

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal Decree/TA/13/2006/SawaiMadhopur

- 1- Moolya s/o Shrichand
- 2- Rameshwar s/o Shrichand
- 3- Brij Mohan s/o Shrichand
- 4- Punya s/o Bhagirath
- 5- Lallu s/o Jainya
- 6- Manohari s/o Jainya

All by caste Meena rs/o Pilu Khera Tehsil Boli Distt. Sawai Madhopur.

Appellants....

Versus

- 1- Ramnivas
- 2- Ramnrain

all sons of Chhittar by caste Meena r/o Pilu Khera Tehsil Boli Distt. Sawai Madhopur.

- 3- State of Government through Tehsildar, Boli.

Respondents..

D.B.

**Shri Rajinder Kumar, Member
Shri Ramniwas Jat, Member**

Present:-

Shri Ashok Agarwal, Counsel for appellants.

Shri Yagya Dutt Sharma, Counsel for respondents

JUDGMENT

Date: 03-05-2019

- 1- This second appeal arises out of the judgment and decree dated 14-12-2005 passed by the learned Revenue Appellate Authority, Sawai Madhopur in first appeal No. 245/03.

2- Facts of the case in nutshell are that the plaintiffs/respondents no. 1 and 2 filed a suit for declaration of khatedari rights, correction of revenue record and permanent injunction against the defendants/appellants no. 1 to 3 and the respondent no. 3 in the trial court of Assistant Collector, Boli Distt. Sawaimadhapur. The suit was contested by the defendants/appellants no. 1 to 3 by filing written statement thereto. On the basis of the pleadings, the learned trial court framed as many as five issues including the issue regarding the relief to which the parties may be entitled to. The burden of proof of the first two issues was placed upon the plaintiffs/respondents and the burden of proof of third and fourth issue was placed upon the defendants. After recording evidence, the learned trial court decided the first two issues against the plaintiffs/respondents and the fourth issue against the defendants/appellants no. 1 to 3 as they had withdraw their counter claim. It is pertinent to observe that in their suit, the plaintiffs/respondents did not implead all the khatedars of the suit land as party to the suit, therefore, the issue no.3 was framed as to whether the suit is liable to be dismissed for non-joinder of all the khatedars as party to the suit ? The learned trial court decided this issue against the plaintiffs/respondents. Thus, their suit was dismissed on merits as well as for non-impleadment of the necessary parties to the suit. The plaintiffs/respondents preferred first appeal in the court of the learned Revenue Appellate Authority, Sawaimadhapur after impleading all the khatedars as party respondents. The learned first appellate court on the basis of the material placed on the record reversed the findings of the learned trial court on issue no. 1 and 2. As regards issue no. 3, it was observed that as all the khatedars have been impleaded party to the appeal, the issue no. 3 was decided in favour of the plaintiffs/respondents and against the defendants/appellants. Accordingly, the suit was decreed in its entirety. Hence, this second appeal by the defendants and the other khatedars of the suit land.

3- We have heard the learned counsels.

4- On behalf of the defendants/appellants, it was mainly argued that the appellant Punya, Lallu and Manohari were not parties to the suit and they were impleaded in the first appeal for the first time, thus, the appropriate procedure was to remit the case for fresh trial to the learned trial court instead of accepting the appeal in toto. These appellants were not given any opportunity to defend the suit. Thus, the impugned judgment and decree have been passed by ignoring the principles of natural justice. A prayer has been made to set aside the impugned judgment and decree.

5- Learned counsel for the plaintiffs/respondents no. 1 and 2 vehemently opposed the above submissions. He supported the findings of the learned first appellate court. A prayer is made to dismiss the appeal.

6- We have given our thoughtful consideration to the above submissions and perused the record carefully.

7- Short question for consideration is whether the learned first appellate court committed illegality in decreeing the suit against the appellants no. 4 to 6 without giving them any opportunity of defending the suit ?

8- Admittedly, the appellant no. 4 to 6 were not party to the suit. They were impleaded as party respondents by the plaintiff in the first appeal. Therefore, the learned first appellate court instead of decreeing the suit ought to have remanded the suit for fresh trial. As the principles of natural justice have been violated, the impugned judgment and decree of the learned court below is not lawful. The appeal deserved to be accepted

9- Resultantly, the appeal in hand is partly accepted after setting aside the impugned judgment and decree of the court below. The matter is remanded to the learned trial court with a direction to

re-admit the suit to its original number and to decide the same afresh as per law. As the record of the trial court has since been destroyed, the copies of relevant documents, including the pleadings of the parties were placed on record by the learned counsels in this file. The Registrar, Board of Revenue, Ajmer is directed to send the said papers to the learned trial court along with the copy of this judgment for further proceedings in accordance with law. The copies of the said paper may be retained in this file.

Pronounced in open court.

(Ramniwas Jat)
Member

(Rajinder Kumar)
Member