

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

1. Appeal Decree/TA/381/2006/Bikaner

Bashira wife of Maqbool Khan caste Musalman resident of Khajuwala
Distt. Bikaner.

...Appellant.

Versus

1. State of Rajasthan through Tehsildar (Revenue) Khajuwala, Distt.
Bikaner.

2. Forest Department, through Dy. Conservator of Forest, Khajuwala.

...Respondents.

2. Appeal Decree/TA/382/2006/Bikaner

Jaitun wife of Razak Khan caste Musalman resident of Khajuwala
Distt. Bikaner.

...Appellant.

Versus

1. State of Rajasthan through Tehsildar (Revenue) Khajuwala, Distt.
Bikaner.

2. Forest Department, through Dy. Conservator of Forest, Khajuwala.

...Respondents.

3. Appeal Decree/TA/387/2006/Bikaner

Maqbool Khan son of Kale Khan caste Musalman resident of
Khajuwala Distt. Bikaner.

...Appellant.

Versus

1. State of Rajasthan through Tehsildar (Revenue) Khajuwala, Distt.
Bikaner.

2. Forest Department, through Dy. Conservator of Forest, Khajuwala.

...Respondents.

4. Appeal Decree/TA/388/2006/Bikaner

Manohar Khan son of Kale Khan caste Musalman resident of
Khajuwala Distt. Bikaner.

...Appellant.

Versus

1. State of Rajasthan through Tehsildar (Revenue) Khajuwala, Distt. Bikaner.
 2. Forest Department, through Dy. Conservator of Forest, Khajuwala.
- ...Respondents.**

D.B.

Shri Mukesh Kumar Sharma, Chairman

Shri Rajinder Kumar, Member

Present:-

Shri Badri Prasad, counsel for the appellants.

Shri V.P. Singh, Govt. Advocate for the respondents.

J U D G M E N T

Date: 6-02-2019

Per Shri Rajinder Kumar, Member

1. These four appeals under section 224 of the Rajasthan Tenancy Act, 1955 have impugned the judgments and decrees dated 16.12.2005 passed by the learned Revenue Appellate Authority, Bikaner, which have endorsed the findings of the trial court given in judgments and decrees dated 15.10.2005 whereby the suits of the plaintiffs/ appellants were dismissed.
2. The plaintiffs/ appellants had instituted separate suits in respect of different suit lands against the same set of defendants. The questions of law involved in these second appeals are common, the counsels for the parties are also same. The arguments raised by them are also common, therefore, these appeals are being decided by this judgment.
3. Facts, in brief, leading to this controversy are that each of the plaintiff/ appellant filed suit in the trial court of Sub-Divisional Officer, Khajuwala seeking the reliefs of declaration in respect of the agricultural lands situated in Chak 1 and 2 of Village Khajuwala against the defendants/ respondents. The learned trial court after

registering the suits ordered to summon the defendants/ respondents. The defendant/ respondent No. 1 filed written statements in all the four suits controverting the plaint averments and thus, made a prayer to dismiss the suits. Before the defendant/ respondent No. 2 could be served, the learned trial court on the request of the Tehsildar, Khajuwala heard the parties and vide judgment and decree dated 15.10.2005 dismissed the suits of the plaintiffs/ appellants. The findings of the learned trial court in dismissing the suits are that the plaintiffs have not submitted the original allotment orders along with the plaints and the photocopies of the allotment orders are not admissible in evidence. The learned trial court also observed that the plaintiffs/ appellants have not adduced any documentary evidence to prove their possession over the lands in dispute and therefore, their suits cannot proceed further. The said judgments and decrees of the trial court were unsuccessfully challenged by the plaintiffs/ appellants in the court of learned Revenue Appellate Authority, Bikaner. Hence these second appeals.

4. The questions of law involved in these appeals are:-

- (i) Whether before the date of first hearing of the suits came, the courts below were right in stating that the photocopies of the allotment orders are not admissible in evidence?
- (ii) Whether before the date of first hearing of the suits came, the courts below were right in stating that in the absence of the original allotment orders and in the absence of other documentary evidence, the plaintiffs have failed to prove their possession over the suit lands?
- (iii) Whether the courts below were right in dismissing the suits of the plaintiffs at the threshold without giving any finding that the suits are barred by law?

