

W.R.**IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER****1. Appeal Decree/TA/5937/2004/Dausa**

1. Gulla son of Ramu (deceased)
 - 1/1 Mohanlal son of Gullaram (deceased)
 - 1/1/1 Krishna widow of Mohanlal
 - 1/1/2 Narendra son of Mohanlal
 - 1/1/3 Ajay son of Mohanlal
 - 1/2 Rameshchand son of Gullaram
 - 1/3 Harsahay son of Gullaram
 - 1/4 Prabhudayal son of Gullaram]
 - 1/5 Mukesh son of Gullaram (deceased)
 - 1/5/1 Meena widow of Mukesh
 - 1/5/2 Karan son of Mukesh }
 - 1/5/3 Sita daughter of Mukesh } –minors through their natural guardian and
 - 1/5/4 Sonal son of Mukesh } mother Smt. Meena widow of Mukesh
 - 1/6 Habli widow Gullaram
 - All Mali by caste residents of Near Asawari Doongari, Tehsil & District Dausal.
 - 1/7 Prem daughter of late Gullaram wife of Ramkhaladi by caste Mali, resident of Gram Sikandara Tehsil Sikarai District Dausa.
 - 1/8 Santosh daughter of Late Gullaram wife of Rameshwar by caste Mali resident of Sikandara Tehsil Sikray District Dausa
 - 1/9 Rajenti daughter of Late Gullaram wife of Vakil Saini resident of Unwada Tehsil Baswa district Dausa.
2. Ramjilal son of Ramu
3. Kishore son of Ramu
4. Kishanlal son of Badri
 - All Mali by caste, residents of Near Asawari Doongri Tehsil & District Dausa.
5. Ghisi daughter of Ramu wife of Godu by caste Mali resident Rajawas Tehsil & District Dausa.

6. Manphooli daughter of Ramu wife of Kailash Chand by caste Mali resident of Subziwala Agrara Line Panchmukhi Hanumanji Panditpura Tehsil & District Dausa.
7. ChhotI daughter of Ramu wife of Bansi by caste Mali resident of Bhandana Road Tehsil & District Dausa.

Appellants

Versus

1. Gordhan son of Jailya (deceased)
1/1 Mooli widow of Gordhan (deceased)
1/2 Ghasi son of Gordhan
2. Gopal son of Ramsahay by caste Mali resident of Near Asawari Doongri Lalsot road Dausa.
3. Narayan son of Ramsahay through natural guardian Mst. Lali widow of Ramsahay Tehsil & District Dausa
4. Lali widow of Ramsahay by caste Mali resident of Near Asawari Doongri Lalsot road Dausa.
5. Chiranji son of Sonya by caste Mali resident of Near Asawari Doongri Lalsot road Dausa.

...Respondents.

2.Appeal Decree/TA/5507/2006/Dausa

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...Respondents.

D.B.

**Shri Mukesh Kumar Sharma, Chairman
Shri Rajendra Kumar, Member**

Present :-

1. Shri Samir Ahmed Counsel for the appellants.
2. Shri Ajit Singh Rathore and Shri Anil Sharma, Counsels for the respondents.

JUDGMENT

Dated: 07-02-2019

Per Shri Rajinder Kumar, Member

1. These 2 second appeals have been preferred against the common judgment and decree dated 30.10.2004 passed by the learned Revenue Appellate Authority, Jaipur camp- Dausa, whereby the learned first appellate court accepted the appeal no.94/2001 filed by the plaintiff/respondent no.1 and dismissed the appeal no.77/2004 filed by the defendants/appellants.
2. Facts of the case in nutshell are that the plaintiff/respondent no.1 Gordhan filed a suit in the trial court of Sub Divisional Officer, Dausa seeking the relief of declaration of the khatedari rights in respect of the suit lands. The defendants/appellants initially contested the suit by filing written statement. On the basis of the pleadings, the learned trial court framed as many as eight issues. On 13.11.1998, the examination-in-chief of the plaintiff Gordhan was recorded by the trial court and the cross-examination was deferred on the request of the defendants/appellants. Thereafter, the defendants/appellants did not appear in the trial court and exparte proceedings were initiated against them. On a later date, the defendants/appellants submitted an application for setting aside the exparte proceedings. However, that application was dismissed by the trial court on 4.7.2000 and the said order was confirmed upto the level of the Revenue Board. The trial court, thereafter, examined two more witnesses of the plaintiff and partly decreed the plaintiff's suit vide judgment dated 27.02.2001. Though the relief was claimed by the plaintiff in respect of the total 15 bigha 2 biswa land whereas the suit filed by him was decreed to the extent of 1/3rd share in the land of khasra no.960. Feeling aggrieved, the plaintiff/respondent filed appeal no.94/01 in the first appellate court and after a period of almost four years, appeal no.77/04 was filed by the defendants/appellants in the said court. By common judgment

