

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Division Bench

**Shri Sanuj Kulshrestha, Member
Kamla Alariya, Member**

APPEAL DECREE NO.8006/2006/TA/JAIPUR

1. Ramji Lal son of Bheru Ram by caste Aheer resident of Village Bagawas Aheeran, Tehsil Viratnagar, Distt. Jaipur.
2. Hanuman son of Bheru Ram by caste Aheer resident of Village Bagawas Aheeran, Tehsil Viratnagar, Distt. Jaipur.
3. Sadhu son of Bheru Ram by caste Aheer resident of Village Bagawas Aheeran, Tehsil Viratnagar, Distt. Jaipur.
4. Chothmal son of Bheru Ram by caste Aheer resident of Village Bagawas Aheeran, Tehsil Viratnagar, Distt. Jaipur.
5. Mulchand son of Bheru Ram by caste Aheer resident of Village Bagawas Aheeran, Tehsil Viratnagar, Distt. Jaipur.

...Appellants.

Versus

1. Ganpat son of Bheru Ram by caste Aheer resident of Bagawas Ahiran Teh. Viratnagar Jaipur.
2. State of Rajasthan through Tehsildar Viratnagar Distt. Jaipur.

... Respondents.

APPEAL DECREE NO.6483/2006/TA/JAIPUR

Ganpat son of Bhenru Ram by caste Aheer resident of Village Bagawas Aheeran, Tehsil Viratnagar, Distt. Jaipur.

... Appellant.

Versus

1. Ramji Lal son of Bhenru Ram by caste Aheer resident of Village Bagawas Aheeran, Tehsil Viratnagar, Distt. Jaipur.
2. Hanuman son of Bhenru Ram by caste Aheer resident of Village Bagawas Aheeran, Tehsil Viratnagar, Distt. Jaipur.
3. Moolchand son of Bhenru Ram by caste Aheer resident of Village Bagawas Aheeran, Tehsil Viratnagar, Distt. Jaipur.
4. Sashu Ram son of Bhenru Ram by caste Aheer resident of Village Bagawas Aheeran, Tehsil Viratnagar, Distt. Jaipur.
5. Chauthmal son of Bhenru Ram by caste Aheer resident of Village Bagawas Aheeran, Tehsil Viratnagar, Distt. Jaipur.
6. State of Rajasthan through Tehsildar, Viratnagar, Distt. Jaipur.

...Performa Respondents

Present :

Smt. Poonam Mathur : counsel for the appellants in 2006/6483 and counsel for the respondents in 2006/8006.

Shri J.K.Pareek: counsel for the respondents in 2006/6483 and counsel for the appellant in 2006/8006 .

Dated : 23.04.2026

J U D G M E N T**(I) GENESIS OF APPEAL :-**

These two instant appeals have been filed under section 224 of the Rajasthan Tenancy Act, 1955 (hereinafter to be referred as "the Act") against the judgment & decree passed by Revenue Appellate Authority, Jaipur dated 26.08.2006 in Appeal No. 66/2005. Both the appeals (8006/2006&6483/2006) originates from single impugned order, hence they will be decided by a common order, for the purpose of avoiding repetition of factual analysis. An original signed copy be placed on record of each of the aforementioned second appeals.

(II) BRIEF FACTS :-**Brief facts of Appeal Decree No. 8006/2006/TA/JAIPUR**

1. In the competent subordinate court Sub-Divisional Officer, Viratnagar, Jaipur the Appellant No.1/plaintiff/Ramji Lal has filed a suit for declaration of rights, khatedari rights, and partition regarding the disputed land bearing old Khasra No. 1409 to 1413 measuring 16 bighas 5 Biswas, presently Khasra No. 2157 to 2172, and 2175, total 17 units with a total area of 4.24 hect, situated in village Bagawas Aheeran, Tehsil Viratnagar, District Jaipur.

2. It was stated that the father of the Appellant No.1/plaintiff and Respondent No.1/defendants No. 1/Ganpat had purchased the said land for Rs. 3,800/- from the income of their joint family and had taken possession thereof. However, Respondent No.1/defendant No. 1 and Appellant No. 2/defendant No. 2 got the khatedari rights recorded in their names through mutation dated 31.3.1961; whereas each of the parties has a 1/6th share in the disputed land.

3. It was further submitted that a compromise (agreement) on 26.11.01 had also taken place, in which it was acknowledged that each party has a 1/6th share, and about 13 years ago, the land had already been partitioned orally among themselves. On the basis of these averments, the plaintiff prayed for partition of the disputed land by allotting 1/6th share to each party as per Para No. 6 of the plaint.

