

W/R

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal Decree/T.A./2317/2008/Jaipur

1- Ghanshyam

2- Gopal Lal

Ss/o Gangaram Caste Brahmin, r/o village Patan, Tehsil
Bassi, District, Jaipur

----- appellants

Versus

1- Govindram

2- Kaluram

3- Girdhari Lal

4- Ramu Ram

Ss/o Jhootha Ram Caste Meena, r/o village Lalpura, Tehsil
Bassi, District, Jaipur.

----- Respondents

Division Bench

Shri Moolchand Meena, Member

Shri Rajendra Singh Chaudhary, Member

Present:-

1- Shri Hanuman Sharma, Advocate for appellants

2- Non respondents absent.

Judgment

Date:- 20-06-2013

1- This 2nd appeal, under section 224 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as 'the Act of 1955') has been preferred by the appellants against the judgment dated 24-12-2007 passed by Revenue Appellate Authority, Jaipur.

2- Brief and relevant facts of the case, leading to the present appeal, are that plaintiff/respondents filed a suit for partition of holding and permanent injunction in the court of Assistant Collector (I), Jaipur (Trial Court) with averments that they are recorded khatedar and tenants in possession of the 1/3rd share in the disputed land admeasuring 17 Bigha 07 Biswa.

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Defendant/respondents are recorded khatedar of $2/3^{\text{rd}}$ share in the land in question. The Trial Court, by its decision dated 22-09-1994 accepted the suit and issued orders to the Tehsildar, Bassi to prepare proposal for partition of the land in consonance of recorded share and possession of the parties. In compliance of decision dated 22-09-1994, the decree was drawn up by the Trial Court on 30-09-2002 in response to the plaintiffs' application dated 19-02-2002. In compliance of decree dated 30-09-2002, no notices were given to the plaintiffs and partition proposal was prepared by the Patwari on 31-01-2006 on the back of the plaintiffs. The plaintiffs were given only 1.21 hectares of land which was less by 0.33 hectares than $1/3^{\text{rd}}$ share of the plaintiffs. The Trial Court on the basis of this defective partition proposal, passed final decision of partition on 20-03-2006 and, on request of the plaintiffs, final decree of partition was drawn up on 30-03-2007. Aggrieved by this decree dated 30-03-2007, the plaintiffs/appellants filed first appeal in the Court of Revenue Appellate Authority, Jaipur (first appellant court), which was dismissed on 24-12-2007. Therefore this second appeal has been filed by the plaintiff/appellants against First Appellate Court's decision dated 24-12-2007.

3- The respondent/defendants in spite of information, did not appear in the Board, therefore ex-parte arguments of the learned counsel for the appellants were heard by us on 03-06-2013 at circuit bench camp Jaipur.

4- The learned counsel for the appellants, repeating the contents of appeal-memo, has contended that partition proposals were prepared by the patwari on the back of the appellants. The Tehsildar should have gone on the site after issuing notices to the plaintiff/appellants, which was not done, as such, partition proposal prepared by the patwari were against rule 18 to 21 of Rajasthan Tenancy (Board of Revenue) Rules, 1955. Further the learned counsel has argued that plaintiff/appellants were recorded khatedar of $1/3^{\text{rd}}$ share of the land in question, but only 1.21 hectare of total 4.39 haectare land has been given to the plaintiffs, which is less by 0.33 hectare than their actual share. The Trial Court has not given any opportunity of hearing to the plaintiffs before passing final decision dated 20-03-2006. The case was listed on 22-02-2006 for arguments on the partition

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proposal, but no such arguments were heard and final decision was passed by the Trial Court on 20-03-2006. It has also been contended by the learned counsel that First Appellate Court has dismissed our appeal on limitation, whereas the appeal was within limitation from the date of issuing the decree dated 30-03-2007. It has been requested by the learned counsel that the appeal be allowed, the decision dated 24-12-2007 passed by the Revenue Appellate Authority, and decision dated 20-03-2006 and decree dated 30-03-2007, being in contravention of mandatory legal provisions and in utter ignorance of important facts of the case, deserves to be set aside. Partition proposals should be prepared afresh after affording proper opportunity of hearing to the parties.

5- We have given a thoughtful consideration to the contentions made by the learned counsel for the appellants and have gone through the record and the impugned order available in the file.

