

Date of Order	<p style="text-align: center;">Appeal/TA/842/2006/Ajmer Gopi & ors. Vs. Radha & ors.</p> <p style="text-align: center;">Appeal/TA/843/2006/Ajmer Gopi & ors. Vs. Radha & ors.</p>	
29.11.2018	<p style="text-align: center;"><u>D.B.</u></p> <p style="text-align: center;">Shri Mohanlal Nehra, Member Shri Rajinder Kumar, Member</p> <p>Argued by : Shri Ajit Singh, counsel for the appellants. Shri Mukesh Jain, counsel for the respondents no. 1 and 2. Shri Rajinder Prasad Sharma, Dy. Govt. Advocate for the respondents no. 3 and 4.</p> <p style="text-align: center;">* * *</p> <p style="text-align: center;"><u>J U D G M E N T</u></p> <p style="text-align: center;"><u>Per Shri Rajinder Kumar, Member</u></p> <ol style="list-style-type: none"> 1. These second appeals have been preferred under Section 225 of the Rajasthan Tenancy Act, 1955 [In short 'the Tenancy Act] against the judgment dated 11.11.2005 of the learned Revenue Appellate Authority, Ajmer passed in Appeal No.14/2002, whereby the judgment & decree dated 30.01.2004 passed by the learned trial court of Sub Divisional Officer, Nasirabad in suits no. 14/02 and 21/02 were set aside and the matter was remanded to the learned trial court for rewriting the judgment after discussing the evidence available on record. 2. Facts leading to the present controversy in nutshell are that suit no. 14/02 under section Sections 88 and 188 of the Tenancy Act was filed by the respondents no. 1 and 2 against the present appellants in respect of the agricultural lands situated in Village Motipura Tehsil Nasirabad. The suit no. 21/03 was filed by the 	

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	<p>present appellants against the respondent no. 1 to 3 in respect of the disputed lands under section 88, 188 and 92 A of the Tenancy Act. After trial, the learned Sub-Divisional Office decreed the suit no. 21/02 in its entirety and partly decreed suit no. 14/02 in respect of the land comprised in khasra no. 751 and dismissed the same in respect of the remaining suit lands. Feeling aggrieved against the said judgment and decree, the respondent no. 1 and 2 preferred two appeals bearing no. 35/2004 and 36/2004 in the court of learned Revenue Appellate Authority, Ajmer whereupon on 11.11.2005, the said appeals were partly accepted in the aforesaid manner. Hence these second appeals.</p> <p>3. We have heard learned counsels for the parties. At the very outset, learned counsel for the appellants has submitted that though the judgment of learned Revenue Appellate Authority, Ajmer has been assailed on merits also but he limits his arguments only to the extent that the learned first appellate court ought to have decided the appeals on their own merits and the order of remand is not justified.</p> <p>4. The question of law involved in the instant appeals, therefore, is whether the learned first appellate court committed illegality in remanding the case to the trial court in contravention of the provisions contained in Order 41 Rule 22 of the Code of Civil Procedure, particularly when the entire evidence was</p>	

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	<p>available before it for deciding the appeals on merits?</p> <p>5. On behalf of the appellants, it has again been argued that the entire material for decision of the appeals was available on record and the learned first appellate authority illegally remanded the matters to the learned trial court. As a final court of facts, the learned first appellate court ought to have decided the appeals without remanding the matter for re-writing the judgment. There is no provision in the Code of Civil Procedure for directing the trial court to re-write the judgment as indicated by the learned first appellate court in the impugned judgment. The matter is not covered by the provision of Order 41 Rule 22 CPC. Therefore, a prayer was made to accept the appeals and remand the same to the learned first appellate court for disposal of both the first appeal on the basis of the evidence collected by the trial court.</p> <p>6. Learned counsel for the defendants-respondents vehemently opposed the above submissions. He has submitted that the learned trial court committed material illegality in passing the judgment and decree dated 30.01.2004 and therefore, the learned first appellate court considering the factual and legal aspects, rightly remanded the matters to the trial court for passing fresh judgment after considering the evidence already lead by the parties.</p>	

