IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal Decree/TA/3645/2006/Hanumangarh.

1. Khyali Ram s/o Nirana Ram (deceased) through LRs:-

   1/1 Jaital Devi w/o Khyali Ram

   1/2 Vidhya Devi d/o Khyali Ram (deceased) through LRs:-

   1/2/1 Bhajan Lal s/o Vidhya Devi

   1/2/2 Kanta d/o Vidhya Devi

   1/3 Indra Devi d/o Khyali Ram

2. Dharmpal s/o Khyali Ram

   All Jat by Caste, rs/o Raisinghpura, Tehsil Nohar Distt. Hanumangarh.

------Appellants.

VERSUS

1. Suman d/o Late Indra Kumar
2. Mukan d/o Late Indra Kumar

   Minors through Natural Guardian and their mother Mst. Guddi w/o Late Indra Kumar Caste Jat, rs/o Raisinghpura, Tehsil Nohar Distt. Hanumangarh.

3. Mst. Guddi w/o Late Indra Kumar Caste Jat r/o Raisinghpura, Tehsil Nohar Distt. Hanumangarh.

-------Respondents.

4. Surjaram s/o Niranaram
5. Chawli Joja Bhagmal

   All Jat by Caste Sakin Raisinghpura Tehsil Nohar Distt. Hanumangarh.

-------Performa Respondents.

D.B.

Shri Mohan Lal Nehra, Member

Shri Rajinder Kumar, Member

Argued by:-

Shri Shrinivas Beniwal, counsel for the Appellants.

Shri Rajesh Gautam, counsel for the Respondents.

JUDGMENT **Date:** 13-07-2018

Per Shri Rajinder Kumar, Member

1. This second appeal under section 224 of the Rajasthan Tenancy Act, 1955 has been preferred by the appellants/defendant no. 1 and 2 against the judgments and decrees dated 07-03-2005 and 15-05-2006 passed by the trial court of the Sub-Divisional Officer (Revenue) Nohar and the first appellate court of the Revenue Appellate Authority, Hanumangarh respectively, whereby the suit no. 109/02 filed by the respondent no. 1 to 3/plaintiffs was decreed and the first appeal preferred by the appellants/defendant no. 1 and 2 was dismissed.

2. The facts leading to the filing of this appeal are that the respondent no. 1 to 3/plaintiffs filed a suit in the trial court in respect of the two lands, details of which are given in para 2 and 3 of the plaint. It was alleged in the plaint that the land mentioned in para (2) of the plaint is the Hindu Joint Family property of the parties, which has devolved upon them from their common ancestor, namely, Nirana Ram. The land mentioned in para (3) of the plaint was purchased by the defendant no. 1 and 2 (appellants herein), defendant no. 3 Hans Ram (not impleaded as party in this appeal) and Surja Ram (respondent no. 4 herein) out of the income of the joint family

property. The plaintiffs are the successors of pre-deceased son of the defendant no. 1. As the property is continuing in the name of defendant no. 1 as its khatedar, the plaintiffs are entitled to get declaration that they are the khatedar of 1/3rd share out of the disputed lands. The defendants no. 1 and 2 contested the suit by filing written statement wherein the allegations levelled in the plaint were controverted. In the additional pleas, it was alleged that no part of the disputed land is in the use and occupation of the plaintiffs. The disputed land is the self acquired land of the defendant no. 1 and he is cultivating the same. Therefore, a prayer was made to dismiss the suit. The trial court framed seven issues and after recording the evidence of both the parties, decreed the suit in its entirety. The first appeal filed by the defendant no. 1 and 2 was dismissed by the learned R.A.A. Hanumangarh. Hence, this second appeal.

3. We have heard learned counsels for the parties.

4. On behalf of the defendant no. 1 and 2/appellants, it has been argued that the findings of the learned courts below as regards the land enumerated in para no. (3) of the plaint are erroneous and contrary to the evidence produced by the parties. The plaintiff Guddi PW1 has admitted that the land enumerated in para no. 3 of the plaint is the self acquired property of the defendant/appellant no. 1. The findings of both the courts below that the disputed property was purchased out of the income of the joint property are not acceptable. There is an ample evidence on record that the plaintiffs are in occupation of part of the land inherited by the parties and not on the self acquired property of the appellant/defendant no. 1, who is in actual physical possession of his self acquired property. In such circumstances, the suit filed by the plaintiffs was not maintainable in the absence of possession

over it. The findings of both the courts below on issue no. 2 to 4 are also based only on conjectures and surmises. Therefore, a request has been made to accept the appeal and set aside the judgments and decrees of the courts below.

5. Learned counsel for the respondents no. 1 to 3/plaintiffs have vehemently opposed the above submissions. He has supported the judgments and decrees impugned in this appeal.

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

7. Here we are dealing with a case, where concurrent findings of facts of the courts below have been challenged. In Hero Vinoth (minor) Vs Seshammal [Appeal (civil) no. 4715 of 2000 decided on 08-05-2006], the Hon'ble Supreme Court has held that the general rule is that the High Court will not interfere with the concurrent findings of the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where:-

   (i) the courts below have ignored material evidence or acted on no evidence.

   (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously or

   (iii) the courts have wrongly cast the burden of proof.

   Therefore, if there is any perversity or illegality or when there is mistake on the part of both the courts below in misreading of evidence or misapplication of law vis-a-vis evidence produced by parties, an interference in second appeal against concurrent findings of fact is possible.

8. In the plaint, it has been the specific case of the plaintiffs that the suit land enumerated in para no. 2 is the Joint Hindu Family Property and the money for purchase of the suit land enumerated

in para no. 3 was paid made out of the income of the Hindu Joint Family Property, i.e., this land was purchased by defendant no. 1 in his name out of the income from the Hindu Joint Family Property. The defendant no. 1 and 2 in their written statement did not admit that the suit land enumerated in para no. 2 of the plaint is the Hindu Joint Family Property. Rather the entire disputed property was claimed to be the self acquired property of the defendant no. 1. However, in his evidence, defendant/appellant no. 1 Khyali Ram DW1 has admitted that the suit land described in para no. 2 of the plaint is the Hindu Joint Family Property. Therefore, there are material contradictions in the pleading and proof of the defendants.

11. Both the courts below came to a concurrent finding that the lands mentioned in para no. 3 of the plaint, though purchased in the name of defendant/appellant no. 1, also belong to the Hindu Joint Family, as the proceeds of sale were paid out of the income of the Joint Family Property. These findings of facts of both the courts below are based on correct appreciation of the oral as well as documentary evidence lead by the parties during trial. It is not a case of a drawing any wrong inferences from facts proved by the parties or erroneous application of law or mis-reading of evidence or ignoring material evidence.

12. Infact there is an evidence on record to prove that the lands enumerated in para no. (3) of the plaint were also treated as the Hindu Joint Family Property because their possession was handed over to the plaintiffs and those lands were blended/mixed with the properties of Hindu Joint Family. These findings of facts arrived at by both the courts below need no interference by this Board. There are no perversities or illegalities in the impugned judgments and decrees of the courts below. No question of law, much less

substantial question of law is involved in this appeal. Therefore, this second appeal is devoid of merits.

13. Resultantly, this appeal is dismissed.

Pronounced.

(Rajinder Kumar)
Member

(Mohan Lal Nehra)
Member