6- The record available in the files of both the lower courts reveal that preliminary decision of the suit for partition was passed by the Trial Court on 22-09-1994 and, on the request of the plaintiffs, preliminary decree of partition was issued on 20-09-2002, i.e. after about 8 years of the decision. Thereafter, partition proposals were prepared by the Patwari on 31-01-2006, which is after about more than 11 years of the decision and after more than 3 years of the decree. There is nothing on the record to show that any notice of site inspection and partition proposal preparation was given to the parties by the Tehsildar or patwari. After receiving partition proposal, the file was listed on 24-02-2006 for arguments on partition proposal. But the order sheet of the Trial Court does not reveal whether any arguments of the parties were heard or not. Final decision of partition was passed on 20-03-2006 and the final decree of partition was drawn up on 30-03-2007, which is after about 12 months of the decision dated 20-03-2006. Though it has been recorded on order sheet dated 20-03-2006 that both the parties have given consent on partition proposal, but neither any letter of consent is there on the file nor there is any signature of the parties or their counsels on order sheet to prove such consent. Therefore fact of parties consent on partition proposal

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is not established. Thus, in our considered opinion, the Trial Court has committed multiple irregularities in this case. Final decree of partition was not prepared in time, whereas it was mandatory for the court, in pursuance of section 33 read with order 20 rule 6-A of the Civil Procedure Code, 1908 within 15 days from the date on which the judgment was pronounced.

7- on merits too, the final decision and decree of the Trial Court does not deserve to be maintained. Undoubtedly, the plaintiff were recorded khatedars of 1/3rd share of the land in question, and accordingly they should have got at least 1.46 hectares out of total land admeasuring 4.39 hectares. But the Trial Court, vide its judgment dated 20-03-2006 and final decree dated 30-03-2007, has given only 1.21 hectares of land to the plaintiffs which is evidently less than their recorded share. Therefore, the plaintiffs preferred first appeal before the Revenue Appellate Authority, but the Revenue Appellate Authority has also failed to appreciate this aspect of the case. Firstly the Revenue Appellate Authority has treated the appeal barred by limitation from the date of decision dated 20-03-2006. As mentioned hereinabove, the decree was issued by the Trial Court on 30-03-2007 and the first appeal was filed by the plaintiffs on 19-04-2007. Though there is provisions in Order 20 rule 6-A (2) Civil Procedure Code, 1908 that an appeal may be preferred against the decree without filing a copy of the decree and in such a case the copy of the judgment shall be treated as the decree, but in our view, **when the court of justice has remains badly negligent in discharging its statutory duties of preparing decree within stipulated time, and preliminary decree is prepared after 8 years and the final decree is prepared after 12 months, and that too on specific request of the party, the plaintiff should not have been condemned by the First Appellate Court on technical issue of limitation.** Looking to the peculiar facts of the case and evident negligence on the part of the Trial Court, limitation should have been reckoned from date of the final decree, and accordingly First Appellate Court should have treated the appeal within limitation.

8- On merits, the First Appellate Court has observed that difference in area land given to the plaintiffs in final decree

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and their recorded 1/3rd share is due to good and bad quality of land. But there is no such mention in the Trial Court's decision or in the partition proposal regarding good or bad quality of land. The rent distribution is also not in proportion of parties recorded share in the disputed land. So it is not acceptable that plaintiffs have been given less land than their share on the basis of quality of land.

9- In view of discussions and observations recorded hereinabove, this court is of the considered view that the Trial Court has committed illegality in passing final decision dated 20-03-2006 as enumerated in foregoing paras. The First Appellate Court has also committed legal and material error in endorsing such an erroneous decision. Therefore, decision of both the lower courts deserve to be set aside, and the case is fit for remanding to the Trial Court to decide it afresh in accordance with observations of this court.

10- Consequently, the second appeal in hand is hereby allowed. The Trial Court's decision dated 20-03-2006 and decree dated 30-03-2007 as well as First Appellate Court's decision and decree dated 24-12-2007 are set aside. The case is remanded to the Sub-Divisional Officer, Bassi with directions to get the partition proposal prepared through the Tehsildar concerned after giving prior notice for site inspection to both the parties. The proposals shall be prepared in accordance with rule 18 to 21 of the Rajasthan Tenancy (Board of Revenue) Rules] 1955. The Sub-Divisional Officer, thereafter pass final decision and decree of partition after providing proper opportunity for hearing to both the parties.

Pronounced in the open Court.

(Rajendra Singh Chaudhary)
Member

(Moolchand Meena)
Member