

IN THE BOARD OF REVENUE FOR RAJASTHAN AJMER

1. Revision/TA/2459/2003/Bharatpur.

1. Radhe Lal) sons of Jagmohan caste Brahmin residents of
2. Vishnu Kumar) Pai Bagh, Bharatpur.
...Petitioners.

Versus

1. Suresh Kumar)
2. Yogesh Kumar) sons of Ninua Ram caste Brahmin
3. Sunil Kumar) residents of Bhador, Tehsil & Distt.
4. Bhupendra Kumar) Bharatpur.
5. Rakesh Kumar)
6. Jagmohan son of Girraj caste Brahmin resident of Pai Bagh,
Bharatpur.
7. State of Rajasthan through Tehsildar, Bharatpur.

...Non-petitioners.

2. Revision/TA/2460/2003/Bharatpur.

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S.B.

Shri Bajrang Lal Sharma, Member

Present:-

Shri Khadag Singh, counsel for the petitioners.

Shri Y.D. Sharma, counsel for the non-petitioners.

Date: 8.2.2013

J U D G M E N T

Both the revision petitions mentioned hereinabove have been filed under section 230 of the Rajasthan Tenancy Act, 1955 (in short 'the Act') being aggrieved by the judgment passed by Revenue Appellate Authority, Bharatpur on 1.5.2003 in appeals No. 251/2002

and 252/2002. The parties, subject matter and legal issues involved are similar in these cases. Therefore, both the petition are disposed of by this common judgment. A copy of the judgment may be kept on each file.

2. The factual matrix of the cases is that the petitioners-plaintiffs filed a regular suit before Assistant Collector, Bharatpur under section 88, 89, 53 and 188 of the Act against the non-petitioner No.6. This suit was decreed by the trial court on 18.6.1997. Being aggrieved by the judgment and decree passed in favour of the petitioners, two appeals were preferred by the non-petitioners before Revenue Appellate Authority, Bharatpur in the year 2002. In both the appeals, the non-petitioners filed application under section 5 of the Limitation Act and application under section 96 of the Civil Procedure Code. The petitioners requested the court to decide both the applications first in these appeals and then to proceed further. The appellate court by its order dated 1.5.2003 accepted the application under section 96 of the Civil Procedure Code and inferred that the petitioners are the aggrieved persons. Therefore, they are competent to file these appeals. On the applications filed under section 5 of the Indian Limitation Act the court expressed the view that this application will be decided at the time of final disposal of the appeals. Being aggrieved by the order passed by the appellate court these revision petitions have been preferred before this court.

3. Heard the learned counsels of the parties.

4. The learned counsel for the petitioners contended that the non-petitioners were not aggrieved in these appeals. Therefore, they had no locus standi to file these appeals before the appellate court. His only argument is that they bought the land on agreement to sale from Jagmohan that does not entitle them to file these appeals. He further argued that since the appeals have been filed after the lapse of some five years from the date of the judgment and decree passed by the trial court. Therefore, these appeals are hopelessly time barred and the lower appellate court was under legal obligation to decide these applications filed under section 5 of the Limitation Act before final disposal of these appeals. The learned counsel also

submitted that no court can go on the merits of the case until-and-unless the issue of limitation is resolved. Therefore, the orders passed by the appellate court are illegal and arbitrary; hence be quashed and set aside.

5. The learned counsel for the non-petitioners contended that it was the discretion of the court to accept the applications filed by the non-petitioners-appellants. He argued that there is no jurisdictional or legal infirmity in the orders passed by the appellate court in both the cases. He urged the court that since the non-petitioners are in possession of the disputed land on the basis of agreement to sale. Therefore, they are aggrieved party and have vested interest in the disputed land. Hence, they are competent to file these appeals before the appellate court. He also contended that the lower appellate court has just expressed its view that the issue of limitation will be decided at the time of final disposal of these appeals. This does not mean that these applications will not be decided at all before the final disposal. He also cited AIR 1961 (Punjab) 281, AIR 1989 (Allahabad) 133, AIR 1974 (SC) 994, AIR 1976 (Allahabad) 121, 2012(1) RRT 137, 2001 RBJ 313, 2003 RRD 502, 2003 RBU 366 and 1998 RRD 319 in support of his arguments. The learned counsel for the non-petitioners argued that these revision petitions have been filed just to harass the non-petitioners and they are devoid of any merit, hence be dismissed.

6. I have given thoughtful consideration to the rival contentions of the learned counsels of the parties and also perused the record available on file.

7. This court has carefully perused the orders passed by the appellate court on 1.5.2003. This court is of the view that the non-petitioners have a vested interested in the disputed land because they have bought this land on agreement to sale from the tenant and are in possession. If the impugned judgment and decree are not assailed their rights are adversely affected. Therefore, the trial court has not committed any error in allowing the application filed by the non-petitioners.

8. The trial court has also expressed its opinion on the application filed by the appellants under section 5 of the Limitation

Act that this application will be decided at the time of final disposal of these appeals for better management of the case and convenience the appellate court is fully competent to decide these applications at the time of final disposal of the appeals but certainly the court will first decide the applications related to limitation then only it will go further on merits of the case.

9. In this regard this court feels strengthened by the judgment delivered by Hon'ble High Court in 1998 RRD 319 wherein it has been observed:-

"Now it must be taken to be well settled principle of law that before rejecting applications under sec. 5 of the Indian Limitation Act and dismissing appeals as barred by lapse of time, the courts of law are required to put a glance as a condition precedent on the merits of the appeals and unless the appeals are found to be hopelessly devoid of merits ordinarily efforts should be made to decide the appeals on merits. Failure to do so in the present appeal by learned lower appellate court has resulted in miscarriage of justice and as such, its judgment and decree under appeal is liable to be set aside".

10. The bare perusal of the judgment explicitly emphasizes on the merit of the case. In this case the appellate court has passed an order which reads that the application under section 5 of the Limitation Act will be decided at the time of final disposal of the appeal. Appellate court's this inference does not mean that the application under section 5 of the Limitation Act has been accepted. The appellate court has decided to apply its mind on the issue of limitation at the time of final disposal of the appeal and before proceeding on merit, the court will decide the application filed under section 5 of the Limitation Act. In view of this court, the appellate court has not committed any illegality in passing this impugned order.

11. As discussed above, both the revision petitions are dismissed being devoid of any merit. The impugned orders passed by the appellate court in both the cases are upheld. The parties are directed to be present before the appellate court on 8.4.2013.

Pronounced.

(Bajrang Lal Sharma)
Member