5. We have heard the learned counsels.

6. On behalf of the plaintiffs/ appellants, it was argued that the suits of the plaintiffs/ appellants were properly instituted in the trial court and there was no stage for the trial court to decide the suits. The trial of the suits has yet not begun and thus, the trial court dismissed

the suits prematurely. The plaintiffs/appellants filed the photocopies of the allotment orders along with the plaints and the stage of filing the original documents was yet to come before the settlement of issues. There is no finding of the courts below that the suits are barred by any law. Therefore, the plaintiffs ought to have been given the opportunities to lead oral and documentary evidence. The courts below have dismissed the suits and the appeals arbitrarily and without following the due process of law. In such circumstances, a prayer was made to accept the appeals, set aside the impugned judgments and decrees of the courts below and remand the suits to the trial court for *denovo* trial in accordance with law.

7. Learned Government Advocate vehemently opposed the aforesaid submissions. According to him, the suits of the plaintiffs were filed in respect of the lands of the Forest Department and thus, the trial court was right in dismissing the suits in limine. The plaintiffs did not produce the original allotment orders along with the plaints. The suits cannot proceed further on the basis of the photocopies of the documents. Even at the appellate stage, the plaintiffs did not submit the original documents, therefore, the courts below committed no illegalities in dismissing the suits and appeals of the plaintiffs/appellants.

8. We have given our anxious consideration to the rival submissions and perused the record carefully.

9. At the outset, it is noticeable that the 'fast track procedure' adopted by the trial court in deciding the suits has caused grave prejudice to the plaintiffs/ appellants. The suits were instituted by the plaintiffs on 15.09.2005 and without following the due process, they were disposed of on 15.10.2005 immediately after the filing of the written statement by defendant/respondent no. 1. Such novel procedure adopted by the trial court and endorsed by the first appellate court is wholly contrary to the scheme of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as 'the Act') and the Code of Civil Procedure, 1908 (hereinafter referred to as the 'Code'). The

reasons for our findings are more than one, which are being indicated hereinbelow.

10. 'The Act' contemplates the filing of various kinds of suits and proceedings viz. suit for declaration, suit for permanent injunction, suit for division of holdings, suit for ejection, suit for arrears of rent, revenue or profit etc. 'The Act' vide section 208 also makes the applicability of the provisions of the Code of Civil Procedure, 1908 to the suits instituted under its various provisions. It is apposite here to quote the said provision:-

"208. Application of Civil Procedure Code - The provisions of the Code of Civil Procedure, 1908 (Central Act V of 1908) except:-

- (a) Provisions inconsistent with anything in this Act, so far as the inconsistency extends*
- (b) Provisions applicable only to special suits or proceedings outside the scope of this Act, and*
- (c) Provisions contained in list of the Fourth Schedule, shall apply to all suits and proceedings under this Act, subject to the modifications contained in List II of the Fourth Schedule. "*

Thus, barring the three exceptions enumerated in section 208 of the Act, the Revenue Courts are also governed by the provisions of 'the Code'. The Revenue Courts must, therefore, dispose of the judicial matters by adopting the procedure laid down in the Code. Various stages of a civil suit are mentioned in the 'Code' before the same culminates into the passing of a decree. The said stages are:-

- (1) The presentation of the plaint.
- (2) The service of summons on defendant.
- (3) The appearance of parties.
- (4) The passing of ex-parte decree, if the defendant(s) fail to turn up after due service.
- (5) The filing of written statement by defendant and replication/rejoinder by the plaintiff.
- (6) Examination of parties by the court.
- (7) Discovery and Inspection.
- (8) Admission.

- (9) Production, impounding and return of documents.
- (10) Settlement of issues and determination of suit on issues of law or on issues agreed upon.
- (11) Disposal of the suit at the first hearing.
- (12) Summoning and attendance of witnesses.
- (13) Hearing of the suit and examination of witnesses.
- (14) Arguments.
- (15) Judgments.
- (16) Preparation of decrees.

The above list is not exhaustive. Many other mandatory steps like settlement of disputes outside the court provided by part V of the Code are undertaken. It is pertinent that for instituting a suit in a court of law, two pre-requisites must be fulfilled by the plaintiff(s). The first requirement is the existence of a cause of action and the other equally important requirement is that the plaintiff(s) must have a right to sue. Once these fundamental requirements are fulfilled, there is an inherent right in every person to bring a suit in a court of law. In AIR 1974 (SC) 1126 'Ganga Bai Vs. Vijay Kumar', it was held by the Hon'ble Supreme Court that :-

"Unless the suit is barred by statute, one may, at one's peril, bring a suit of one's choice. It is no answer to a suit, howsoever frivolous the claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit".

