

## IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

### Appeal Decree/TA/194/2006/Sawai Madhopur.

- 1. Dropadi widow of late Bajranga
- 2. Hargovind son of Bajranga
- 3. Roopnarain son of Bajranga
- 4. Rukmani daughter of Bajranga
- 5. Radha daughter of Bajranga
- 6. Radhe alias Balla son of Bajranga
- Mainta daughter of Bajranga All by easte Gurjar residents of Gopalpura Tehsil Khandar Distt. Sawai Madhopur.

... Appellants.

#### Versus

- Brij Kishore sn of Vijay Shankar caste Brahmin resident of Bahrawanda Khurd Tehsil Khandar Distt. Sawai Madhopur.
- 2. State of Rajasthan through Tehsildar.

...Respondents.

# <u>D.B.</u> Shri Ashfaq Hussain, Member Shri Sanjay Kumar, Member

Present:-

Shri Ashok Agarwal, counsel for the appellants.

Shri Y.D. Sharma and Shri Abhishek Sharma, counsels for the respondent.

Date: 18.11.2015

## JUDGMENT

This appeal before the Board of Revenue has been filed under section 224 of the Rajasthan Tenancy Act, 1955 (in short 'the Act') against the judgment and decree dated 19.11.2005 passed by learned Revenue Appellate Authority, Sawai Madhopur in appeal No. 74/2005, inter-alia, on the ground that the learned first appellate court has not followed the provisions of Order 41 Rule 31 of the Civil Procedure Code and has reversed the findings of the trial court without any legal or factual basis. Without any counter-claim on record the first appellate court while passing the impugned judgment/ decree has ordered for the entries to be made in the revenue record in favour of the respondent. The first appellate court has relied on an unregistered document which was not produced before the trial court. Inter-alia, it has been prayed that this appeal may be allowed and the judgment/ decree passed by the first appellate court be set aside and the judgment/ decree passed by the trial court be revived/ upheld.

2. The respondent was duly summoned and he has put in an appearance through his advocate. Record was called for which has been received. Heard the arguments and perused the record and file.

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- 3. During the course of arguments, the learned counsel for the appellants has stated that without following the procedure under Order 41 Rule 27 of the Civil Procedure Code the first appellate court took the document produced by the respondent on record and has passed his finding on this unsubstantiated document without the document being duly proved in trial, cognizance cannot be taken of such an unregistered document. Repeating the averments made in the memo, the learned counsel has requested for this appeal to be allowed and the relief asked for be granted. On the other hand, the learned counsel for the respondent has vehemently argued that the unregistered sale deed as per section 49 of the Registration Act can be seen for collateral purposes. Possession of the disputed land has always been with the respondent, therefore, the first appellate court has rightly come to the conclusion that the suit for permanent injunction cannot be decreed without possession and has thus rightly set aside the decree passed by the trial court. The learned counsel has further argued that the document has duly been taken on record and as per the judgment reported in 2003 (1) RRT 273, this document can be read legally by the first appellate court. The learned counsel has further reiterated that on account of oral evidence produced in the trial court also it is proved that the possession of the disputed land is with the respondent and not with the appellants. Inter-alia, the learned counsel has requested for this present second appeal to be dismissed and the judgment/ decree passed by the first appellate court be upheld.
- 4. From a perusal of the record and the file it is clear that the present appellants had filed a regular revenue suit before the trial court under section 88 and 188 of the Act stating that the respondent was creating disturbances in the possession of their khatedari land bearing khasra No. 9 min area 1 bigha 2 biswa, khasra No. 9 min measuring 5 bigha situated in village Gopalpura. The respondent forcefully wants to usurp the khatedari land of the present appellants. On the other hand, respondent has come out with the case that the disputed land was sold to him through an agreement to sale by the husband/ father of the present appellants i.e. Bajranga. The possession of the disputed land is with the respondent. The present revenue suit may be dismissed as such. Before the trial court this revenue suit was contested and three issues were framed, evidence was led and documents were produced. After following due procedure of law, the learned trial court came to the conclusion that the appellants (plaintiffs) have succeeded in proving their suit and therefore, a decree of permanent injunction was

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passed against the respondent. Thereafter the respondent filed the first appeal before the learned Revenue Appellate Authority, Sawai Madhopur. During the course of proceedings he produced a document purported to be the agreement to sale dated 3.5.1988 whereby Bajranga is supposed to have sold the land to the respondent for a consideration and had also given the possession of the disputed land. The learned first appellate court on the basis of this document and on the basis of reading the evidence produced before the trial court reversed the finding of the trial court and held that as the possession of the disputed land is with the respondent, therefore, the present appellants are not entitled for grand of permanent injunction against the respondent. From a perusal of the record, it is clear that a document before the first appellate court can only be taken on record following the provision of Order 41 Rule 27 of the Civil Procedure Code and the law laid down in this behalf by the Hon'ble Supreme Court in 'Union of India Vs. Ibrahimuddin' 2012 (8) SCC 148 has to be followed. If a document is taken on record by an appellate court then the chance of rebuttal also has to be given to other party. The learned Revenue Appellate Authority has not followed these principles in the appeal before him. The trial court has given an issuewise reasoned judgment and has held that as per the oral evidence also the possession of the land is with the present appellants. The first appellate court without giving any cogent reason, without giving an issuewise finding has reversed this factual proposition as propounded by the trial court without any basis. It is clear that a gair khatedar cannot as par surling R Rb 1989 ( 620 forwards) 1912 transfer his land to another. In the present case when the purported transfer dated 3.5.1988 of the land is shown to be done, the land was in the possession of the said Bajranga as a gair khatedar. Therefore, the said Bajranga had no legal right to transfer the land. As far as section 49 of the Registration Act is concerned, the Hon'ble Supreme Court recently in Suraj Lamps Vs. State of Haryana (2012 (1) SCC 656) has laid down proposition that an unregistered document can only be looked into for the partial purpose of section 53-A of the Transfer of Property Act in view of section 49 of the Registration Act, but first of all the said document has to be duly proved to have been executed. In the present case the said document was never produced before the trial court by the respondent, therefore, there was no occasion for this document to have been duly proved. Just by placing a document before the first appellate court it cannot be held without due trial that such document is proved. Therefore, it is amply clear that the impugned judgment/ decree passed by the learned Revenue Appellate

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Authority is factually and legally not in consonance with law. The learned Revenue Appellate Authority following ditto lines has also added that accordingly entry be made in the revenue record, whereas there was no occasion for him to have passed this said order on ditto lines. Therefore, in toto the learned Revenue Appellate Authority's judgment/ decree is factually and legally unsustainable. The judgment forwarded by the respondent in the facts and circumstances of this case is not applicable, as the judgment is based on the provisions of Order 41 Rule 27 of the Civil Procedure Code, whereas the provision of Order 41 Rule 27 of the Civil Procedure Code have not been followed by the first appellate court. The judgment/ decree passed by the trial court is well reasoned and has been passed after following due procedure of law and needs no interference. In consequence following orders are hereby passed:-

This second appeal preferred by the appellants before the Board of Revenue under section 224 of the Act is hereby allowed. The impugned judgment/ decree passed by the learned Revenue Appellate Authority, Sawai Madhopur dated 19.11.2005 is hereby set aside and consequentially the judgment/ decree passed by the trial court i.e. Assistant Collector, Sawai Madhopur camp Khandar dated 28.4.2005 is hereby upheld.

Pronounced.

(Sanjay Kumar) Member

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(Ashlaq) Wassain) Member 18-11-2015

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