

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal Decree/TA/1753/2004/Sawai Madhopur.

Ramdhan son of Laxminarain caste Meena resident of village Badodya
Tehsil Malarna Dungar Distt. Sawai Madhopur.

...Appellant.

Versus

1. Devchand son of Bheru (deceased) through LRs:-

1/1 Smt. Prem Devi wife of Devchand

1/2 Rambhanwar son of Devchand

1/3 Hansraj son of Devchand

All by caste Meena residents of Badodya Tehsil Malarna Dungar Distt.
Sawai Madhopur.

2. Laxminarain son of Kana caste Meena resident of village Badodya Tehsil
Malarna Dungar Distt. Sawai Madhopur.

3. State of Rajasthan through Tehsildar, Malarna Dungar.

4. Jagdish son of Laxminarain caste Meena resident of Badodya Tehsil
Malarna Dungar Distt. Sawai Madhopur.

...Respondents.

D.B.

Shri R.D. Meena, Member

Shri Ravi Dangi, Member

Present:-

Shri V.P. Singh, counsel for the appellant.

Shri Madhavraj Singh, counsel for the respondents.

Date:22.3.2022

J U D G M E N T

This second appeal is filed under section 224 of the Rajasthan Tenancy Act, 1955 against the judgment and decree of the Revenue Appellate Authority, Sawai Madhopur vide his order dated 6.2.2004 in appeal No. 4/2003.

2. Facts apposite giving rise to this appeal are as follows:-

A suit for declaration, permanent injunction and correction of entries was filed by the appellant and respondent No. 4/ Ramdhan and Jagdish against respondent No. 1 and 2/ Devchand and Laxminarain bearing suit No. 438/99 before the learned trial court.

Factually Kana had two sons viz. Bheru and Laxminarain (respondent No. 2). Bheru married Lachha Devi and passed away without having any children. Laxmi Narain was married with Hansa Bai from whom he had four sons and one daughter. One the demise of Bheru, his wife Lachka Devi went in Nata to Laxminarain. Laxminarain had three sons viz. Devnarayan,

Ramdhan and Jagdish and four daughters from Lachka Devi. On the demise of Bheru, khasra No. 162 area 3.14, 163/ 0.12, 168/ 6.19 and 395 area 3.13 in gram Badodya Tehsil Baulin were recorded in the khatedari of Devchand, while khasra No. 272/ 3.16 was recorded in the name of Dev Chand and Laxminarain having one-half share each. Laxaminarain in his written statement has admitted the plaint, while Jagdish gave written statement in favour of Devchand and has even endorsed that he did not file the suit. Devchand in his written statement has averred that khasra No. 162, 163, 168 and 395 were self acquired land of Bheru and khasra No. 272 percolated from Kana. Therefore, ten issues were framed and the case was listed for prosecution witnesses.

However, twin applications under Order 7 Rule 11 of the Civil Procedure Code evenly dated 5.2.2001 and 6.10.2001 were filed by the defendant No. 1/ Devchand, to which reply was filed. However, vide judgment dated 18.10.2002, the application was accepted and the suit was rejected by the learned trial court. On appeal the learned first appellate court vide his judgment and decree dated 6.2.2004 upheld the judgment and decree of the learned trial court. Hence giving birth to this second appeal.

3. Heard the learned counsels for the appellant and the legal representatives of respondent No. 1. Respondent No. 2 name has been deleted vide order dated 4.12.2020. None appeared on behalf of the respondent No. 4 despite registered AD notice being sent to him.

4. The counsel for the appellant/ Ramdhan has argued vehemently that both the judgments and decrees of the learned lower courts below were not as per the law. Only plaint is to be seen while deciding application under Order 7 Rule 11 of the Civil Procedure Code. The defendant No. 1/ Respondent No. 1/ Devchand wrongfully had mutated the disputed land claiming to be the adopted son of deceased Bheru. Bheru had passed away earlier and after his demise Devchand was born. Para 12 of the suit discloses the cause of action. To decide issue No. 6 as a preliminary issue trial of the suit is a must, as it is a mixed question of facts and law. Hence, prayed to accept the appeal.

5. The counsel for the legal representatives of respondent No. 1 argued vehemently that both the judgments and decrees of the learned courts below were just and proper and as per the law. The twin applications filed under

Order 7 Rule 11 of the Civil Procedure Code were rightly accepted and the suit was dismissed. The appellant/ Ramdhan has no locus standi to file the suit and no cause of action accrued to him. The concurrent judgments and decrees need to be upheld and the appeal may kindly be rejected.

