

**IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER**

**Appeal/Decree/TA/5950/2005/Jaipur.**

1. Gatturam s/o Isra (deceased) through LRs:-
    - 1/1. Jagdish s/o Gatturam
    - 1/2. Madan s/o Gatturam
    - 1/3. Kannuram s/o Gatturam
    - 1/4. Kamla Devi w/o Gatturam
  2. Kamal s/o Ram Kumar
  3. Suresh s/o Ram Kumar @ Suraj Kumar
  4. Ashok s/o Ram Kumar
  5. Yashoda d/o Ram Kumar
  6. Ramsahai s/o Late Roop Narayan (deceased) through LRs:-
    - 6/1. Rajkumar Verma s/o Ramsahai
    - 6/2. Smt. Dakha w/o RamsahaiAll Regar by caste, rs/o Village Mansinghpura, Regar Basti, Tonk Road Tehsil and Distt. Jaipur (Raj).
  7. Premsagar s/o Late Roop Narayan
  8. Madanlal s/o Late Roop Narayan
  9. Om Prakash s/o Late Roop Narayan
  10. Harish s/o Bherubaks
  11. Jai Prakash s/o Bherubaks
  12. Bherubaks s/o Late Ramlal
- All Regar by caste, rs/o Rambagh Colony, Sanganer, Jaipur (Raj.)

**.....Appellants.**

**VERSUS**

1. Vinod Kumar s/o Hari Narayan r/o Sahitya Shiksha Niketan, Opp. Shanti Lodge, Atray Farm, Gujar Ghati, Jaipur
2. Smt. Rampyari wd/o Gopal
3. Ramchandra s/o Gopal rs/o Sahitya Shiksha Niketan, Opp. Shanti Lodge, Atray Farm, Gujar Ghati, Jaipur
4. Ram Krishna s/o Gopal
5. Ramkalyan s/o Gopal rs/o Behind Lal Mahal, Chaumukha road, Jamwaramgarh, Tehsil Jamwaramgarh, Distt. Jaipur.
6. Smt. Shanti d/o Gopal
7. Smt. Kanta d/o Gopal
8. Smt. Hanumani d/o Gopal
9. Smt. Sushila d/o Gopal
10. Smt. Anandi d/o Gopal
11. Smt. Mangli d/o Gopal
12. Smt. Geeta d/o Gopal

All Meena by caste, rs/o Jamwaramgarh, Tehsil Jamwaramgarh, Distt. Jaipur (Raj.)

13. Ghasi s/o Kanaram r/o Village Babaji ki Chavanni, Jamwaramgarh, Tehsil Jamwaramgarh, Distt. Jaipur (Raj.)

..... Respondents.

D.B.

**Shri Suraj Bhan Jaiman, Member**

**Shri Rajinder Kumar, Member**

**Argued by:-**

Shri Gyaneshwar Baddhar, counsel for the Appellants.

None on behalf of the Respondents.

## J U D G M E N T

Date: 24-10-2018

*Per Shri Rajinder Kumar, Member*

1. This second appeal is directed against the judgment and decree dated 21.10.2005 of the learned Revenue Appellate Authority, Jaipur passed in first appeal no. 74/02, decreeing the plaintiff's suit after setting-aside the judgment and decree dated 25.02.2002 of the trial court, which had dismissed the said suit.
2. The facts of the case are that the predecessor of the defendants, namely, Gopal and Ghasi filed a suit in the trial court against the appellants seeking the reliefs of declaration of khatedari rights and permanent injunction in respect of the land of khasra no. 674 measuring 13 bigha 7 biswa. The defendants no. 4 and 5, namely, Roop Narayan and Sushila contested the suit by filing written statement. The plaintiffs examined 5 witnesses. The defendants were given many opportunities to produce evidence but no oral evidence was led by them. The learned trial court after hearing both the parties dismissed the plaintiffs' suit vide judgment and decree 25.02.2002. Feeling aggrieved they preferred first appeal in the court of Revenue Appellate Authority, Jaipur. The said appeal was accepted by the first appellate court vide judgment and decree dated 21.10.2005. It is pertinent that during pendency of first appeal, an application was filed by the plaintiffs/respondents under Order 41 Rule 27 C.P.C for taking on record three documents, namely, mutation no. 300 dated 07.08.1964, 'khatoni' issued by the Settlement Office and comparative khatoni. The learned trial court vide order dated 26.09.2005 accepted the said application without affording the defendants/appellants any opportunity of leading documents in rebuttal and without requiring the plaintiffs/respondents to prove the said documents by oral evidence. The learned first Appellate Court in reversing the findings of the trial court placed strong reliance on these three documents. Hence, the defendants have come up in the second appeal.

3. The question of law involved in this appeal is whether the learned first appellate court committed an illegality by not affording an opportunity to the defendants/appellants for producing rebuttal evidence after taking on record the documents submitted by the plaintiffs under Order 41 Rule 27 C.P.C. and also in relying upon the said documents without requiring the plaintiffs/respondents to prove the same by leading oral evidence?
4. We have heard learned counsel for the appellants only as none appeared on behalf of the respondents at the stage of arguments.
5. Learned counsel for the appellants has vehemently argued that the learned first appellate court committed an illegality in reversing the well considered judgment of trial court solely on the basis of the documents produced by the plaintiffs under Order 41 Rule 27 C.P.C. The first appellate court did not give any opportunity to the defendants/appellants to submit documents in rebuttal of the said documents. Even otherwise, the first appellate court ought to have remanded the matter to the trial court for permitting the plaintiff/respondent to lead their evidence for proving the said documents. Therefore, a prayer has been made to set-aside the judgment of First Appellate Court and to remand it to the trial court for recording the evidence as per law.
6. We have given our thoughtful consideration to the rival submissions and perused the record carefully.
7. The record reveals that the learned trial court dismissed the suit of the plaintiffs/respondents and the learned first appellate court in reversing the judgment of trial court placed strong reliance upon the three documents which were taken on record under Order 41 Rule 27 C.P.C. It is pertinent that the learned first appellate court took the said three documents on record vide order dated 26.09.2005 and after doing so the first appellate court was required to give an opportunity

to the defendants/appellants to submit rebuttal evidence, if any but the learned first appellate court instead of doing so and that too without requiring the plaintiffs/respondents to prove the said documents by leading oral evidence, reversed the findings of the learned trial court in an illegal manner. Therefore, the judgment of the first appellate court decreeing the plaintiffs' suit requires interference by this Board and the matter is required to be remanded to the trial court.

8. Resultantly, the appeal filed by the defendants/appellants is accepted and the judgment of the Revenue Appellate Authority, Jaipur is set-aside. The plaintiffs' suit is remanded to the trial court to re-admit the same to its original number and to decide the suit of the plaintiffs afresh after affording the defendants/appellants a reasonable opportunity of producing documentary evidence in rebuttal of the documents submitted by the plaintiffs/respondents. Then both the parties shall be free to produce oral evidence also to prove their respective documents. Thereafter, the trial court shall decide the suit in accordance with law within three months positively. The parties shall appear in the trial court on 18-12-2018.

Pronounced.

**(Rajinder Kumar)**  
Member

**(Suraj Bhan Jaiman)**  
Member