and decree impugned herein, the learned trial court accepted the appeal of the plaintiff/respondent no. 1 and decreed the suit in its entirety and dismissed the appeal of the defendants/appellants. Hence, these two appeals have been preferred by the defendants/appellants.

3. We have heard the learned counsels.

4. On behalf of the defendants/appellants the judgment and decree of the courts below was attacked on merits also. But the main thrust of the arguments of the learned counsel was that the same do not conform to the legal provisions contained in Order XX Rule 5 and O. XLI Rule 31 C.P.C. respectively. It was argued that the learned trial court has decided only issue no.3 and the other issues have been left undecided. Even if the defendants/appellants remained exparte, it was the duty of the trial court to deal with all the issues and give its findings as each of them. The learned first appellate court also did not decide the appeal as per the mandatory provisions contained in Order 41 Rule 31 CPC. Therefore, a prayer was made to accept the appeal, set aside the impugned judgments and remand the matter to the trial court for fresh adjudication in accordance with law.

5. Learned counsel for the plaintiffs/respondents vehemently opposed the aforesaid submissions. It was argued that there is no infirmity in the judgments and decree of the learned first appellate court. The court below has rightly decreed the plaintiffs/respondents suit. All the legal and factual aspects were considered by the court in passing the impugned judgment. The reasoning of the first appellate court is neither perverse nor illegal. Therefore, a prayer was made to dismiss the appeals.

6. We have given our thoughtful consideration to the rival submissions and perused the records carefully.

7. The questions of law involved herein are:-

(i) Whether the learned trial court committed illegality in passing the judgment without giving finding on all the issues and thus the judgment and decree of the trial court is in contravention of the provisions contained in Order XX Rule 5 CPC.

(ii) Whether the learned first appellate court also did not formulate the questions for determination of the appeal and thus, passed its judgment without adhering to the mandatory provisions contained in Order XLI Rule 31 CPC.

8. It is noticeable that the trial court framed 8 issues on the basis of pleadings of two parties whereas it passed the judgment on issue no.3 only and the remaining issues were not decided by it. Apart from denying the plaint averments on merits, the defendants/appellants had contested the suit by stating that the same is not within limitation and the trial court has no jurisdiction to decide the same. The trial court's judgment runs into five hand written pages. In the first four pages, the pleadings of the parties and the arguments of the learned counsel for the plaintiff/respondent have been stated. In the last and fifth page, the learned trial court after mentioning the gist of the statement of the witnesses and the documents has stated that the issue no. 3 stands partly proved. In the whole judgment, it is not stated by the trial court that the issues were framed by it, what to talk of mentioning the issues in the judgment and giving issuewise findings thereupon.

9. To our mind, Order XX Rule CPC clearly stipulates that the court must return finding on each issue. It is opposite here to quote the said provision, of Order XX Rule 5 CPC :-

"5. Court to state its decision as each issue:-

In suits in which issues have been framed, the court shall state its finding or decision, with the reasons therefore, upon each separate issue, unless the findings upon any one or more of issues is sufficient for the decision of the suit."

Therefore, it was mandatory for the trial court to pass issue-wise judgment. It was not a case which could have been disposed of an issue no.3 alone. The remaining seven issues, including the issue about jurisdiction of court and the issue pertaining to limitation were equally important, which were not decided by the trial court. Mere fact that the defendants/appellants were proceeded exparte does not mean that the issues of limitation and jurisdiction stood waived off. Such legal issues must be decided by the court, notwithstanding the fact that the suit is contested one or exparte.

