

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

**Appeal Decree/TA/1594/2004/Barmer**

1. Birma s/o Khumaram deceased through LR's

1/1 Heera w/o Birma

1/2 Dharma d/o Birma

1/3 Gom s/o Birma

1/4 Bhawra s/o Birma

2. Hadman s/o Khuma

3. Mana s/o Ishra

4. Khairaj s/o Ishra

all by caste Jat r/o Rangwali Tehsil Chohatan Distt. Barmer

....Appellants.

*Versus*

1. Gokla s/o Hukma

2. Moola s/o Surta

3. Ganga s/o Surta

4. Achla s/o Dola

5. Jeeva s/o Dola

6. Rawata s/o Simratha

7. Derama s/o Birdha

8. Roopa s/o Birdha

9. Dhamu s/o Mana

10. Phooli w/o Birdha

11. Dhanna s/o Jetha

12. Ratna s/o Jetha

13. Laxmi alias Seema w/o Jetha

14. Chatra s/o Likhma

15. Dagi w/o Moda

16. Duda s/o Moda

17. Gaina s/o Moda

18. Rama s/o Mukana

19. Kana s/o Mukana

20.Rau s/o Mukana

21.Rudha s/o Mukana

22.Beera s/o Mukana

all by caste Jat r/o Rangwali Tehsil Chohatan Distt. Barmer.

...Respondents.

**D.B.**

**Shri Mukesh Kumar Sharma, Chairman**

**Shri Rajinder Kumar, Member**

**Present :**

Shri J.P.Mathur, counsel for appellants.

Shri Duni Chand Didhariya and Shri Ashok Nath, counsels for respondents.

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

**Dated: 8-02-2019**

***Per Shri Rajinder Kumar***

1- This appeal has been preferred under section 224 of the Rajasthan Tenancy Act, 1955 by the plaintiffs/appellants feeling aggrieved by the judgment and decree dated 08-04-2004 passed by the learned Revenue Appellate Authority, Barmer passed in first appeal whereby the said appeal of the defendants/respondents no. 1 to 6 was accepted and the judgment and decree of the trial court passed on 27-02-2004 was set-aside. By the said judgment and decree, the trial court decreed the suit of the plaintiffs/appellants for division of holdings.

2- Facts of the case in nutshell are that the plaintiffs/appellants filed the aforesaid suit in the trial court of SDO, Gudamalani Distt. Barmer. After contest by the defendants/respondents no. 1 to 6, the learned trial court passed Preliminary Decree vide judgment dated 26-12-2003. Thereafter, the learned trial court after obtaining the partition proposals from the concerned Tehsildar passed the Final Decree vide judgment dated 27-02-2004. Feeling aggrieved, the defendants/respondents preferred first appeal before the learned

Revenue Appellate Authority, Barmer, which came to be allowed and the judgment and decree of the trial court was set aside, meaning thereby that the suit of the plaintiffs/appellants was dismissed; hence, this second appeal.

3- It is pertinent that the learned trial court had dealt with all the contentions raised by the parties before passing preliminary decree on 26-12-2003. Thereafter, the said judgment of the learned trial court is a 'well considered' judgment. No challenge of the same was laid by the defendants/respondents by preferring any appeal. Hence, the same had attained finality. The Final Decree dated 27-02-2004 of the trial court was set aside by the learned first appellate court observing that 'parcha lagan' of the disputed lands was issued about fifty years ago. The persons in whose favour 'parcha lagan' was issued had since expired and thereafter, their legal representatives have been recorded as khatedars of the disputed lands in pursuance to their respective mutations. The said legal representatives have, therefore, accepted the entries of the parcha lagan and the plaintiffs/appellants are estopped from challenging the said entries. On the basis of these findings, the learned first appellate court set aside the judgment dated 27-02-14. In this factual matrix, the following questions of law arise for determination of this appeal:-

- (i) Whether the defendants/respondents no. 1 to 6 were right in laying challenge to the judgment and final decree dated 27-02-14 when the Preliminary Decree passed by the trial court has attained finality?
- (ii) Whether the first appellate court was right in setting aside the judgment and final decree dated 27-10-14 on the ground that the plaintiffs/appellants are estopped from challenging the correctness of the entries of the 'parcha lagan' ?

4- We have heard the learned counsels.

5- On behalf of the plaintiffs/appellants it was argued that the defendants/respondents no. 1 to 6 had no right to challenge the trial

courts judgment and final decree as the Preliminary Decree had attained finality and thus the matters urged at the time of Preliminary Decree cannot be reopened new. Therefore, the learned first appellate court fell into error in accepting the first appeal. In support of his contentions, the learned counsel relied upon the following citations:-

(i) 2012 (19) RBJ 172 ' Ganduri Koteswaramma &ors. Vs Chakiri Yanadi & ors.- In that case it was held by the Hon'ble Supreme Court that if a party aggrieved by a preliminary decree does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal preferred from the final decree.

