

W.R.

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal/TA/1418/2005/Churu

1. Mst. Hazra widow of Abdul Razak by caste Vyapari resident of Churu
 2. Mohd. Salim
 3. Ayub
 4. Wasid
 5. Imran
 6. Mohammad Amin
 7. Hafiz Ahmed
 8. Mohd. Yasin
- } sons of Abdul Razak by caste Vyapari
resident of Churu
- } sons of Late RahimBaksh
- All Vyapari by caste, residents of Churu
9. Zakir Hussain son of Late Abdul Razzak by caste Vyapari, resident of Churu

.....Appellants

Versus

1. M/s Amarkal Vyapar Pvt. Ltd., 1/A Great Lane, Kolkatta through Director, Krishna Kumar Sarraf son of Laduram Sarraf resident of Ratangarh, Churu.
 2. Smt. Bismilla wife of Late Gulam Kadar
 3. Liyakat Khan
 4. Sikandar Khan
 5. Farook Khan
 6. Jahangir Khan
- Sons of Late Gulam Kadar by caste Kayamkhani residents of Churu

...Respondents

Appeal/TA/1419/2005/Churu

1. Mst. Hazra widow of Abdul Razak by caste Vyapari resident of Churu
 2. Mohd. Salim
 3. Ayub
 4. Wasid
 5. Imran
 6. Mohammad Amin
 7. Hafiz Ahmed
 8. Mohd. Yasin
- } sons of Abdul Razak by caste Vyapari
residents of Churu
- } sons of Late RahimBaksh
- By caste Vyapari residents of Churu residents of Churu.

9. Zakir Hussain son of Late Abdul Razzak by caste Vyapari, resident of Churu

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 - Sons of Late Gulam Kadar by caste Kayamkhani residents of Churu

...Respondents

D.B.

Shri Mukesh Kumar Sharma, Chairman
Shri Rajinder Kumar, Member

Argued by:-

Shri Dunichand Counsel for the appellants

Shri Yogendra Singh & Shri Rajesh Gautam, counsels for the respondents.

J U D G M E N T

Dated

Per Shri Rajinder Kumar, Member

1. In nutshell, facts of the case are that three revenue suits came to be filed in the court of Sub Divisional Officer, Churu. The first suit bearing no.99/95 was filed by Mst. Hajra, Md. Salim, Ayub, Vaasid, Imran and Mohammad Yamin against Gulam Kadar (since deceased), Kishan Kumar and Jakir Hussain. The second suit bearing no.123/96 was filed by the same set of plaintiffs against M/s Amar Kal Vyapar Pvt.Ltd. through Director Krishan Kumar, Md. Yasin and Hafiz Ahmed

Ali. The third suit was filed by the plaintiffs, namely, Hafiz Ahmed Ali and Mohammad Yasin against the contesting defendant M/s. Amarkal Vyapar Pvt. Ltd. and pro-forma defendants, namely, Mst. Hajra, Md. Salim, Ayub, Vajid, Imran and Md. Aami. The land in dispute and the reliefs claimed in all the three suits were the same, therefore, the learned trial court consolidated these suits in suit no. 99/95 and after recording the evidence of the parties, the suits were decreed vide its common judgment dated 4.9.2004. Assailing the said judgment and decree, two appeals were filed in the court of the learned Revenue Appellate Authority, Bikaner. The first appeal no. 57/2004 was filed by M/s Amarkal Vyapar Pvt. Ltd. against all the plaintiffs. The second appeal no. 63/2004 was filed by the contesting defendants Bismillah, Liyakat Ali, Sikander, Farookh and Jahangir against all the plaintiffs. The learned first appellate court vide common judgment and decree dated 17.1.2005 accepted the appeals setting aside the judgment and decree of the trial court and remanded the matter to the trial court for *denovo* trial after impleading all the khatedars of the suit land as party defendants to the suits. Feeling aggrieved against the said judgments and decrees of the first appellate court, the plaintiffs have preferred these separate appeals.

2. We have heard the learned counsels.
3. On behalf of the plaintiffs/appellants, it was argued that the three suits were filed in the trial court by the plaintiffs/appellants. A counter-claim was also filed by the defendant Krishan Kumar against the plaintiffs. Therefore, the defendants ought to have filed four separate appeals in the court of the Revenue Appellate Authority whereas they filed only two appeals. In this way, the first appeals filed by the defendants/respondents against the judgment and decree of the trial court were barred by 'res-judicata'. Learned counsel further argued that the trial court had passed a well considered judgment and the learned first appellate court illegally remanded the matter to the trial court. The matter was not covered by any of the provisions of

Order 41 C.P.C. justifying the remand of the case. Therefore, a prayer was made to accept these appeals and set aside the impugned judgments & decrees passed by the first appellate court. In support of his arguments, the learned counsel relied upon the following citations:-

