

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Revision/TA/5024/2004/Dholpur.

1. Ramesh Singh s/o Sunder Singh, Caste Gurjar r/s Purani Chhawani Tehsil and Distt. Dholpur (deceased) through LR:-
 - 1/1. Shakuntala Devi wd/o Ramesh
 - 1/2. Virendra Singh s/o Lt. Ramesh
 - 1/3. Bhupendra Singh s/o Lt. Ramesh
 - 1/4. Rinki d/o Ramesh
 - 1/5. Dhirendra s/o Ram
 - 1/6. Seema d/o Ramesh and w/o Sarnam Singh, Caste Gurjar, r/o Village Garavpura Tehsil and Distt. Dholpur (Raj.)

-----Revisionists.

VERSUS

1. Sumitra wd/o Bharat Singh
2. Keshav
3. Hallo
4. Gambhir
5. Kishandei d/o Bharat Singh and w/o Parshottam, Caste Gurjar, r/o Village Bintoli, Tehsil and Distt. Morena (M.P)
6. Ratandei d/o Bharat Singh and w/o Ramnath, Caste Gurjar, r/o Village Bintoli, Tehsil and Distt. Morena (M.P)
7. Sultan Singh @ Badan Singh s/o Bhagwan Singh, Caste Gurjar r/o Purani Chhawani, Tehsil and Distt. Dholpur(deceased) through LR:-
 - 7/1. Kalavati wd/o Sultan Singh
 - 7/2. Balram
 - 7/3. Jai Singh
 - 7/4. Jayanti d/o Sultan Singh and w/o Vidhyaram Caste Gurjar r/o Ganwai Tehsil Badi Distt. Dholpur (Raj.)
 - 7/5. Manja Devi d/o Sultan Singh and w/o Ranveer Caste Gurjar r/o Village Garwapura Tehsil and Distt. Dholpur (Raj.)

-----Respondents.

S.B.

Shri Rajinder Kumar, Member

Present:-

Shri Vinod Bhargav, counsel for the Revisionist.

Shri Gaurav Dave, counsel for the Respondents.

J U D G M E N T

Date: 23-08-2018

1. This revision seeks to challenge the orders dated 21-10-1991 and 21-09-1999 of the order dated 17-03-2004 of the trial court of SDO Dholpur and Revenue Appellate Authority, Bharatpur.
2. I have heard learned counsels for the parties.
3. Learned counsel for the revisionists has argued that the suit filed by the revisionist under section 183 B Rajasthan Tenancy Act, 1955 was dismissed by the trial court in default of its prosecution and for want of evidence vide order dated 21-10-1991. Thereafter, the revisionists submitted an application for restoration of suit, which was also dismissed by the trial court on 21-09-1999. Feeling aggrieved the revisionists filed an appeal before the learned Revenue Appellate Authority and the same was also dismissed vide order dated 17-03-2004. He has argued that the order passed by the courts below are against the facts and law. The order dated 21-10-1991 is self contradictory in many respects. A suit cannot be dismissed in default when counsel of the plaintiff was present. Likewise, a suit cannot be dismissed in default of prosecution and for want of evidence by a common order. Learned counsel has further argued that the suit was dismissed on this ground also that the plaintiff has been afforded a large number of opportunities in the last 12 years to produce the evidence and he has failed to produce the same. As the matter relates to immovable property, the court ought to have afforded a last opportunity to the plaintiff to produce his

entire evidence. In this way a request has been made to allow the revision and to afford an opportunity to the revisionists to produce their evidence. Learned counsel has also argued that nine months prior to the filing of this revision, the plaintiff/revisionist met with a road accident and thus, a delay occurred in preferring this revision also. A request has been made to condone the delay in filing the revision.

4. Learned counsel for the respondents opposed the above submissions. He has argued that the revisionists had been afforded sufficient opportunities to lead evidence. Thus, the orders of the courts below are perfectly justified.
5. I have given my thoughtful consideration to the above submissions and perused the record carefully.
6. The first appeal filed by the plaintiffs was dismissed by the learned RAA on 17-03-2004 and this revision has been filed on 4-10-2004. Thus, there has been a delay of few months in preferring this revision after excluding the stipulated period of limitation. However, revisionists have submitted an application for condonation of delay on the ground that prior to the filing of this revision, the revisionist met with a road accident and thus, he was unable to make the movements. The contents of the said application have not been denied by the respondents by filing any reply thereof. Therefore, there is nothing on record to disbelieve the version of the revisionists. The delay in filing revision is also not inordinate. Thus, the said delay is condoned.
7. On merits also, the record reveals that the court closed the evidence of the plaintiff on 21-10-1991 and dismissed his suit on the same day without adjourning it for evidence of the defendants. The proper course was to adjourn the suit for evidence of the defendants after closing the evidence of the

plaintiff. Thereafter, issue-wise findings must have been recorded by the trial court after hearing arguments of the parties.

8. Though a large number of opportunities had been granted to the revisionists to lead evidence. But as the dispute pertains to immovable property, thus, it was required to resolve the controversy between the parties on merits, instead of dismissing the same on technicalities. Therefore, in the interest of justice, opportunity of leading evidence is required to be granted to the revisionists on payment of costs. The revision deserves to be accepted.
9. Resultantly, the revision is accepted at the costs of Rs. 5,000/-. The impugned orders of the trial court dated 21-10-1991 and 21-09-1999 and the impugned judgment of the learned RAA dated 17-03-2004 are set aside. The suit is remanded to the trial court with a direction to re-admit it to its original number. The trial court shall fix two dates in the presence of the parties for production of evidence by the revisionists and on the stipulated dates, the revisionists shall produce their witnesses, who will be cross-examined by the defendants on the same day. Thereafter, the case will be fixed for evidence of the defendants, and they shall also be given sufficient opportunity for leading evidence. After production of evidence by both the parties, the suit shall be decided expeditiously and not later than six months from the date of receipt of copy of this judgment. Parties are directed to appear in the trial court on 10-09-2018.

Pronounced.

File be consigned.

(Rajinder Kumar)
Member