4. The competent subordinate court, after framing issues on the basis of the plaint and written statement, decided the issues and decreed the suit in favor of the Appellant No.1/plaintiff/RamjiLal. Being aggrieved with the judgment and decree dated 19.04.05, Respondent No. 1/Defendant No.1/Ganpat filed an appeal before the Learned Revenue Appellate Authority, Jaipur after hearing both the parties and the learned appellate court passed the judgment and decree dated 26.08.06 in which the appellate court not only dismissed the appeal but also dismissed the suit filed by the Appellant No. 1/plaintiff/Ramji Lal and further directed to cancel the mutation dated 31.03.1961, concluding that it was opened on the basis of unregistered document. Being aggrieved by the judgment and decree dated 26.08.2006 passed by the Revenue Appellate Authority, Jaipur, to the extent entire suit was dismissed in appeal; present appellants/plaintiff filed the second appeal before this board.

Brief facts of Appeal Decree No. 9483/2006/TA/JAIPUR

5. Without averting to repetition of facts as mentioned in para 1 to 3, supra; It is apparent from the record that being aggrieved with the judgment and decree dated 19.04.05, Appellant/Defendant No.1/ Ganpat filed an appeal before the Learned Revenue Appellate Authority, Jaipur after hearing both the parties and the learned appellate court passed the judgment and decree dated 26.08.06 in which the appellate court not only dismissed the appeal but also dismissed the suit filed by the Appellant No. 1/plaintiff/Ramji Lal and further directed to cancel the mutation dated 31.03.1961 concluding that it was opened on the basis of unregistered Sale instrument. Being aggrieved by the judgment and decree dated 26.08.2006 passed by the Revenue Appellate Authority, Jaipur, Appellant filed the appeal before the board.

(III) ARGUMENTS OF THE PARTIES/ COUNSELS :-

1. The counsel of the appellants while reiterating the factual matrix of the appeal argued that the suit was decreed on the basis of 'Bahi Vilekh' followed by the delivery of possession of the disputed land the issue of possession was discussed in detail. Even the trial court proceeded to consider the compromised entry between the parties in the Civil Court when agreement was exhibited. Therefore, the judgment of the trial court was well reasoned and although three issues which were interrelated, were discussed together but the judgment was delivered issue wise in compliance with the procedural law. Setting aside such a judgment by the Revenue Appellate Authority, Jaipur was bad in law, as the judgment of Revenue Appellate Authority was not based on issues rather the rational crux of the judgment, as reasoned, was the non-registration of the agreement of sale dated 15.08.1960. The court of Revenue Appellate Authority proceeded to hold such document inadmissible even for collateral purposes, albeit the law declared by Hon'ble Supreme Court conveys otherwise.

2. *Per Contra*, The counsel of respondents submitted that the judgment of Revenue Appellate Authority, Jaipur was well reasoned and based on sound judicial principles. It was also argued that no right can be granted on the basis of unregistered agreement to sale. Therefore, this appeal deserves to be disallowed.

3. For Appeal Decree No:- 2006/6483 as respondent of the instant appeal are the appellants they also challenged the judgment of Revenue Appellate Authority dated 26.08.2006 on the ground that Revenue Appellate Authority, proceeded to cancel the entire mutation dated 31.03.1961, which was never ever pleaded in the first appeal. The relief which was not sought could not be granted, is the basic tenet of law. On the basis of this argument the appeal was pleaded to be allowed at the instance of Appellant/Ganpat in Appeal number 6483/2006, to the extent it cancelled the Mutation dated 31.03.1961.

(IV) DISCUSSION OF THE COURT :-

1. With regard to second appeal, the judgment of the Hon'ble Supreme Court in 'Inder Singh vs. State of MP' [2025 INSC382] provides essential guidance.

"We are of opinion that the second appeal deserves to heard, contested and decided on merits..."

Clearly, this adjudication also derives support from Section 227 of the Rajasthan Tenancy Act. For convenience, Section 227 is reproduced hereunder:

227. No decree or order to be reversed or modified for error or irregularity-

No decree or order shall be reversed or substantially varied, nor shall any case be remanded in appeal, on appeal, on account of any mis-joinder of parties or causes of action or any error or irregularity in any proceedings, not affecting the merits of the case.

In other words, generally, no decree or order may be set aside or quashed by an appellate court without an examination of its merits.

