

BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal Decree/TA/2006/7688/Karauli

1. Kesaria son of Bhoodar
 2. Manohari son of Bhoodar
 3. Shriram son of Bhoodar
- All are by caste Meena resident Gairai Tehsil & District Karauli.

...Appellants

1. Mausriya son of Harikishan by caste Meena resident of Gairai Tehsil & District Karauli
2. The State of Rajasthan

...Respondents

D.B.

**Shri Modu Dan Detha, Member
Shri Ravi Dangi, Member**

Present:-

Shri O.L. Dave, Counsel for the appellants
Shri Yogendra Singh, Counsel for the respondents

JUDGMENT

Dated 16-3-2020

This appeal under Section 224 of the Rajasthan Tenancy Act, 1955 (in short the Act) has been filed against the judgment & decree dated 19.10.2006 passed in appeal no.197/05 by the Revenue Appellate Authority, Sawai Madhopur.

2. Briefly the facts of the case are that appellants/plaintiffs filed a suit before the S.D.O.Karauli against the Respondents/Defendants for correction of entries, declaration, khatedari & permanent injunction on 9.8.2001.

That the disputed land khasra no. 582, 583, 594, 662,665 and 666 admeasuring 10 bighas & 16 biswas in Gram Gerai, Karauli belongs to the plaintiffs as per the revenue record of 2019 to 2022 as it stood in the name of plaintiff's father Bhoodar & uncle Loharya. Uncle Loharya had no children, they the plaintiff's, performed his last rites etc. At the same time, plaintiff pleaded that Mosriya (Respondent no.1/Defendant No.1) has no right in the disputed land, but with the collusion of patwari he got his name entered in the revenue record as recorded khatedar of 1/3 of the land. Plaintiff's further pleaded that they are in cultivatory possession thus the

name of defendant no.1 be removed from the revenue record & the plaintiffs be declared as khatedar of the whole land & the defendant no.1 be permanently enjoined so as not to create any disturbance in the cultivation, use and enjoyment of the land by the plaintiffs.

To this, the defendant no.1 claimed $\frac{1}{2}$ of the disputed land instead of $\frac{1}{3}^{\text{rd}}$. Defendant no.1 alleged that his father Harkishan is the real brother of Bhoodar and Loharya, all having equal of $\frac{1}{3}$ share as per jamabandi of Samvat 2056-2059. As Loharya left behind no heir, they are also his successors & thus instead of $\frac{1}{3}$, defendant no.1 now be declared as recorded khatedar of $\frac{1}{2}$ of the disputed land & thereby defendant no.1 filed a counter-claim for the same and claimed $\frac{1}{2}$ the share, division & correction of entries accordingly as per the jamabandi of Samvat 2056-2059, defendant no.1 is shown as recorded khatedar of $\frac{1}{3}$ of the total land of 10 bigha and 16 biswa.

The learned trial court dismissed the suit & accepted the counter claim of defendant no.1 & thereby declared defendant no.1 as recorded khatedar of $\frac{1}{2}$ of the disputed land vide its judgment and decree dated 26.11.2005.

Against this an appeal was filed under Section 223 of the Rajasthan Tenancy Act before the Revenue Appellate Authority, Sawai Madhopur. The first appellate court vide its judgment dated 19.10.2006 rejected the appeal and upheld the judgment & decree of the trial court. Aggrieved by it, the appellants filed this second appeal before the Board.

3. Heard the learned counsels of both the sides.
4. The counsel for the appellant submits that the impugned judgment and decree are not as per the law and facts & the appeal needs to be accepted as per the grounds raised in the memo of appeal.
5. **Per Contra**, the counsel for the respondent argued that as the suit of the plaintiff/appellant was dismissed & the counter claim of the defendant no.1/ respondent no.1 was accepted. Thus, two separate appeals should

have been filed before the first appellate court & before the Board and in the event of failure, the appeal in hand deserve dismissal.

6. We have given our anxious consideration to the aforesaid submission and perused the record carefully.

7. Before adverting into the merits of the case, the mute question which needs to be decided first is: When the suit has been dismissed & counter claim has been decreed, whether 2 separate appeals should have been filed & in case of failure, the resultant.

Firstly, Order 8 Rule 6A(4) of C.P.C. reads :

“The counter claim shall be treated as a plaint & governed by the rules applicable to plaints”.

Thus a counter claim is a cross suit with all the trappings of a separate suit.

Secondly, Section 11 of C.P.C. embodies the doctrine of res judicata or the rule of conclusiveness of judgments. This section corresponds to estoppels by judgment in English law. The principles of res judicata is founded on equity, justice & good conscience. Based partly on the maxim of Roman Jurisprudence “**Interest rei publicae ut sit finis litium**”- it concerns the State that there be an end to law suits – and partly on the maxim “**Nemo debet bis vexari pro una et eadem causa**” – no man should be vexed twice over for the same cause.

Thirdly, an appeal is the continuance of the suit.

Thus, the matter in hand where there was a suit & counter claim. Vide single judgment the counter claim was accepted meaning thereby the deemed dismissal of the suit. Litigating parties were the same and the subject matter was also the same. The plaintiff in the suit declined to give even an inch to Def. No.1, while in the counterclaim Defendant no.1 claimed ½ share in the disputed land, which was decreed to them by the trial court. There are catena of judgments on the count that where there is a counter claim and no appeal is filed section 11 of the C.P.C. gets attracted. Therefore, the judgment and decree of the trial court will rule. Thus, the

principle of res judicata will apply as there should have been two separate appeals. But since only one appeal has been filed, **res judicata** becomes applicable.

8. Thus, the appeal in hand is clearly hit by Section 11 of C.P.C. 1908 and the provision of res judicata are attracted. Hence, since no two separate appeals were filed the appeal deserve dismissal.

9. Hence, the appeal is dismissed.

No orders as to cost.

Pronounced in the open court.

(Ravi Dangi)
Member

(Modu Dan Detha)
Member