10. In AIR 1985 SC 736 'M/s Fomento R. & H. Ltd. Vs Gustavo Ranato da Cruz Pinto,' it was held that:-

" In a matter of this nature where several contentions factual and legal are urged and when there is scope of appeal from the decision of the Courts, it is desirable as was observed by the Privy Council long time ago to avoid delay and protraction of litigation that the court should , when dealing with any matter dispose of all the points and not merely rest its decision on one single point."

In view of the above, the judgment and decree passed by the trial court partly decreeing the plaintiff/respondents suit is unsustainable.

11. As regards the judgment and decree passed by the first appellate court, the same too has been passed against the spirit of the provisions of Order XLI Rule 31 CPC. The said provisions is as under :-

"31. Contents, date and signature of judgment.

The judgment of the appellate court shall be in writing and shall state
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- a) The points for determination*
- b) The decision-thereon*
- c) Where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.*

and shall, at the time it is pronounced, be signed and dated by the Judge or by the Judges concurring therein."

The requirements of the above provisions have been totally ignored by the first appellate court while writing the impugned judgment. The court below in fact did not frame the points for determination of the appeal. Had it been done so, the court below might have come to know that the issues of limitation and jurisdiction have been left undecided by the trial court.

13. In B.V.Nagesh and anr. Vs. H.V.Sreenivasa Murthy (2010) SCC 530, while dealing with this issue, the Hon'ble Supreme Court has held thus:-

"3) The impugned judgment passed by the High Court arose out of regular first appeal filed under Section 96 CPC. It is the grievance of the appellants that the High Court, without adverting to all the factual details and various grounds raised, disposed of the appeal in a cryptic manner. In the light of the above assertion, we verified the impugned judgment of the High Court. The High Court, after narrating the pleadings of both parties, without framing points for determination and considering both facts and

law set aside the judgment and decree of the trial Court and modified the same without proper discussion and assigning adequate reasons.

4) How regular first appeal is to be disposed of by the appellate Court/High Court has been considered by this Court in various decisions. Order XLI of C.P.C. deals with appeals from original decrees. Among the various rules, Rule 31 mandates that the judgment of the appellate Court shall state:

- a) the points for determination;*
- b) the decision thereon;*
- c) reasons for the decision; and -*
- d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.*

The appellate Court has jurisdiction to reverse or affirm the findings of the trial Court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case therein is open for re-hearing both on questions of fact and law. The judgment of the appellate Court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put-forth and pressed by the parties for decision of the appellate Court. Sitting as a court of appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. [Vide [Santosh Hazari vs. Purushottam Tiwari](#), (2001) 3 SCC 179 = JT (2001) 2 SC 407 and [Madhukar and Others vs. Sangram and Others](#), (2001) 4 SCC 756]

5) In view of the above salutary principles, on going through the impugned judgment, we feel that the High Court has failed to discharge the obligation placed on it as a first appellate Court. In our view, the judgment under appeal is cryptic and none of the relevant aspects have even been noticed. The appeal has been decided in an unsatisfactory manner. Our careful perusal of the judgment in the regular first appeal shows that it falls short of considerations which are expected from the Court of first appeal. Accordingly, without going into the merits of the claim of both parties, we set aside the impugned judgment and decree of the High Court and remand the regular first appeal to the High Court for its fresh disposal in accordance with law.”

The above view has been reiterated by the Hon’ble Supreme Court in 2015(1) SCC 391 ‘Vinod Kumar Vs. Gangadhar’. In the instant case, the learned first appellate court has passed the judgment ignoring the salutary provisions

of Order 41 Rule 31 CPC. Therefore, the judgment of the first appellate court is also not sustainable. The questions of law framed above are answered in favour of the defendants/appellants.

14. In the result, these appeals succeed and the judgments and decree of the courts below are set aside and the suit is remitted to the trial court with a direction to register it at its original number, to hear the parties, to examine the record and thereafter, to deliver the judgment in accordance with law. It is made clear that no further evidence will be adduced by the parties as it is a case of 'limited remand'. The trial court is directed to decide the suit at the earliest and not later than a period of six months from today. The parties are directed to appear in the trial court on 13.03.2019.

Pronounced.

(Rajinder Kumar)
Member

(Mukesh Kumar Sharma)
Chairman