2. On the anvil of legal provisions and authoritative judicial pronouncements, based upon the argument advanced at bar, the impugned judgment of RAA, Jaipur dated 26.08.2006 and Sub-Divisional Officer, Viratnagar dated 09.04.2005 is to be smited as under:-

(A) Relief and pleading Interrelation:-

(i) With regard to the variation in pleading and proof it is well settled that, 'What is not pleaded can not be granted'. Without specific pleading, no relief can be provided. This proposition of law is well founded in the judgment of Hon'ble Supreme Court in 'State of Uttrakhand Vs. Mandir Shri Laxman Siddh Maharaj [2017(9)SCC 579], Wherein Hon'ble Supreme Court has held that the court cannot travel beyond the pleading, for granting any relief. Further in the judgment of Amrit Lal Kothari Vs. Dosu Khan Samad Khan [MANU/SC/1799/2009] Hon'ble Supreme Court opined that though the court has very wide discretion in granting relief, the court

however, cannot, ignoring and setting aside the norms and principles governing the grant of relief, grant a relief not even prayed for by the petitioner.

(ii) It is clear from the above settled law that the relief part of the judgment and order of RAA dated 26.08.2006, so far as it pertains to cancellation of mutation dated 31.03.1961 was unwarranted as no such relief was either pleaded or expressly sought in the appeal by the appellants of the first appeal, also the appellants of the second Appeal No. 6483/2006.

(B) Sanctity and providence of mutation entries vis-a-vis acceptability of unregistered sale instrument:-

(i) While adverting to the facts of the case the settled principles of law as to the sanctity and importance of a revenue record was discussed in express terms by Hon'ble Supreme Court in 'State of Haryana Vs. Amin Lal'[2024 INSC 875].

" ... Revenue records are public documents maintained by government officials in the regular course of duties and carry a presumption of correctness under Section 35 of the Indian Evidence Act, 1872. While it is true that revenue entries do not by themselves confer title, they are admissible as evidence of possession and can support a claim of ownership when corroborated by other evidence."

(ii) With regard to the acceptability of unregistered instrument section 53 A of Transfer of Property Act, clearly provides the even in case of an unregistered instrument followed by the delivery of possession, to be valid prima facie presumption of possession itself, provided the agreement is still executory. This prima facie presumption of possession, if effectuated by way of mutation entry, becomes the prima facie proof of possession, as discussed in the Judgment of Hon'ble Supreme Court(State of Haryana Vs. Aminlal, ibid).

(iii) It is well settled from the above mentioned , Judicial pronouncement that the mutation entries carries with it a presumption of possession, specially when such entries are decades old. In this case, the basis of such entries were never controverted by the parties to the agreement of sale, which formed the basis of such mutation entries in 1961.

(iv) It is undoubtedly the law of the land that unregistered sale document / instrument do not confer any title or ownership, except to the limited extent of part performance as provided under Transfer of Property Act. However, the plea of part performance or absence thereof has to be taken by either of the parties to the agreement, not by an outsider or a third person and definitely appellate court cannot venture into it, by way of creating a new case for parties, which they have not put forth for adjudication.[Ref: Rama K T Barman Vs. Md. Mahim Ali 2024 INSC 644(sic)].

(v) In other words, the only mode of challenging an unregistered agreement to sell for immovable property followed by delivery of possession over a very long period of time is either by way of specific performance suit between the parties, privy to the contract/agreement, or by way of a suit for cancellation of such agreement and consequent declaration to the effect of being null and void. Revenue court has no occasion or jurisdiction to interfere with the settled possession of the parties without any such declaration by the civil court as mentioned above. Even otherwise, as well, the act of entering the mutation in 1961 on the basis of an unregistered agreement , was done by the Revenue authorities. This fact acquired more prominence, specially in the light of the fact that the parties to the agreement were rural villager-agriculturists. It was the duty of the revenue authorities/ officials, to ensure that the mutation entries are recorded on the basis of genuine documents as per law especially when the document itself mentions about entering a registry thereof. Therefore, cancelling such a mutation when the basis thereof *i.e.* agreement to sale, was never question by any of the parties thereto, as far as it's genuinity and execution is concerned is not warranted by law. At the most appellate court could have impounded such document for proper stamping and subsequence registration, as per law, or remanded back for this purpose, *ejusdem generis* .

(vi) Even otherwise as well mutation entries of 1961 and long possession create a legal presumption of non-disturbance without following the due procedure of law, as held by honourable Supreme Court in catena of judgements starting from Midnapore Zameen daari company case uptill

recent pronouncement of *Smriti Debbarma Vs. Prabha Ranjan Debbarma*[2023 SCC OnLine SC 9] has held that a person in possession of land in the assumed character as the owner, and exercising peaceably the ordinary rights of ownership, has a legal right against the entire world except the rightful owner. Apparently, the proceeding before the first appellate authority was not the proceedings under due procedure of law as per the prevalent land Revenue, and tenancy laws, as far as the cancellation of mutation proceedings are concerned.

