

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal Decree/TA/2617/2004/Barmer.

1. Sanga Ram son of Chuna Ram
2. Joga Ram son of Navla Ram
3. Kachhba Ram son of Navla Ram
4. Ganga Ram son of Navla Ram
5. Bhanwara Ram son of Navla Ram
6. Smt. Tijo wife of Navla Ram
7. Tiloka son of Chutra Ram

All by caste Kumhar residents of Nagdara Tehsil Shiv Distt. Barmer.

...Appellants.

Versus

1. Padma Ram son of Mahesha Ram
2. Rama Ram son of Mahesha Ram
3. Babu son of Khiya Ram
4. Bhura Ram son of Khiya Ram
5. Natha Ram son of Punja Ram

All by caste Kumhar residents of Nagdara Tehsil Shiv Distt. Barmer.

...Respondents.

D.B.

Shri Ravi Dangi, Member

Dr. Sharwan Kumar Bunkar, Member

Present:-

Shri Yogendra Singh, counsel for the appellants.

Shri Hagami Lal Choudhary, counsel for the respondents.

Date:21.4.2022

J U D G M E N T

This appeal has been filed under section 224 of the Rajasthan Tenancy Act, 1955 against the judgment of Revenue Appellate Authority, Barmer passed on 25.3.2004 in the review application No. 7/2004.

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

That initially two suits were filed bearing No. 102/1998 and 35/1998 among the family members tracing their lineage from one Asha.

The suit No. 102/1998 was filed by Padma under section 88, 188 of the Rajasthan Tenancy Act before the learned Sub-Divisional Officer, Shiv. Apart from it, another suit No. 35/1998 was filed by Natha under section 88 and 53 of the Rajasthan Tenancy Act. In both the suits other family members were made defendants, who were claiming lineage from the common ancestor Asha. Both the suits were consolidated and common issues were framed and were decided together by the Sub-Divisional Officer, Shiv on 8.8.2003 decreeing the suit. Aggrieved by it, Sanga and others filed an appeal

bearing No. 60/2003 under section 223 of the Rajasthan Tenancy Act and the said appeal was allowed by the learned Revenue Appellate Authority, Barmer vide his judgment dated 4.2.2004.

Aggrieved by the said judgment dated 4.2.2004, a review petition No. 7/2004 was filed by Padma and Natha and the same was decided on 25.3.2004 by the learned Revenue Appellate Authority, vide which judgment, the review application was allowed and the judgment and decree dated 4.2.2004 was set aside and the judgment and decree dated 8.8.2003 passed by Sub-Divisional Officer, Shiv was restored.

Aggrieved by it, this appeal has been preferred by Sanga and others before the Board.

3. Heard the learned counsels.
4. The counsel for the appellant reiterating the facts mentioned in the memo of appeal and argued vehemently that the judgment dated 25.3.2004 is against the law, rules and the record. No any affidavit was filed along with the review petition. There was no error apparent on the face of the record in the judgment and decree dated 4.2.2004. After acceptance of the review, the learned first appellate court should have restored the appeal and should have heard and decided it. Due to compromise between the two parties, the judgment and decree could not have been set aside by the learned first appellate court. As per the record the legal representatives of Gaja had the right over 3/5 share of land, originally held by Asha. Thus, prayed to set aside the judgment of review dated 25.3.2004.
5. *Per contra*, counsel for the respondents argued vehemently that the review petition was rightly decided. It was as per the law and facts. The appeal in hand deserves to be rejected. The learned trial court's judgment dated 8.8.2003 was just and proper. The parties belong to one family and due to succession being sons of Moda, their claim to half the share was rightly allowed by the learned trial court and the same was upheld by the learned first appellate court vide its judgment of review dated 25.3.2004. Thus, prayed to dismiss the appeal.
6. Considered the arguments of the learned counsels and perused the material available on record.
7. To begin with, the family tree is as follows:-

Asha had two sons Gaja and Moda, who succeed half share each.

Gaja had three sons viz. Chuna, Chatra and Navla. While Moda had three sons Punja, Mahesh and Bula. Bula is said to have migrated to Pakistan.

Chuna is succeeded by Sanga and Aklo. While Chutra by Triloka and Nawal by Noji, Joga, Kasba, Ganga and Bhanwar.

Punja was succeeded by two sons viz. Khema and Natha. Khema is succeeded by Baboo and Bhura. Mahesh has two sons Rama and Padma.

As per parcha lagan, Chuna, Chutra, and Navla's share being 3/5 and Kheema and Rama's being 1/5 each.

