

W.R

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Revision No.5849/2004/TA/Udaipur :

Keshulal S/o Gabu Lal Mahajan (Deceased), represented by :-

1. Kailash Chand } sons of Keshulal Mahajan
2. Dinesh Chand }
3. Kamla D/o Keshulal and W/o Gangadhar Mundra
All residents of Bhindar, Tehsil Vallabhnagar, District Udaipur.
4. Pushpa D/o Keshulal and W/o Purshottam Kabra, R/o Radha
Bhawan, Rampura, Tehsil Nathdwara, District Rajsamand.
... Revisionists.

Versus

1. Manohar Lal S/o Gabu Lal Mahajan (Deceased), represented by :-
 - 1/1. Satyanarain S/o Manohar Lal Mahajan, R/o Bhindar, Tehsil
Vallabhnagar, District Udaipur.
 - 1/2. Chandra Devi D/o Manohar Lal and W/o Suresh Chandra,
Laddha Brothers, Lakhara Chowk, Udaipur.
 - 1/3. Manju Kumari D/o Manohar Lal and W/o Ramprasad Dudani,
R/o Kharkheda, Tehsil Gangrar, District Chottorgarh.
2. State of Rajasthan, through Tehsildar Vallabhnagar.
... Respondents.

S.B.

Shri Rajinder Kumar, Member

Argued by :

Shri Sampat Lal Bohra : counsel for the revisionists.

Shri Ravindra Sethi : counsel for the respondents No. 1/1 to 1/3.

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J U D G M E N T

Dated : 12-11-2018

1. This revision petition has been preferred against the judgment dated 08.11.2004 of the learned Revenue Appellate Authority, Udaipur whereby the appeal no. 18/2002 filed by the defendant/revisionists was dismissed.

2. The facts of the case are that the original plaintiff/respondent no. 1 Manohar Lal [since deceased] filed a suit in the trial court of Sub Divisional Officer, Vallabhnagar District Udaipur for declaration and partition of the disputed land. In that suit, the original defendant/revisionist Keshulal [since deceased] appeared through his counsel and submitted written statement alongwith his counter claim. The plaintiff submitted written statement to the counter claim on 30.8.1997. On 15.4.2000, issues were framed by the trial court. On 27.01.2001, the learned counsel representing the defendant/revisionist pleaded 'no instructions' and therefore, ex-parte order was passed against him. After recording the plaintiff's evidence, the learned trial court vide judgment dated 20.10.2001 passed Preliminary Decree. On 03.12.2001, an application was filed on behalf of the defendant/revisionist seeking to set aside the ex-parte judgment and decree. On 25.9.2002, the learned trial court dismissed the defendant/revisionist's application under Order 9 Rule 13 CPC and passed Final Decree on the same day decreeing the plaintiff/ respondent's suit. Feeling aggrieved, the defendant/ revisionist filed an appeal in the court of learned Revenue Appellate Authority, Udaipur which was also dismissed vide impugned judgment dated 08.11.2004. Hence this revision by the representatives of the deceased defendant Keshulal.
3. I have heard learned counsels for the parties.
4. On behalf of the defendant/ revisionists, it was argued that the counsel representing the defendant in the trial court pleaded 'no instructions' without any reason and without giving him any intimation in this regard. Therefore, the defendant/ revisionist can not be blamed for the act of his counsel. The trial court also did not give any notice to the defendant/ revisionist before proceeding to pass ex-parte order against him. Not only this, the learned trial court dismissed the application under Order 9 Rule 13 CPC submitted by the defendant/ revisionists in an illegal manner. The learned appellate court also dismissed the appeal ignoring the factual and legal aspects involved in

this case. Therefore, a prayer was made to accept this revision petition and set aside the orders of the courts below and to remand the suit to the trial court for passing decision afresh on merits. In support of his submissions, learned counsel has relied upon the following citations :-