(C) Scope of Appellate Court:-

(i) Appellate Court functions on the premise that the appeal is an extension of suit. It means that the scope of analysis of merits of the case by the appellate court must be circumscribed by the case put up by the parties through their pleadings, averments and evidences before the trial court in the original proceedings. In the regard the judgment of Hon'ble Supreme Court in *Rama K T Barman Vs. Md. Mohim Ali*[2024 INSC 644] provides the necessary legal insight, wherein Hon'ble Supreme Court has held that it is well-settled principle of law that the Court cannot create any new case at the appellate stage for either of the parties, and the appellate court is supposed to decide the issues involved in the suit based on the pleadings of the parties. Further in the case of *Gobind Singh and Ors Vs. Union of India*[2026 INSC 211] Hon'ble Supreme Court has observed that the procedural framework under Order 41 of CPC makes it abundantly clear that appeal is originally be decided on the basis of evidence adduced before the trial court. The appellate court is not expected to embark upon fact finding exercise or production of additional evidences as a matter of routine.

(ii) These judgments provide the legal framework prescribing the four corners of the framework for appellate court's judicial functioning, ordinarily. In this case the learned Revenue Appellate Authority proceeded to venture upon a journey whereby, setting up a new case, based on a fact finding exercise not pleaded or challenged in the original suit; wherein it declared the mutation dated 31.03.1961 as illegal, being based on an un-registered instrument. This venturing of first appellate court is not warranted, by law as per authoritative judicial pronouncements supra.

(D) Importance of Procedural Provisions:-

(i) It is also clear from the judgment of Revenue Appellate Authority that neither issues nor the points of determination were framed, which is against the tenate of law as prescribed under Order 41 CPC. The law in this regard is well settled with the authoritative judicial pronouncement of Supreme Court of Indian in Satyanath Vs. Sarojmani[Civil Appeal No. 3680/2022 dated of judgment 06.05.2022:2022 Live law (SC) 458] has held that

' Keeping in view the object of substitution of sub-Rule (2) to avoid the possibility of remanding back the matter after the decision on the preliminary issues, it is mandated for the trial court under Order XIV Rule 2 and Order XX Rule 5, and for the first appellate court in terms of Order XLI Rules 24 and 25 to record findings on all the issues. '

On this count the recent judgment of Hon'ble Rajasthan High Court in Daroji Vs. Chetra[2025(Supreme)(Raj)1898] has held that a judgment without points of consideration and evidence there upon is no judgment in the eye of law. Hon'ble Court in quantifying its reasoning relied upon the judgment of Hon'ble Supreme Court in Fomento Resorts and Hotels ltd. Vs. Gustabo Ronato[AIR 1985 SC 736].

3. It is clear from the discussion above that, on merits of both the appeal bearing number 8006/2006 and 6483/2006 the judgment of Revenue Appellate Authority, Jaipur dated 26.08.2006 is bad in law. Therefore the judgment and decree of the Learned Revenue Appellate Authority, Jaipur deserves to be set aside and the matter is remanded back to be decided afresh in accordance with law. While deciding the appeal, the learned Revenue Appellate Authority, Jaipur is expected to take note of judicial reasonings and propositions of law discussed hereinabove. This court is aware that remanding the matter back to the lower court must be resorted to, very sparingly, but this court is also aware of the fact that unless the evidence part of the *lis* is not properly appreciated in accordance with law by the trial court and the first appellate court, as per the procedure established, the scope of appreciation of merits of the case, majorly

involving appreciation of evidence, is very limited. Hence this order. Be it ordered accordingly.

ORDER

Consequent upon the discussion hereinabove, this court, after considering the factual matrix of these cases and upon careful analysis of relevant law and authoritative judicial pronouncements, proceeds to declare that both the appeals are allowed. The order of Sub-Divisional Officer, Viratnagar, dated 19.04.2005 is upheld and the judgment and decree of learned Revenue Appellate Authority, Jaipur dated 26.08.2006 is set aside and the matter is remanded to Revenue Appellate Authority, Jaipur to decide afresh in accordance with law; while deciding the appeal, the learned Revenue Appellate Authority is expected to take note of judicial reasonings and propositions of law discussed herein above, expeditiously in accordance with law and procedure. These second appeals, are accordingly disposed off. Decree be drawn as per rule.

Pronounced in open court.

(KAMLA ALARIYA)
Member

(SANUJ KULSHRESTHA)
Member