

**IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER**

**Appeal Decree No.2729/2012/TA/Bundi :**

1. Brijraj Singh S/o Shri Bhanwar Singh, by caste Rajput, resident of Undaiya Ki Dungari, Bundi.
2. Inder Singh S/o Shri Bhanwar Singh, by caste Rajput
3. Smt. Rukmani widow of Shri Bhanwar Singh, by caste Rajput, resident of Shola Ki Jhopdiyan, Tehsil Hindoli, District Bundi.

... Appellants.

**Versus**

Devi Singh S/o Shri Sultan Singh, by caste Rajput,  
resident of Shola Ki Jhopdiyan, Tehsil Hindoli, District Bundi.

... Respondent.

\*+\*+\*

**D.B.**

Shri Pramil Kumar Mathur, Member  
Shri D.R. Meena, Member

**Present :**

Shri Ashok Agrawal, counsel for the appellants.

Shri Sohanpal Singh Choudhary, counsel for the respondent.

\*+\*+\*

Dated : 18<sup>th</sup> April, 2012

**J U D G M E N T**

This second appeal under section 224 of the Rajasthan Tenancy Act, 1955 (hereinafter to be referred as 'the Act') arises from the judgment passed in appeal no.84/2011 by learned Revenue Appellate Authority, Kota on 30.3.2012.

2. The brief material facts relevant to this case are that respondent Devi Singh filed a declaratory suit in the trial court pertaining to land bearing khasra no.325 area 14 bigha 12 biswa situated at Village Shola Ki Jhopdiyan Tehsil Hindoli District Bundi. That suit was contested by the present appellants by submitting the written statement and counter-claim. The counter-claim filed by the present appellants was decreed ex-

parte on 17.1.2004 and possession of the disputed land was handed over to the appellants in pursuance of ex-parte decree dated 17.1.2004. The ex-parte judgment & decree passed on 17.1.2004 was set aside by the appellate court on 28.7.2007 and case was remanded to trial court for deciding it afresh after following the procedure established by law. Thereafter, respondent filed an application under section 144 for restitution of the possession of the disputed land, that was dismissed by the trial court vide order dated 18.5.2011 and receiver was appointed on the disputed land. Being aggrieved by the judgment dated 18.5.2011, present respondent Devi Singh preferred an appeal before the Revenue Appellate Authority, Kota which was allowed by impugned judgment dated 30.3.2012 and direction was made to restore the position of the disputed land as existed before the ex-parte decree dated 17.1.2004. Hence, appellants have assailed the judgment & decree dated 30.3.2012 by this second appeal.

3. We have heard the learned counsels for the parties at admission stage and perused the record.

4. The learned counsel for the appellants has challenged the findings of the first appellate court by submitting that first appellate court has not passed any executable decree, the suit is still pending and rights of the parties are yet to be decided; therefore, question of restitution does not arise. Respondent has claimed the title on the basis of the adverse possession. There is no provision in the Rajasthan Tenancy Act for conferment of the khatedari rights on the aforesaid grounds. Therefore, the wrong doer cannot get the possession of the disputed land. First appellate court passed a non-speaking & non-reasoned judgment. Placing reliance on the decision of this court reported in 1994 RRD page 161 'Kamla & anr. Vs. LRs of Mst. Khajano', learned counsel for appellants contended that first appellate court failed to apply correct principle of law. Hence the impugned judgment be set aside.

5. Per contra, learned counsel for the respondent has submitted that provision of section 144 of the Code of Civil Procedure imposes a mandatory duty on the courts to restore the things in original position;

therefore, when the basic decree is set aside by the appellate court, it is lawful rather imperative on the court to restore the position of the suit land as existed before passing of the original decree. Hence, first appellate court did not commit any illegality in passing the impugned judgment. Learned counsel for the respondent has submitted following judgments in support of his contentions :-

- (i) Yashwant Singh Vs. State of Raj.  
1990 RRD page 355
- (ii) Rehmat Vs. Abdul Rehman & ors.  
2005 RRD page 199
- (iii) Mst. Jagannathi Bai Vs. Ram Kalyan & ors.  
1998 RRD page 569
- (iv) Kamlesh Vs. Kailash Chand  
2009 RBJ (16) page 720

6. We have given our thoughtful consideration to the rival contentions and scanned the matter carefully.

7. Examining the rival contentions, this court finds that admittedly, the judgment & decree passed by the trial court on 17.1.2004, in compliance of which the possession was given to present appellants, was set aside by the appellate court on 28.7.2007.

8. On the scrutiny of section 144 of the Civil Procedure Code, it emerges that the concept of restitution is basically founded on the idea that when a decree is reversed, law imposes an obligation on the party who received an unjust benefit of the erroneous decree to reconstitute the other party for what the other party has lost, during the period the erroneous decree was in operation. Therefore, the court while granting restitution is required to restore the parties as far as possible to their same position as they were in at the time when the court by its erroneous action displaced them. It is the duty of the court to enforce that obligation. The obligation to reconstitute lies on the person or the authority that has received unjust enrichment or unjust benefit. This obligation arises automatically on the reversal or modification of the decree and the court in making restitution is bound to restore the parties to the same position as existed before passing of the original judgment.

9. In the judgment reported in 1994 RRD page 161 'Kamla & anr. Vs. LRs of Mst. Khajano', possession was not handed over to any party in compliance of the original decree and the original decree was not executed. Therefore, it has no application to the facts of this case.

10. In the light of above noted parameters, we are of the view that the impugned judgment of appellate court does not suffer from any infirmity or illegality, warranting interference by this court. Consequently this second appeal is dismissed in limine at admission stage.

Pronounced in open court.

**(D.R. MEENA)**  
Member

**(PRAMIL KUMAR MATHUR)**  
Member

\*+\*+\*