

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal Decree No.4812/2001/TA/Jhunjhunu:

Mukandaram S/o Shri Kurdaram, by caste Jat, resident of
Village Birol, Tehsil Nawalgarh, District Jhunjhunu.

... Appellant.

Versus

1. Murti Mandir Shri Raghunath Ji,
Village Birol, Tehsil Nawalgarh : minor- through
Tehsildar Nawalgarh, District Jhunjhunu.
2. Bhanaram, Chairman
3. Richhpal Singh, Secretary
Mandir Shri Raghunath Ji Trust, Birol,
Tehsil Nawalgarh, District Jhunjhunu.

... Respondents.

++*

D.B.

Shri Pramil Kumar Mathur, Member
Shri Moolchand Meena, Member

Present :

Mr. J.K. Pareek : counsel for the appellant.

None present : on behalf of the respondents.

++*

Dated : 24 September, 2012

J U D G M E N T

This appeal has been filed against the judgment & decree dated 09.7.2001 passed by the Revenue Appellate Authority, Sikar -Camp: Jhunjhunu in regular first appeal no.24/96 whereby the learned Revenue Appellate Authority has dismissed the appeal preferred by the present appellant and maintained the judgment & decree passed by the Sub Divisional Officer, Nawalgarh on 31.7.1996 in revenue suit no.61/90.

2. In short, the respondent no.1 Murti Mandir Shri Raghunath Ji as plaintiff filed a revenue suit against the present appellant in the court of Sub Divisional Officer, Nawalgarh for eviction from the suit property bearing khasra no.288 area 2.06 hectare situated at Tehsil Nawalgarh District Jhunjhunu claiming himself as the recorded khatedar of the suit

land. The trial court had issued summons to the defendant and regardless of the service of summons, defendant did not appear before the trial court, hence trial court chose to proceed ex-parte. The trial court vide order dated 31.7.1996 decreed the suit filed by the plaintiff-respondent Murti Mandir Shri Raghunath Ji. Aggrieved by the judgment & decree dated 31.7.1996, present appellant had moved first appeal before the Revenue Appellate Authority, Sikar. The learned Revenue Appellate Authority has dismissed the appeal by judgment & decree dated 09.7.2001 filed against revenue suit no.61/90. The said judgment & decree dated 09.7.2001 is under challenge before this court.

3. Heard Mr. J.K. Pareek, counsel for the appellant. He vehemently attacks on the judgments & decrees passed by the subordinate courts by submitting that plaintiff did not produce even any iota of evidence before the trial court, still the trial court has decreed the suit without recording any evidence. This is well established that for want of plaintiff's evidence, suit cannot be decreed but the suit was liable to be dismissed. Without corroboration of the pleaded facts, the learned trial court has made grave error in decreeing the suit. First appellate court has also ignored this cardinal principle of law; hence the judgments & decrees passed by both the courts below are liable to be set aside.

4. We have given our thoughtful consideration to the contentions made by learned counsel for the appellant and scanned the matter carefully.

5. This factual aspect is not disputed that present appellant has neither appeared before the trial court nor put any defence before the trial court and trial court has chosen to proceed ex-parte against defendant on 05.9.1990. Though, the trial court has given ample opportunity to the plaintiff to substantiate his claim, but plaintiff has failed to examine any witness and the trial court without examining any witness and trusting entirely on the unexhibited Jamabandi of Samvat 2045 to 2048, decreed the suit.

6. Ordinarily, it is incumbent upon the trial courts to decide a suit after following the procedure established by the law which includes the recording of evidence & fair opportunity of hearing to both the parties. But in peculiar circumstances, courts have been entrusted to pronounce the

judgment on the basis of the facts contained in the plaint even without the requirement of any such fact to be proved. In this regard, sub clause (2) of Order 8 Rule 5 is relevant which operates as under :-

"(2) Where the defendant has not filed a pleading, it shall be lawful for the Court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved."

7. Apart from this, trial court's judgment & decree is entirely based upon the Jamabandi of Samvat 2045 to 2048 which certainly is an official register maintained by public servant in the discharge of his official duty & prepared by the revenue officials. Hence, it is a public document in terms of section 74 of the Indian Evidence Act, 1872 (in short 'the Act') and certified copy of the public document prepared under section 76 of 'the Act' is admissible in evidence under section 77 of the said Act. A certified copy of a public document is admissible in evidence without being proved by calling witnesses. The law does not insist on the maker of these entries to be examined in the court in proof of the entries.

8. In view of the fact that trial court's decree dated 31.7.1996 clearly rests upon the certified copy of the Jamabandi of Samvat 2045 to 2048 which undisputedly is a public document and when the defendant has not filed his pleading, as in present case, the law permits the courts to pronounce the judgment without requiring any pleaded fact to be proved.

9. Thus, in view of the above deliberations, we are satisfied that the judgment & decree passed by the trial court as affirmed by the first appellate court is based upon proper application of the law and does not suffer from any irregularity or illegality for interference.

10. Consequently, the appeal fails and is accordingly dismissed.

Pronounced in open court.

(MOOLCHAND MEENA)
Member

(PRAMIL KUMAR MATHUR)
Member

++*