- i). Premier Tyre Vs. Kerala State Road Transport Corporation (AIR 1993 SC)
- ii). Girija & ors Vs Rajan and ors (RSA no. 14 of 2015 decided on 28.01.2015)
- iii). Lonankutty Vs Thomman (AIR 1976 SC 1645)

4. Learned counsels for the defendants/respondents vehemently opposed the above submissions. Both the learned counsels supported the impugned judgment & decree passed by the first appellate court in their appeals. It was argued by them that only one appeal at the instance of the each set of defendants was maintainable because common judgment and decree was passed by the learned trial court after consolidated all the three suits. The learned counsels also submitted that the judgment and decree of the trial court was *ex facie illegal*, as the same was passed without impleading all the khatedars as party defendants to the suits. The learned trial court had decided only one suit and no judgment and decree was passed on the remaining two suits and the counter-claim of the defendant. The judgment passed by the trial court was non-speaking and the evidence produced by the defendants/respondents was mis-interpreted. There were apparent contradictions in the judgment of the trial court. Therefore, the learned first appellate court did not commit any illegality in remanding the suits to the trial court for fresh adjudication after impleading all the affected parties as defendants. In support of their arguments that only one appeal against the common judgment was maintainable, the learned counsels relied upon a judgment passed by this Board in 1986 RRD 660 'Chuni Lal Vs Bheru Lal'. It was held in that case that once the court has ordered consolidation, there is amalgamation of two suits in one suit from the

date of order of consolidation and they are to be decided as if they were one suit. It was also held that in consolidated suits, there is common judgment and common decree and there is no question of any former suit or decree which can operate as 'res-judicata' in subsequent suit.

5. We have given our thoughtful consideration to the above submissions and perused the record carefully.
6. The question of law involved in these appeals is whether the defendants/respondents were bound to file four separate appeals in the court of learned Revenue Appellate Authority, Bikaner against the common judgment and decree passed by the trial court in the suits of the plaintiffs and counter-claim of the defendants/respondents or whether only two appeals filed by them were competent?
7. A cursory look at Order VIII Rule 6 of the Code of Civil Procedure, 1908 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 SC 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 in the connected suit, due to non-filing of appeal precluded the Court from proceeding with appeal in other suit."

8. 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 & ors (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 counter 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."

9. It is trite that consolidation of suits is done to avoid multiplicity of proceedings and to eliminate chances of conflicting decisions on the same points and to avoid unnecessary costs and expenses. Therefore, the consolidation of suits for trial merely enables the court to record evidence in one suit only, which is required to be read in the other suits as well. In spite of the consolidated trial having taken place, the consolidated suits nevertheless remain separate and distinct from each other. They may be disposed of by the trial court by common judgment or separate judgments on the same evidence. Having so stated the legal propositions, we may now advert to the facts of the present appeals. Here also the plaintiffs/appellants preferred three separate suits and a counter-claim was also filed by the contesting defendants/respondents. All these matters were decided by the trial court vide common judgment after their consolidation. Therefore, the contesting defendants/respondents ought to have filed four separate appeals. Having failed to do so, only two appeals filed by them before the first appellate court were barred by the principle of res-judicata. In this regard, reliance is placed on a Larger Bench Judgment of the Hon'ble Supreme Court in 'Lonankutty Vs Thomman' reported as AIR 1976 S.C. 1645. In that case, the Hon'ble Supreme Court held that the circumstance

that the court has disposed of the matters by common judgment cannot effect the applicability of Section 11 of the Civil Procedure Code, 1908.

10. It is also pertinent to observe that in all the three suits, common relief of permanent injunction was sought by all the plaintiffs in respect of the same suit land against the contesting defendants. Therefore, a common judgment and decree was passed by the trial court in favour of the plaintiffs. Although the learned trial court did not specifically passed the order of dismissal of counter-claim but the same could be inferred by necessary implication. A perusal of Explanation V to Section 11 of the CPC is very clear on the point, according to which any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purpose of this section, be deemed have been refused. As the principle of 'res-judicata' is applicable in such proceedings, where only one appeal is filed against the common judgment passed in more than one suits, therefore, also the Explanation V of section 11 would get attracted in the present matter. It is in these circumstances also that the contesting defendants ought to have preferred four separate appeals, if they were really aggrieved by the judgment and decree of the trial court. In view of the above discussion, material illegality was committed by the learned first appellate court in accepting the appeals and remanding the matter to the trial court for fresh adjudication. These appeals, therefore, deserve to be accepted.

11. Resultantly, the second appeals filed by the plaintiffs/appellants are accepted. The impugned judgments and decrees dated 17.01.2005 of the first appellate court are set aside and the judgment and decree dated 4.09.2004 of the trial court are restored.

Pronounced.

(Rajinder Kumar)
Member

(Mukesh Kumar Sharma)
Chairman