

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal/TA/2632/2004/Jhalawar

1. Ram Narayan
2. Madanlal
3. Banshilal **Ss/o** Prabhulal
By caste Lodha residents of Sagoni Tehsil Aklera
4. Kesar Bai D/o. Prabhulal W/o. Babulal
5. Shanti D/o. Prabhulal W/o. Babulal
By caste Lodha residents of Baneth Tehsil Manoharthana
6. Mathuribai Wd/o. Prabhulal caste Lodha resident of Sagoni Tehsil Aklera Distt. Jhalawar.

.....Appellants.

VERSUS

Gomuda S/o. Rugha caste Lodha resident of Sagoni Tehsil Aklera Distt. Jhalawar

..... Respondent.

D.B.

Shri V. Srinivas, Chairman
Shri Rajinder Kumar, Member

Present:-

Shri Mukesh Jain, counsel for the Appellants.

Shri Khadag Singh, counsel for the Respondent.

JUDGMENT

Date: 21-06-2018

1. This second appeal under section 225 of the Rajasthan Tenancy Act, 1955 is preferred against the judgment dated 14-05-2004 of the Revenue Appellate Authority, Kota passed in appeal no. 196/02 titled as Gomuda Vs. Ram Narayan and others, whereby the judgment and decree of the trial court of SDO, Aklera in Revenue Suit No. 1190/2004 dismissing the suit filed by the plaintiff and decreeing the counter claim filed by defendants were set-aside and the learned trial court was directed to decide the matter afresh in the light of the observations made therein.

2. The brief facts necessary for the disposal of this appeal are that the respondent Gomuda (hereinafter referred to as the plaintiff) filed a suit in the trial court against the appellants (hereinafter refers to as defendants) under section 183 of the Rajasthan Tenancy Act, 1955 for delivery of possession of land bearing khasra no. 120 (measuring 3 bigha 19 biswa) situated in Village Sagoni Tehsil Aklera. The defendants contested the suit and also filed a counter claim for claiming khatedari rights on the basis of adverse possession. The plaintiff filed rejoinder to the written statement and counter claim. The learned trial court framed as many as 07 issues and after recording evidence of the parties, dismissed the suit of the plaintiff and decreed the counter-claim filed by the defendants.
3. Aggrieved by the judgment and decree of the trial court dated 31-10-2001, the plaintiff filed an appeal before the R.A.A. Kota on 23-07-2002. The learned first appellate Court vide judgment impugned herein allowed the appeal and remanded the matter to the trial court as aforesaid. Hence this appeal by the defendants.
4. We have heard learned counsel for the parties.
5. On behalf of the defendants/appellants, it was argued that the first appeal was preferred by the plaintiff/respondent before R.A.A. Kota on 23-07-2002, which was delayed by 07 months. The learned first appellate court condoned the delay in filing appeal without considering the fact that the plaintiff gave no 'sufficient cause' of filing the first appeal after much delay. In addition to it, the appeal was remanded to the trial court on this ground that the State Government is a necessary party to the suit, therefore, the State Government must be impleaded as defendant in the suit. Another ground for remand of the matter was that the trial court did not give decision on each and every issue as per mandate of O.20 Rule 5 C.P.C. Even the findings of facts recorded by the trial court were found erroneous by the first appellate Court. Therefore, the learned trial court was directed to decide the suit afresh. However, the learned first appellate Court did not consider the fact that the plaintiff filed only one appeal against the judgment and decree of the trial court whereas the learned trial court apart from dismissing the suit of the plaintiff, decreed the counter-claim of the defendant. Therefore, it was mandatory for the plaintiff to file two appeals, one against the dismissal of his suit and the other

against the order of decreeing the counter claim of defendants. Having failed to file two separate appeals, the appeal was liable to be dismissed. It has also been argued that in a suit filed under section 183 of the Rajasthan Tenancy Act, 1955, the State Government is not a necessary party. The first appellate Court being a court of facts also, it could have decided the appeal on merits but it shirked the responsibility and wrongly passed the order of remand. Therefore, a request is made to accept the appeal, set-aside the impugned judgment of the learned first appellate Court and to restore the judgment and decree of the trial Court.

6. Learned counsel for the plaintiff has strongly refuted the above submissions. He has argued that the remand order was passed in view of the erroneous findings of the learned trial court. The State Government being the land holder, it was found necessary to implead it as defendant in the suit. Therefore, the judgment impugned is perfectly justified. He has also submitted that the counter-claim is never regarded as a cross-suit, therefore, it was not mandatory for the plaintiff to have filed two separate appeals against the judgment and decree of the trial court. Therefore, a request has been made to dismiss the appeal.
7. We have pondered over the above submissions and perused the records carefully.
8. Two substantial questions of law arise for consideration in this second appeal:-
 - 1) Whether the plaintiff is bound to file two separate appeals, if the suit was dismissed and counter claim of the defendant was decreed?
 - 2) Whether the part of the judgment, allowing the counter-claim operate as res-judicata in so far as the appeal filed against the order of dismissal of suit is concerned?
9. A cursory look at O.8 Rule 6 A to Rule 6 D C.P.C would reveal that a counter claim is a cross-suit with all the trappings of a separate suit. In Premier Tyres Ltd. Vs. Kerala State Road Transport Corporation [AIR 1993 S.C. 1202], the Hon'ble Supreme Court has held as under:-

“Where no appeal is filed, as in this case from the decree in connected suit it has the same effect of non

filing of appeal against a judgment or decree. Thus the finality of finding recorded the connected suit, due to non-filing appeal precludes the Court from preceeding with appeal in other suit."

The question as to the impact of the principle of res-judicata in a case wherein the suit is resisted by a defendant not only by denying the plaintiff's claim, but by raising a counter-claim, was examined by Hon'ble Kerala High Court in Girija & ors Vs. Rajan and others [R.S.A. No. 14 of 2015 decided on 28-01-2015] and after discussing a catena of decisions on the subject, it was observed as under:-

"From the above discussion, it is discernible that the law stated in Order 8 Rule 6A C.P.C makes it abundantly clear that the claim in a suit will have all the characteristics of a cross suit including the vulnerability of suffering the bar of res-judicata enshrined in section 11 C.P.C, if not properly challenged."

Thereafter, the Hon'ble High Court held as under:-

"Therefore, I find that the question of law arising in this case can only be decided against the appellants, finding that if a defendant who raised a counter claim in a suit, fails both in the suit and in the counter claim, will have to file separate appeals challenging the decree in the suit and the counter claim. Since the appellants in this case failed to do so before the lower appellate court, I am of the view that the first appeal itself was barred by res judicata. Hence, the second appeal is not maintainable."

The facts of the present case are squarely covered by the *ratio decidendi* laid down in the cases of Premier Tyres Ltd (supra) and Rajan & ors (supra). In the present case also, the plaintiff filed only one appeal before the first appellate court against the judgment and decree dated 31-10-2001. However, the first appellate Court did not advert itself to the said legal position and committed grave illegality in accepting the first appeal and remanding the matter to the trial court as aforesaid. In view of the preceding discussion, the substantial questions of law are answered in the terms that the plaintiff was bound to file two separate appeal and having failed to do so, only one appeal filed by him before the first Appellate Court was barred by the principle of res-judicata. Therefore, this appeal filed by the defendant deserves to be accepted.

10. Resultantly, the appeal is allowed. The impugned judgment of the R.A.A. Kota is set-aside and the judgment and decree of the trial court are restored.

Pronounced.

(Rajinder Kumar)
Member

(V. Srinivas)
Chairman