11. In the instant case, neither the trial court nor the first appellate court returned any finding that the suits filed by the plaintiffs/ appellants were barred by any law. There was no application from either of the defendants/ respondents to reject the plaint under Order 7 Rule 11 of the Civil Procedure Code. Therefore, the dismissal of suits by the trial court at the stage and in the manner done by it cannot be countenanced by this Board. By virtue of the provisions contained in Order 14 Rule 2(2) of the Civil Procedure Code, a suit may be disposed of only on an issue of law relating to jurisdiction of the court or a bar to the suit created by any law, then the said issue may be tried

first. As is clear from the judgments of the courts below, such a situation was not obtained in the present matters. For the sake of repetition, it is worth mention that under Order 7 Rule 11 (d) of the Civil Procedure Code, the plaint shall be rejected where the suit appears from the statement of the plaint to be barred by any law. In this regard also, the court has to examine the averments in the plaint and the pleas taken by the defendant in written statement would be wholly germane. In this regard, reliance is placed on AIR 2012 (SC) 3023 'Bhanu Ram Vs. Janak Singh'. If the matters are not covered by any of the aforesaid provisions, the suits must ordinarily be decided after giving the plaintiff(s) an opportunity of hearing and leading evidence in accordance with law.

12. In AIR 2012 S.C. 148 'Union of India Vs. Ibrahim Uddin and anr', it was held by the Hon'ble Supreme Court that:-

"Generally, it is the duty of the party to lead best evidence, in his possession, which could throw light on the issue in controversy and in case such material evidence is withheld, the court may draw adverse inference under section 114(g) of the Evidenced Act."

Therefore, adverse inference could have been drawn against the plaintiffs/ appellants upon their failure to produce the documents after the parties have led their evidence and not in the manner and at the stage done by the trial court.

13. It appears to us that the learned trial court was obsessed with the idea that if the original documents are not filed along with the plaint, the suit must be dismissed. The learend trial court simultaneously held that the photocopies of the documents are not admissible and thus, the suits filed by the plaintiffs cannot proceed further. It appears that the provisions contained in Order XIII Rule 1 of the Civil Procedure Code lost sight of the trial court and the appellate court. The relevant provision in this regard is being reproduced as below:-

"1.Original documents to be produced at or before the settlement of issues -(1) The parties or their pleader shall

produce on or before the settlement of issues, all the documentary evidence in original where the copies thereof have been filed along with plaint or written statement".

Therefore, the stage of producing the original documents did not arise in the present matters and the trial court dismissed the suits of the plaintiffs prematurely. Even if the plaintiff did not produce the original documents after the settlement of issues, it was no stage to dismiss their suits. It was obligatory for the trial court to settle issues and put the parties to trial. Whether the plaintiffs were able to establish their cases on merits and have any right in the lands in dispute is a different matter, however, before giving any final verdict, they ought to have been afforded the opportunities of leading evidence and only then the stage of deciding the suits would have reached.

14. In the result, the procedure adopted by the trial court in dismissing the suits and the procedure adopted by the first appellate court in dismissing the first appeals is completely against the procedure established by law. In AIR 2009 SC 1433 'Vidyabhai Vs. Padmalatha', it was held that the date on which the issues are settled is the date of first hearing. Therefore, the courts below committed illegalities in pre-judging the cause of the plaintiffs without following due process of law. The learned trial court in its enthusiasm for speeding up the trial of the case committed material illegalities and adopted its own mechanism of deciding the suits. No doubt, justice to the litigants must be provided without delay but at the same time such type of hurried trial leads to miscarriage of justice. To secure an early and expeditious trial of the suits, the fairness of trial and principles of natural justice must not be sacrificed. Therefore, the questions of law framed above are answered in favour of the plaintiffs/ appellants and against the defendants/ respondents. The appeals filed by the plaintiffs/ appellants deserve to be accepted.

15. Resultantly, the appeals are accepted and the judgments and decrees passed by the courts below are set aside. The trial court is directed to register the suits to their original numbers and decide them in accordance with law, preferably within a period of one year from

the date of receipt of copy of this judgment. The parties shall appear in the trial court on 1.3.2019.

Pronounced.

(Rajinder Kumar)
Member

(Mukesh Kumar Sharma)
Chairman