

तारीख हुक्म	हुक्म या कार्यवाही मय इनिशियल्स जज Revision/LR /1613/2005/Alwar Chahat Vs Idu & or	नम्बर व तारीख अहकाम जो इस हुक्म की तामील में जारी हुए
10.12.2018	<p style="text-align: center;"><u>S.B.</u></p> <p style="text-align: center;">Shri Rajinder Kumar, Member</p> <p><u>Present:</u></p> <p>Smt. Poonam Mathur, counsel for the Revisionists. Shri Ashok Agarwal and Shri Shahabuddin, counsels for the Respondents.</p> <p style="text-align: center;">- - -</p> <p style="text-align: center;"><u>J U D G M E N T</u></p> <p>1. This Revision is directed against the judgment dated 18.03.2005 of the learned Revenue Appellate Authority, Alwar passed in appeal no. 49/2000, whereby the said appeal alongwith the application under section 96 CPC preferred by the appellant was dismissed.</p> <p>2. Facts of the case in nutshell are that the revisionist is in physical and cultivatory possession of the land bearing khasra no. 1 measuring 6 bigha 4 biswas situated in Village Dhanda as its 'gair khatedar'. But vide order dated 20.09.1986, the Tehsildar-cum-Managing Officer issued Patta of this land jointly in the names of the respondent no. 1 Idu and the father of the respondent no. 1 Ram Gopal. Assailing the order dated 20.09.1986, an appeal came to be filed by the respondent no. 1 in the court of Collector cum Settlement Commissioner, Alwar. During the pendency of the said appeal, the respondent Ram Gopal expired and therefore, the respondent no. 2 Suresh Chand was substituted as party respondent in his place. The main grievance of the respondent no. 1 in the first appeal was that the application for issuance of Patta was submitted by one</p>	

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	<p>Shri Ram Gopal s/o Manohar Lal Mahajan whereas the original respondent no. 1 Ram Gopal is the son of Gutti Mahajan. His another grievance was that he alone is in physical possession of the disputed land and therefore, patta in the joint names of Idu and Ram Gopal son of Gutti Mahajan has been wrongly issued. The learned first appellate Court, after hearing the respondents, vide judgment dated 12.08.1999 accepted the appeal and set aside the order dated 20-09-1986 of the Tehsildar-cum-Managing Officer. Feeling aggrieved against the said said judgment, the revisionist preferred second appeal in the court of the learned Revenue Appellate Authority, Alwar. Alongwith the said appeal, an application under section 96 CPC was also filed by the revisionist for allowing him to present the appeal. The learned second appellate court vide the impugned judgment dated 18.03.2015 dismissed the application under section 96 CPC and the second appeal as well. Hence this Revision.</p> <p>3. I have heard learned counsels for the parties.</p> <p>4. It was vehemently argued by learned counsel for the revisionist that the revisionist is in actual physical possession of the disputed land and the learned courts below committed illegalities in passing the impugned judgments without hearing the revisionist. The learned second appellate court wrongly dismissed appeal on the ground that application under section 96 CPC is not maintainable in second appeal. The learned counsel also argued that the revisionist was a necessary party in the courts below and he has been condemned unheard.</p>	

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	<p>His valuable rights over the disputed lands have been materially prejudiced by not impleading him party to the proceedings in the courts below. Though a regular suit filed at the instance of the revisionist is pending in the trial court yet he has right of hearing in the instant matters also and the order passed behind his back is a nullity. Therefore, a prayer was made to remit the matter to the learned R.A.A., Alwar for hearing the second appeal on merits and to adjudicate the same afresh after hearing the parties in accordance with law.</p> <p>5. The learned counsel for the respondent no. 1 vehemently opposed the above submissions. He has supported the judgment impugned in this revision, which was passed in summary proceedings. His further argument was that a regular suit filed at the instance of the revisionist is pending in the trial court and the rights of the parties will be finally adjudicated in that suit. His further contention was that the revisionist did not prefer any appeal against the order of the Tehsildar cum Managing Officer and thus, the second appeal against the order of the learned Collector cum Settlement Commissioner was incompetent. Therefore, the application under Section 96 was rightly dismissed by the learned Revenue Appellate Authority. In support of the arguments, the learned counsel relied upon the following citations:-</p> <ol style="list-style-type: none"> 1) 1992 RRD 682 'Uda Ram Vs Devender Singh & or':- In that case, it was held by the Board of Revenue that the provisions of section 96 would apply only in the case of first appeal. 2) 2014 (3) WLC (Raj.) 699 'Smt. Narendra Kumari 	

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	<p>Vs Smt. Shanta Kothari':- In that case, it was held by the Hon'ble Rajasthan High Court that the first appellate court will not interfere in the conclusions of the trial court, if the same are well reasoned and not erroneous or illegal.</p> <p>3) 1980 RRD 748 'Sukha Vs Ram Saran':- In that case, the appellant had already filed a regular revenue suit against the respondent in respect of the property in dispute. Therefore, the appeal filed by him against the judgment and decree passed in another suit to which he was not a party was held to be incompetent.</p> <p>4) 1993 RRD 44 'Om Prakash & or Vs State Of Rajasthan & or":- In that case, it was held by the Board of Revenue that the fact that a stranger to suit is aggrieved by the judgment does not by itself entitle him to file an appeal unless he obtains a permission of the court to file the appeal.</p> <p>5) 2015 (2) DNJ (Raj) 657 'Brij Bala Vs Ram Lal':- In that case, leave to file first appeal was rejected on the ground of inordinate delay in filing the same.</p> <p>6. After giving thoughtful consideration to the rival submissions and upon perused of record, it is revealed that the revisionist sought permission to prefer second appeal under the provisions of section 96 CPC whereas the said provisions are attracted in case of first appeals only.</p> <p>7. In addition to above, the judgments impugned have</p>	

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	<p>been passed in summary proceedings whereas a regular suit in respect of the disputed land filed at the instance of the revisionist is admittedly pending in the trial court of Sub-Divisional Officer. Therefore, the impugned judgment would not stand in the way of the revisionist to get his rights adjudicated in that suit.</p> <p>8. In revisional jurisdiction, the scope of interference is very limited and re-appreciation of evidence is not possible unless the findings arrived at by the courts below are perverse or illegal. In the instant case, the learned second appellate court has not committed any perversity or illegality in passing the impugned judgment, particularly when regular suit is pending between the parties in respect of the disputed land. Therefore, this revision is liable to be dismissed.</p> <p>9. Resultantly, the revision is dismissed.</p> <p>Pronounced.</p> <p>File be consigned.</p> <p style="text-align: center;">(Rajinder Kumar) Member</p>	