

W.R.

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal Decree No.1220 /2004/TA/Sikar:

1. Banshi
2. Sultan
3. Ramswaroop

Ss/o Prabhu, Caste Mali, rs/o Dariba Tehsil Neemkathana Distt. Sikar.

... **Appellants.**

Versus

1. Heera
2. Rameshwar
3. Babulal

Ss/o Kishna, Caste Mali, rs/o Dariba Tehsil Neemkathana, Distt. Sikar.

... **Respondents.**

* * *

D.B.

Shri Modu Dan Detha, Member

Shri Rajinder Kumar, Member

Argued by :

Shri Mukesh Jain: Counsel for the Appellants.

Shri Purna Shankar : 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 has been preferred against the judgment and decree dated 2.08.2003 of the learned Revenue Appellate Authority, Sikar passed in

appeal no. 35/2001, whereby the judgment and decree of the trial court of the SDO, Neemkathana dismissing the suit filed by the plaintiffs/respondents was set aside and a decree declaring the plaintiffs/respondents as khatedars of the disputed lands was passed.

2. Facts of the case, in nutshell, are that the plaintiffs/respondents filed a suit in the trial court seeking the relief of declaration of khatedari rights in respect of the lands bearing khasra no. 1117 (17 biswa), 1118 (1 bigha 02 biswa), 1120 (13 biswa), 1139 (7 biswa) and half portion of the land of khasra no. 1109 (16 biswa) situated in Village Dariba. The main basis of the suit of the plaintiffs/respondents was that earlier the disputed lands were the khatedari lands of the father of the defendants/appellants, namely, Prabhu, who had allegedly sold the same to the father of the plaintiffs/respondents, namely, Shri Krishna by executing a writing in the Bahi. The possession of the lands was also given to Kishna and sale consideration of Rs. 1000/- was received by the vendor Shri Prabhu from the father of the plaintiffs/respondents. The defendants/appellants did not appear in the trial court after service of summons upon them. The learned trial court after recording evidence of the plaintiffs /respondents dismissed their suit. Feeling aggrieved, the plaintiffs/respondents filed appeal in the court of learned RAA, Sikar, which was accepted on 2.08.2003 and suit of the plaintiffs/respondents was decreed. Hence, this second appeal.
3. The question of law involved in this appeal is whether khatedari rights can be claimed by a person on the basis of unregistered and unstamped agreement to sale ?
4. We have heard the learned counsels.
5. On behalf of the defendants/appellants, it was submitted that the suit was rightly dismissed by the learned trial court and the learned first appellate court without appreciating the factual aspect that the defenants/appellants are in possession of the disputed lands decreed the suit in an illegal manner. The learned first appellate court also did

not appreciate the fact that the main basis of the suit of the plaintiffs/respondents was an unregistered and unstamped agreement to sale, which was not admissible in evidence. Therefore, the plaintiffs/respondents were not entitled to the relief claimed by them. A prayer was made to accept the appeal and set aside the judgment and decree of the learned first appellate court.

6. On behalf of the defendants/appellants, it was also argued that there has been a delay of about 4-5 months in filing this appeal. The counsel for the defendants/appellants did not give timely information to them about the decision of the first appeal. As soon as the defendants/appellants came to know of the passing of the impugned judgment and decree, the present appeal was filed. A prayer was made to condone the delay.
7. Learned counsel for the plaintiffs/respondents vehemently opposed the above submissions. It was argued by him that the defendants/appellants did not contest the suit and the agreement to sale was duly proved and exhibited by the plaintiffs/respondents, thus, the defendants/appellants cannot raise any dispute regarding the admissibility of the said document at the appellate stage. Therefore, a prayer was made to dismiss the appeal.
8. We have given our thoughtful consideration to the above submissions and perused the record carefully.
9. There has been a delay of about four and half months in filing this appeal. The reason assigned in the delay condonation application is that the defendants/appellants were not timely informed by their counsel about the passing of the impugned judgment and decree. In this regard, an affidavit of the defendant/appellant Ramsarup has been placed on record. The said delay is neither intentional nor inordinate. No litigant should suffer on account of the lapse of his counsel. Thus, the delay in late filing of this appeal is condoned.

10. It is trite that a decree of declaration of khatedari rights under the provisions of the Rajasthan Tenancy Act, 1955 cannot be obtained on the basis of an unregistered and unstamped agreement to sale. In this regard reference can be made to a judgment of the Revenue Board passed in 2003 (1) RRT 22 'Gokulchand Vs Ramsahai and ors.' In fact, when an agreement to sale is executed between the parties and one of them refuses to abide by any of its terms and conditions, the remedy lies in the civil court for getting decree of Specific Performance of contract. The party aggrieved cannot directly claim khatedari rights by filing revenue suit.
11. In the instant case, the learned trial court, therefore, rightly dismissed the suit of the plaintiffs/respondents. The learned first appellate court committed an illegality in decreeing the suit on the ground that the plaintiffs/respondents are in possession of the disputed lands for more than 15 years. In arriving at the said conclusions, the learned first appellate court failed to appreciate the fact that the main basis of the suit of the plaintiffs/respondents was an unregistered and unstamped document, which was not admissible in evidence. As such, the learned first appellate court committed a material illegality in setting aside the well considered judgment and decree passed by the learned trial court and in decreeing the suit of the plaintiffs/respondents.
12. Therefore, the judgment and decree of the first appellate court is liable to be set aside.
13. Resultantly, the appeal in hand is accepted and the judgment and decree dated 2-08-2003 passed by the learned first appellate court is set aside and the judgment and decree dated 09-07-2001 passed by the learned trial court is restored.

(Rajinder Kumar)
Member

(Modu Dan Detha)
Member