- (i) 1998 (2) RLW Raj. 1071 'Smt. Manju Vs. Krishan Gopal'
- (ii) 2002 (2) RRT 975 'Lakhji & ors. Vs. Babra & anr.'
- (iii) 2002 (2) CLT 727 'Jai Kishan & ors. Vs. Municipal Board'
- (iv) 1994 (1) RBJ 287 'Padma Ram Vs. Bhom Raj'
- (v) 1994 RRD 742 'Ramjilal Vs. Rati Ram & anr.'
- (vi) 1994 RRD 172 'Badri Prasad & anr. Vs. Smt. Savitri Devi & anr.'
- (vii) 2001 (8) RBJ 376 'Bhura Ram Vs. Balu Ram'
- (viii) 2003 (10) RBJ 44 'M/s Aravali Stone Co. Vs. UIT'
- (ix) 1998 DNJ (SC) 47 'Milkiat Singh Vs. Joginder Singh'
- (x) 1998 RRD 319 'UIT Vs. Poonam Chand'
- (xi) 2004 CLT (Raj.) 345 'Pooranmal & ors. Vs. Ashok Kumar & ors.'
- (xii) 2001 RRT 36 'Arjun Singh Vs. Board of Revenue'

5. Learned counsel for the plaintiff/ respondent no. 1/1 to 1/3 argued that the defendant/ revisionists have been negligent throughout in conduct of their defence in the trial court. Therefore, their counsel rightly pleaded 'no instructions' and the courts below also made no illegality in passing the impugned judgments/ orders. In support of his submissions, learned counsel relied upon 2014 (2) RRT 1034 'Babu Lal & ors. Vs. Ratti Ram & ors.'
6. I have given my thoughtful consideration to the above submissions and carefully perused the record. I have also respectfully studied the law laid down in the cases cited above.
7. There is no denying the fact that the original defendant/ revisionist Keshulal had engaged a counsel to defend him in the revenue suit. The said counsel pleaded 'no instructions' on 27.11.2000 in the trial court. However, he did not issue any notice to the defendant Keshulal before giving the said statement, who was admittedly not present in the court on the said date. On the same day, the learned trial court passed ex-parte order against him. Thereafter, the learned trial court recorded the plaintiff's evidence and vide judgment dated 20.10.2001, Preliminary Decree was passed. On 3-12-2001 i.e. within a period of

almost two months, the defendant Keshulal submitted an application for setting aside the ex-parte proceedings. The said application was supported by affidavit of the deceased defendant Keshulal. In the said application, he specifically stated that due to his illness, he was taking treatment in Ahmedabad and Udaipur and thereafter he remained on bed rest. On 25.11.2001, his counsel informed him that he had pleaded 'no instructions' on his behalf. In this application, he has also stated that he was neither careless nor negligent in conduct of his defence and as soon as he learnt about ex-parte order and ex-parte decree, he immediately filed the application to set aside the same. It is nobody's case that the counsel for the defendant informed him that he had made a statement regarding 'no instructions' to the court, thus, it stands proved that the deceased defendant was neither careless nor negligent in defending the suit. In this way, it was the duty of the trial court to have issued a notice to the deceased defendant before passing ex-parte order and ex-parte decree against him. Thus, the defendant/revisionist has shown a 'sufficient cause' for his non-appearance on the said date. In this factual background, the learned trial court and the learned appellate court have failed to exercise jurisdiction properly and in lawful manner in refusing to set aside *ex-parte* orders and judgment passed against the defendant/revisionists. Therefore, interference by this Board is required to prevent miscarriage of justice.

8. Resultantly, the revision in hand is accepted and the exparte orders, judgments & decrees passed by the courts below are set aside and the application filed by the defendant/ revisionists under Order 9 Rule 13 CPC is allowed. The trial court is directed to re-admit the suit to its original number and proceed in the case from the stage, when the counsel for the defendant/ revisionist reported 'no instructions' and to decide the suit in accordance with law at the earliest.

Pronounced.

(Rajinder Kumar)
Member