court on issue no. 1 are justified. At para no. 9 of the judgment, the learned first appellate court has observed that the plaintiff is successful in proving issue no. 1 and even then the appeal was partly accepted and the matter was remitted to the trial court for deciding the suit afresh. It appears that the learned first appellate court was unable to understand the controversy between the parties and that is why inconsistent findings have been given in the impugned judgment and therefore, interference by this Board is necessary to prevent miscarriage of justice. The question of law framed above is decided accordingly in favour of the appellants. The appeal deserves to be accepted.

9. Resultantly, the appeal in hand is accepted and the judgment dated 22.11.2002 of the learned Revenue Appellate Authority, Bharatpur : Camp- Deeg is set aside and the matter is remanded to the first appellate court for deciding the Appeal No. 123/2001 afresh after giving reasonable opportunity of hearing to the parties. Both the parties shall appear in the court of learned R.A.A. on 19.12.2018.

Pronounced.

(Rajinder Kumar)
Member

(R.K. Jaiswal)
Member

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