(ii) 2003(1) DNJ (SC) 34 ' Venkatrao Anantedeo Joshi & ors. Vs Sau. Malatibai &ors. - In that case it was held by the Hon'ble Supreme Court that correctness of preliminary decree cannot be challenged in appeal against final decree.

On the basis of the contentions advanced, the learned counsel made a prayer to accept the appeal, set aside the impugned judgment and decree and maintain the trial court's judgment and final decree.

5- Learned counsel for the defendants/respondents vehemently opposed the aforesaid arguments. It was argued that the learned trial court committed patent error in decreeing the suit of the plaintiffs. Therefore, the learned first appellate court was right in dismissing their suit on the ground that no right exists in the plaintiffs/appellants to institute the suit for division of holdings. The parties are continuing in possession of the disputed lands as per their shares indicated in the 'parcha lagan'. There can be no better evidence than the admission of the parties. The long settled possession of the parties cannot be disturbed by passing the judgment and decree of division of holdings merely because the lands are shown in the revenue record as the co-tenancy lands. It was further argued that exclusive jurisdiction is conferred upon the Jagir Commissioner to decide the question as to whether any property of the Jagirdar is of the nature of khudkasht and the decision of the Jagir Commissioner

in this regard would be final and cannot be challenged collaterally in Civil and Revenue Court. To buttress his arguments, the learned counsel relied upon AIR 1968 S.C. 898 ' Board of Revenue for Rajasthan Vs Rao Baldev Singh.' On the strength of the law laid down in that judgment, the learned counsel submitted that the Revenue Court had no jurisdiction to entertain the suit for division of holdings of the disputed lands.

6- We have given our thought consideration to the above submission and perused the record carefully.

7- Ordinarily, in a suit for division of holdings, two decrees, namely, the Preliminarily Decree and Final Decree are passed. In Preliminary Decree, the shares of the parties are determined by the trial court. This exercise is undertaken in the light of the rights of the respective parties over the lands in dispute. The objections as regards maintainability of the suit and jurisdiction of the court are also determined by the court while passing the Preliminary Decree. The Code of Civil Procedure, 1908 specifically permits the filing of appeal against the Preliminary Decree. After this exercise of the passing of the preliminary decree, the trial court has to undertake the further exercise of the passing of the final decree as per the provisions contained in the Rajasthan Tenancy (Board of Revenue) Rule, 1955. This exercise includes the appointment of local commissioner and deciding the objections of the parties to the local inspection report and thereafter to effect partition by metes and bounds or as per the directions given in the preliminary decree. The Code of Civil Procedure, 1908 contemplates the filing of appeal against the final decree as well.

8- In AIR 1989 Kerala ' Laxmi & ors Vs A. Sankappa & ors., it was held that-

*".....a preliminary decree conclusively determines the rights and liabilities of the parties with regard to all or some of the matters in controversy in the suit although it does not*

*completely dispose of the suit. Further proceedings await the suit to work out and adjust the rights of the parties.”*

The Hon'ble High Court further held that:-

*"The parties to the suit have acquired rights or incurred liabilities under the decree. They are final, unless or until the decree is varied or set aside."*

In the instant case, the preliminary decree passed by the learned trial court has attained the finality. Therefore, the parties are now bound by the rights and liabilities determined/incurred by passing of the said decree. In view of the provisions contained in Section 97 CPC, the defendants/respondents are precluded from disputing the correctness of the preliminary decree in the instant appeal which has been filed against final decree. Thus, the contention of the defendants /respondents no. 1 to 6 that the Revenue Court had no jurisdiction and only the Jagir Commissioner had jurisdiction to determine the rights and liabilities of the parties cannot be accepted at this stage.

9- It is not the case of defendants/respondents that the final decree passed by learned trial court is not in accordance with the shares determined in Preliminary Decree. Therefore, the learned first appellate court committed illegalities in setting aside the judgment and final decree of the trial court. The legal questions framed hereinabove are answered in favour of the plaintiffs/appellants and against the defendants/respondents.

10- In view of the above, we are inclined to accept this appeal.

11- Resultantly, the appeal is accepted and the judgment and decree of the first appellate court is set aside. The judgment and decree of the trial court is restored.

Pronounced.

**(Rajinder Kumar)**  
**Member**

**(Mukesh Kumar Sharma)**  
**Chairman**