

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal Decree/TA/5796/2004/Tonk

1. Budhiprakash son of Rameshwar Prasad
 2. Kedar Prasad son of Rameshwar Prasad
- Both by caste Brahmin residents of Sankhana Tehsil and Distt. Tonk.
...Appellants.

Versus

1. Radheshyam adopted son of Chaturbhuj caste Brahmin resident of village Sankhana Tehsil and Distt. Tonk.
 2. State of Rajasthan through Tehsildar, Tonk
- ...Respondents.

D.B.

**Shri Hari Shankar Goyal, Member
Shri Ravi Dangi, Member**

Present:-

Shri V.P. Singh, counsel for the appellants.
Shri Yogendra Singh, counsel for the respondent No.1.

Date:.....

J U D G M E N T

This second appeal has been filed under section 224 of the Rajasthan Tenancy Act, 1955 against the judgment and decree dated 14.9.2004 passed by Settlement Officer-cum-Revenue Appellate Authority, Tonk in appeal No. 145/2002.

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

The plaintiffs/ appellants filed a suit before the Assistant Collector, Tonk under section 88, 53 and 188 of the Rajasthan Tenancy Act. They claimed that they are in the culvatory possession over one-half the area on khasra No. 71 area 8 bigha 5 biswa and khasra No. 154 area 1 bigha 5 biswa in Gram Meernagar. Chaturbhuj son of Ghasi Lal being karta and head of the family during settlement got the said land endorsed in his name alone, whereas one-half the share should have been endorsed in the name of Bhurji son of Ghasi Lal. As Chaturbhuj adopted the defendant, the entire land after Chaturbhuj percolated to him. The land being ancestral, the plaintiffs claimed one-half the share. Apart from it, khasra No. 70 area 12 bigha 7 biswa being the khatedari land of Mandir Shri Raghunathji, through Pujari Ghasi Lal. After the demise of Ghasi Lal, it should have been endorsed in the name of both his sons Bhurji and Chaturbhuj. Bhurji had three sons Rameshwar, Giriraj and Radheshyam, while Chaturbhuj adopted

Radheshyam. Giriraj Prasad also went in adoption to one Ramnarain. Rameshwar's sons are the plaintiffs.

To this, the defendant Radheshyam filed the written statement admitting the plaint.

On this plaintiff Kedar deposed as PW-1 and Vijay as PW-2. However, after hearing the arguments, the learned trial court rejected the suit vide judgment dated 29.10.2002. Aggrieved by the said judgment, an appeal was filed, but the same was also rejected vide the judgment dated 14.9.2004. Hence this appeal.

3. Heard the learned counsels of the parties.

4. The counsel for the plaintiff/ appellants vehemently argued that both the learned lower court failed to appreciate the fact that the land in dispute was ancestral land. At the same time the defendant No. 1/ Respondent No. 1 filed the written statement admitting the plaint. Apart from it, an affidavit of defendant No. 1/ respondent No. 1 was also filed. The plaintiffs/ appellants also proved his suit by two witnesses viz. PW-1 Kedar and PW-2 Vijay. An admission is the best evidence. The learned first appellate court wrongly rejected the appellants' application under Order 41 Rule 27 of the Civil Procedure Code. Another application filed by the appellant under Order 41 Rule 27 of the CPC dated 27.11.2002 was left undecided by the learned first appellate court. Thus, prayed to set aside both the judgments of learned lower courts and to decree the suit of the plaintiffs/ appellants.

5. Per contra, the counsel for the respondent No.1, argued that both the judgments of the learned courts below are just, proper and as per the law. The plaintiffs/ appellants failed to prove through any document that the disputed land was ancestral. Thus, the appeal in hand deserves to be dismissed.

6. We have given our thoughtful consideration to the rival contentions and perused the material available on record.

7. To begin with, the plaintiffs/ appellants filed a suit before the Assistant Collector, Tonk under section 88, 53 and 188 of the Rajasthan Tenancy Act. They claimed that they are in the culvatory possession over one-half the area on khasra No. 71 area 8 bigha 5 biswa and khasra No. 154 1 bigha 5 biswa in Gram Meernagar. Chaturbhuj son of Ghasi Lal being karta and head of the family during settlement got the said land endorsed in his

name alone, whereas one-half the share should have been endorsed in the name of Bhurji son of Ghasi Lal. As Chaturbhuj adopted the defendant, the entire land after of Chaturbhuj percolated to him. The land being ancestral, the plaintiffs claimed one-half the share. Apart from it, khasra No. 70 area 12 bigha 7 biswa being the khatedari land of Mandir Shri Raghunathji, through Pujari Ghasi Lal. After the demise of Ghasi Lal, it should have been endorsed in the name of both his sons Bhurji and Chaturbhuj. Bhurji had three sons Rameshwar, Giriraj and Radheshyam, while Chaturbhuj adopted Radheshyam. Giriraj Prasad also went in adoption to one Ramnarain. Rameshwar's sons are the plaintiffs. To this, the defendant Radheshyam filed the written statement admitting the plaint. Therefore, no issues were framed. On this, plaintiff Kedar deposed as PW-1 and Vijay as PW-2. However, after hearing the arguments, the learned trial court rejected the suit vide judgment dated 29.10.2002. Aggrieved by the said judgment, an appeal was filed, but the same was also rejected vide the judgment dated 14.9.2004. Application under Order 41 Rule 27 of the CPC filed by the applicant before the learned first appellate court dated 13.9.2004 was rejected by the learned first appellate court. However, another application filed by the appellant under Order 41 Rule 27 of the CPC dated 27.11.2002 was left undecided by the learned first appellate court. Therefore, the second appeal filed by the appellants is hereby partially allowed and the matter is remanded to the learned first appellate court with direction to decide the application under Order 41 Rule 27 of the Civil Procedure Code dated 27.11.2002 first and then decide the first appeal afresh. Both the parties are directed to be remain present before the learned Settlement Officer-cum-Revenue Appellate Authority, Tonk on

Pronounced in open court.

(Ravi Dangi)
Member

(Hari Shankar Goyal)
Member