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	<p>7. Learned Dy. Government Advocate has submitted that the disputed lands have already been acquired by the National Highway Authority of India and compensation has been paid to the respective khatedars in proportion to the shares of the acquired lands. However, due to the passing of the stay order by this Board in these appeals, the work of construction of road could not be initiated and it is causing a lot of inconvenience to the public at large and a loss of exchequer to the State Government as well. Therefore, a prayer has been made to dispose of these appeals this way or that way, so that the stay order passed in these appeals may be vacated and construction work may be started.</p> <p>8. After giving thoughtful consideration to the rival submissions and upon perusal of the record, it is revealed that the learned trial court has passed its judgment on merits of the controversy. The said judgment was not passed on any preliminary issue, but the learned first appellate court remanded the matter to the trial court for re-writing the judgment after considering the evidence produced by the parties. In the opinion of the learned first appellate court, the judgment of the learned trial court was sketchy and therefore, the same was set aside in the aforesaid manner.</p> <p>9. It is pertinent that none of the parties made any request to the learned first appellate court to permit</p>	

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	<p>them to lead additional evidence in the case. The learned first appellate court also did not make any observation in the impugned judgment that it requires any evidence for just decision of the case. The powers of the first appellate court while deciding the first appeal have been explained by the Hon'ble Supreme Court in B.V. Nagesh and Anr. Vs. H.V. Sreenivasa Murthy (2010) 13 S.C.C. 53 in the following terms:-</p> <p style="text-align: center;"><i>"3. How regular first appeal is to be disposed of by the appellate Court/High Court has been considered by this Court in various decisions. Order XLI of C.P.C. deals with appeals from original decrees. Among the various rules, Rule 31 mandates that the judgment of the appellate Court shall state:</i></p> <p style="text-align: center;"><i>a) the points for determination;</i></p> <p style="text-align: center;"><i>b) the decision thereon;</i></p> <p style="text-align: center;"><i>c) reasons for the decision; and -</i></p> <p style="text-align: center;"><i>d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.</i></p> <p style="text-align: center;"><i>4. The appellate Court has jurisdiction to reverse or affirm the findings of the trial Court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case therein is open for re-hearing both on questions of fact and law. The judgment of the appellate Court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put-forth and pressed by the parties for decision of the appellate Court. Sitting as a court of appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. [Vide Santosh Hazari vs. Purushottam</i></p>	

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	<p style="text-align: center;"><i>Tiwari, (2001) 3 SCC 179 = JT (2001) 2 SC 407 and Madhukar and Others vs. Sangram and Others, (2001) 4 SCC 756].</i></p> <p style="text-align: center;"><i>5. In view of the above salutary principles, on going through the impugned judgment, we feel that the High Court has failed to discharge the obligation placed on it as a first appellate Court. In our view, the judgment under appeal is cryptic and none of the relevant aspects have even been noticed. The appeal has been decided in an unsatisfactory manner. Our careful perusal of the judgment in the regular first appeal shows that it falls short of considerations which are expected from the Court of first appeal. Accordingly, without going into the merits of the claim of both parties, we set aside the impugned judgment and decree of the High Court and remand the regular first appeal to the High Court for its fresh disposal in accordance with law."</i></p> <p>10. In view of the above dictum of the Hon'ble Supreme Court, it transpires that in the instant matters also, the learned first appellate court did not frame points of determination of the appeals and also did not gave any finding supported by reasons, on all the issues arising there in. It was the duty of the learned first appellate court to deal with all the issues and the evidence led by the parties before recording its findings. The learned first appellate court did not do what was expected from it as a final court of facts. An order of remand of a case cannot be passed on <i>ipse dixit</i> of the court. This power of remand is governed by the provisions of the Code of Civil Procedure contained in Order 41 Rule 22 onwards. In our considered opinion, the present case was not covered under any of the said provisions requiring remand of the case.</p>	

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	<p>11. Therefore, the learned first appellate court committed illegality in remanding the case to the trial court in contravention of the provisions contained in Order 41 Rule 22 of the Code of Civil Procedure, particularly when the entire evidence was available before it for deciding the appeals on merits. The question of law framed above is answered accordingly in favor of the appellants. The appeals deserve to be accepted in part.</p> <p>12. Resultantly, the appeals in hand are accepted and the judgment dated 11.11.2005 of the learned Revenue Appellate Authority, Ajmer is set aside and the matter is remanded to the first appellate court for deciding the Appeal No. 35/2004 and 36/2004 on their own merits afresh after giving reasonable opportunity of hearing to the parties. Both the parties shall appear in the court of learned Revenue Appellate Authority, Ajmer on 11.01.2019.</p> <p>Pronounced.</p> <p style="display: flex; justify-content: space-around;">(Rajinder Kumar) (Mohan Lal Nehra) Member Member</p>	