Padma has filed the suit No. 102/1998 pertaining to khasra No. 490 area 209 bigha, Khasra No. 556 area 101bigha 4 biswa, khasra No. 558 area 170 bigha 8 biswa, khasra No. 451 area 195 bigha 7 biswa totalling to 675 bigah 19 biswa in Motinada and khasra No. 212 area 97 bigha 2 biswa, khasra No. 423 area 32 bigha 15 biswa, khasra No. 426 area 10 bigha 4 biswa totalling to 140 bigha 1 biswa in Nagdara under section 88 and 188 of the Rajasthan Tenancy Act before the Sub-Divisional Officer, Shiv.

Natha has filed the suit No. 35/1998 pertaining to the same disputed land before the Sub-Divisional Officer, Shiv under section 88 and 53 of the Rajasthan Tenancy Act.

Both the suits were decided by the Sub-Divisional Officer, Shiv vide a consolidated judgment dated 8.8.2003 and decreed the suit and ordered that:-

“वादी का वाद स्वीकार कर मौजा मोतीनाडा के खेत खसरा नम्बर 490 रकबा 209 बीघा, खसरा नम्बर 556 रकबा 101.04 बीघा, खसरा नम्बर 558 रकबा 170.08 बीघा तथा खसरा नम्बर 451 रकबा 195.07 बीघा कुल भूमि 675 बीघा 19 बिस्वा के 1/4 हिस्से में प्रतिवादी सं. 1 के वादी को सहखातेदार, प्रतिवादीगण संख्या 2 से 4 का 1/4 हिस्सा तथा 1/2 हिस्सा प्रतिवादीगण संख्या 5 से 12 का घोषित किया जाता है। इसी प्रकार मौजा नागदड़ा के खेत खसरा नम्बर 212 रकबा 47.02 बीघा, खसरा नम्बर 423 रकबा 32.15 बीघा, खसरा नम्बर 426 रकबा 8.06 बीघा कुल 140.01 बीघा में 1/4 हिस्सा वादी व प्रतिवादी संख्या 1 रामा का, 1/4 हिस्सा प्रतिवादीगण संख्या 2 से 4 का तथा 1/2 हिस्सा प्रतिवादीगण संख्या 5 से 12 की खातेदारी में घोषित किया जाता है।”

On this an appeal was preferred by the legal representatives of Chuna, Chutra, Navla and the same was allowed by the learned Revenue Appellate Authority, Barmer vide his judgment and decree dated 4.2.2004. However, a review petition was filed by Padma and Natha bearing No. 7/2004. This

review petition was allowed and the judgment and decree dated 4.2.2004 of the Revenue Appellate Authority, Barmer was set aside and the judgment and decree dated 8.8.2003 passed by the Sub-Divisional Officer, Shiv was restored.

The review petition was allowed on the ground that Baboo and Bhura sons of Kheema had given an admitted written statement before the learned trial court. Secondly, Rama did not file any appeal against Padma against the judgment and decree of the learned trial court, nor any cross objections were filed by him and also the fact that compromise has been entered between them during the review proceedings.

No doubt this part of the order of review being as per the law but in the judgment of review the learned first appellate court has set aside the judgment and decree dated 4.2.2004 of the Revenue Appellate Authority, Barmer and restored the judgment and decree dated 8.8.2003 of the learned trial court. Thus, indirectly it has revised the share of the family members, without giving any finding on it. The case involved twin questions. The first being inter dispute between Padma with his real brother Rama and of Natha with his real brother Kheema's legal representatives. The second issue being the legal representatives of Gaja were claiming 3/5 of share while Moda's legal representatives claimed 1/2 the share by way of succession. No any finding was given by the learned Revenue Appellate Authority in his judgment dated 25.3.2004 pertaining to the second issue, i.e. the share of successor of Gaja and Moda respectively. The legal representatives of Gaja claimed 3/5 share as per the Parcha lagan, while of Moda on succession basis. Moreover, **Order 47 Rule 8** of the Civil Procedure Code reads as follows:-

“8. Registry of application granted, and order for re-hearing- When an application for review is granted, a note thereof shall be made in the register and the court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit.”

Thus, as the review was allowed by the learned first appellate court vide its judgment dated 25.3.2004 which was just and proper which does not call for any interference. However, thereafter without considering the appeal issuewise, the learned first appellate court rejected the appeal and upheld the judgment and decree of the learned trial court dated 8.8.2003, without following the procedure laid down under Order 47 Rule 8 of the Civil

Procedure Code. Therefore, this part deserves to be and is set aside. Thus, the appeal is partially allowed. Appeal No. 60/2003 ‘Sanga and ors. Vs. Padma and ors.’ is remanded to the learned first appellate court/ Revenue Appellate Authority, Barmer to decide afresh and issuewise, after giving proper opportunity of hearing to the parties, unaffected by the observations made above. Parties are directed to appear before the learned Revenue Appellate Authority, Barmer on 18.5.2022. All application(s), if any, pending, also disposed of accordingly.

Pronounced in open court.

(Dr. Sharwan Kumar Bunkar)
Member

(Ravi Dangi)
Member