6. To begin with, a suit for declaration, permanent injunction and correction of entries was filed by the appellant and respondent No. 4/ Ramdhan and Jagdish against respondent No. 1 and 2/ Devchand and Laxminarain bearing suit No. 438/99 before the learned trial court.

Factually Kana had two sons viz. Bheru and Laxminarain (respondent No. 2). Bheru married Lachha Devi and passed away without having any children. Laxmi Narain was married with Hansa Bai from whom he had four sons and one daughter. On the demise of Bheru, his wife Lachka Devi went in Nata to Laxminarain. Laxminarain had three sons viz. Devnarayan, Ramdhan and Jagdish and four daughters from Lachka Devi. On the demise of Bheru, khasra No. 162 area 3.14, 163/ 0.12, 168/ 6.19 and 395 area 3.13 in gram Badodya Tehsil Baulin were recorded in the khatedari of Devchand, while khasra No. 272/ 3.16 was recorded in the name of Dev Chand and Laxminarain having one-half share each. Laxminarain in his written statement has admitted the plaint, while Jagdish gave written statement in favour of Devchand and has even endorsed that he did not file the suit. Devchand in his written statement has averred that khasra No. 162, 163, 168 and 395 were self acquired land of Bheru and khasra No. 272 percolated from Kana. Therefore, ten issues were framed and the case was listed for prosecution witnesses.

However, twin applications under Order 7 Rule 11 of the Civil Procedure Code evenly dated 5.2.2001 and 6.10.2001 were filed by the defendant No. 1/ Devchand, to which reply was filed. However, vide judgment dated 18.10.2002, the application was accepted and the suit was rejected by the learned trial court. On appeal the learned first appellate court vide his judgment and decree dated 6.2.2004 upheld the judgment and decree of the learned trial court. Hence giving birth to this second appeal.

Order 7 Rule 11 of the Civil Procedure Code reads as follows:-

11. Rejection of plaint- the plaint shall be rejected in the following cases:

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate.

[(f) where the plaintiff fails to comply with the provisions of rule 9]

[Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp paper shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.]

Order 14 Rule 2 of the Civil Procedure Code reads as follows:-

[2. Court to pronounce judgment on all issues – (1) Notwithstanding that a case may be disposed of on a preliminary issue, the court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issues first if that issues relates to-

(a) the jurisdiction of the court, or

(b) a bar to the suit created by any law for the time being in force. And for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.]

From the twin applications filed under Order 7 Rule 11 of the Civil Procedure Code it comes to the fore that they are not simpliciter applications under Order 7 Rule 11 of the Civil Procedure Code, but as the issues were framed and the application to decide the issue No. 6 as preliminary issue was prayed for. Issue No. 6 reads as follows:-

“6. आया वादीगण को कोई वाद हेतु दावा पेश करने बाबत पैदा नहीं हुआ।”

The judgments and decrees of the learned lower courts below have dealt into facts and law. Only the legal issues are to be decided first. Since the issue No. 6 is not a pure question of law but is a mixed question of fact and law, which can be decided only after evidence.

Apart from it under which provision and facts the land of Bheru was solely endorsed in the name of Devchand is also to be thread bare which can be done by evidence only.

The suit has been filed under section 136 of the Rajasthan Land Revenue Act, 1956 also. If the two sons namely Ramdhan and Jagdish have no right in the disputed land, then how their real brother Devchand solely has the right to succeed to the land held by Bheru exclusively. This fact can be decided by evidence. Even otherwise the suit could not have been dismissed at that stage as the suit was maintainable for khasra No. 272 at least. Therefore, the plaint could not have been rejected in piecemeal. On the demise of Bheru, the land could have been inherited by Lachhma or Laxminarain or otherwise. As Laxminarain has passed away during the second appeal, therefore, the plaintiffs are also the legal representatives of Laxminarain. Both the courts below were of the view that as Laxminarain has not filed any counter claim, but now looking to the changed circumstances, the findings are not sustainable. Both the courts below considered the material/ documents without giving opportunity to prove or disprove it. Therefore, the issue No. 6 is a mixed question of facts and law. In these circumstances also findings of both the courts below deserve to be and hereby rejected.

7. Hence, with this factual matrix and the given circumstances, the appeal in hand deserves and hence allowed. Both the judgments and decrees of the learned trial court dated 18.10.2002 and Revenue Appellate Authority, Sawai Madhopur dated 6.2.2004 are set aside and the matter is remanded to the learned trial court to proceed further as per the law. Parties are directed to appear before the learned trial court on 26.4.2022. All application (s), if pending, also disposed of accordingly.

Pronounced in open court.

(Ravi Dangi)
Member

(R.D. Meena)
Member