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IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal Decree/TA/6451/2011/Karauli

2. Appeal Decree/TA/6452/2011/Karauli

1. Shri Hari Singh son of Shri Kirodi (deceased) through his legal representative:

1/1, Mst. Pushpa daughter of Shri Hari Singh wife of Shri Bhim Singh, Jat resident of Lahchoda Tehsil Hindaun City Distt. Karauli

2. Shri Hargovind son of Shri Bhawani Singh, Jat resident of Somala Ratra, Tehsil Hindaun City, Karauli.

...Appellants

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1. Shri Balgovind son of Shri Bhagwat, Jat resident Somala, Tehsil Hinduan City District, Karauli
2. Shri Ghamandi Singh son of Smt. Rampyari wife of Shri Ghamandi Singh
3. Shri Tejbhan Singh son of Smt. Rampyari wife of Shri Ghamandi Singh
4. Shri Shankar Singh son of Smt. Rampyari wife of Shri Ghamandi Singh
5. Mst. Premvati wife of Shri Bane Singh & daughter of Smt. Rampyari Jat r/o Mehganva Tehsil Kumher District Bharatpur.
6. Mst Shakuntala wife of Shri Ramhet & daughter of Smt.Rampyari Jat r/o Jaghina, District Bharatpur.
7. Mst. Lajjawati wife of Shri Adal Singh & daughter of Smt. Rampyari Jat r/o Khohara, Post Abreni District Mathura (U.P.)
8. Mst.Sheela wife of Shri Babu Singh & daughter of Smt. Rampyari Jat resident of Nangla Tehriya Tehsil Roopvas District Bharatpur
9. Mst. Virma wife of Shri Hakim Singh & Daughter of Smt. Rampyari Jat resident of Nangla Gharsoni Tehsil Veir District Bharatpur
10. Mst. Geeta wife of Shri Subhash Singh & daughter of Smt. Rampyari Jat resident of Sahna, Tehsil Roopvas, District Bharatpur.

.....Respondents

D.B.

Shri Bajrang Lal Sharma, Member
Shri D.R.Meena, Member

Present:-

Shri N.L.Pokharna, Counsel for the appellants,

JUDGMENT

Dated 30.9.2011

The above captioned two appeals have been filed under Sec. 224 of Rajasthan Tenancy Act, 1955 (In short 'The Act') by the appellants being aggrieved by the judgment and decree dated 18.8.2011 passed by Revenue Appellate Authority, Sawai Madhopur appeal No.145/2009 & 146/2009. The parties, subject matter and the legal issues involved in these appeals are similar

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therefore, both the appeals are disposed of by this single order. The copy of the judgment will be kept on each file.

2. The brief facts of this case are that two regular suits were filed under section 88 and 188 of the Act in the Court of Sub Divisional Officer, Hindaun. The first suit (Suit No.220/1999) filed by Shri Balgovind (respondent No.1) against Shri Hargovind(appellant) and legal representatives of Smt. Rampyari. The Second Suit (Suit No.243/99) was filed by Shri Hari Singh and Shri Har Govind (Appellants) against Shri Bal Govind & legal representatives of Smt. Rampyari (Respondents/defendants). The land involved in both the suits was khasra no.172 measuring 0.40 hectare (Old khasra no.156 area 2 bighas) of village Somala Ratra (Tehsil Hindaun). The trial court consolidated both the suits and framed 09 issues in this case. The Trial Court finally decreed the suit filed by Shri Bal Govind on 23.9.2009 and declared him khatedar of land in question and restrained the appellants for not interfering with the possession of Shri Bal Govind. The court dismissed the suit filed by the appellants (Suit No.243/99) by the same judgment. The appellants filed two appeals before the R.A.A., Sawai Madhopur but the appellate Court dismissed both the appeals filed by the appellants on 18.8.2011. Being aggrieved by the judgment and decree passed by the R.A.A. the above mentioned two appeals have been preferred in this court.

3. Heard the learned counsel for the appellants on admissibility of these appeals.

4. The learned counsel contended that the judgment and decree passed by the R.A.A., Sawai Madhopur is illegal, perverse and in violation of the basic provisions of the Civil Procedure Code. He submitted that the learned R.A.A. did not comply with the provision of Order 41 rule 31 of the C.P.C. He argued that as per the provisions of the Code the first appellate court was duty bound to give explicit finding on each issue of the case after analyzing the evidence produced therein. He stated that the appellate court has erred in summarily disposing of appeals while ignoring the basic provision of law. The learned counsel also cited the following pronouncements in support of his arguments:

2001 RBJ P 603
2001(2) RRT P 721
1994 RBJ P 50
2001 RBJ P 188
2004 RBJ P 329

5. The learned counsel finally argued that the appeals be admitted and the compliance of the judgment & decree passed by both the lower courts be stayed till final decision of the appeals.

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6. We gave serious thought to the arguments advanced by the learned counsel of the appellants and very carefully perused the record available on files. We also considered the case laws referred by the learned counsel for the appellants.

7. The judgment of the trial court dated 23.9.2009 reveals that after consolidating both the suits, the trial court framed 09 issues in Suit No.220/99. The trial court has given lucid inferences/findings on every issue. The court has also analyzed the evidence produced before it.

8. It is evident from the judgment of the trial court that khasra no.172 measuring 0.40 Hectare (old khasra No.156 area 2 bighas) was recorded in khatedari of Mrs. Ram Pyari in the jamabandi (Svt. 2052-55) of village Somala Ratra. This disputed land was sold to Shri Bal Govind by Smt. Ram Pyari by a registered sale deed on 3.9.1998 in Rs.62,000/-. The mutation in compliance of this sale-deed could not be sanctioned as there was some dispute of possession. The trial court has inferred that since the land in question was recorded in name of Shri Ramjilal son of Shri Lohare and after his death the land in question was recorded in name of Smt Ram Pyari, (Sister of Shri Ramjilal). This has also been held by the trial court that names of the appellants (Shri Hari Singh, Shri Har Govind et al) were never recorded as khatedar in jamabandi at any given time. The appellants who filed suit on the basis of adverse possession on khasra no.172 measuring 0.40 Hectare (Old khasra No.156 area 2 bighas) was dismissed by the trial court as their continuous and hostile possession on the disputed land was not proved.

9. We carefully went through the judgment of the R.A.A. The appellate Court has unequivocally concurred with the findings of the trial court and examined the judgment of the trial court at length. The court has also categorically observed that the appellants/plaintiffs (in Suit No.243/99) could not prove their uninterrupted hostile possession on the land in question. The appellate court has scrutinized the judgment of the trial court on the issues raised before it relating to fact & law. The appellate court has given clear findings on all the issues raised in the appeals. Therefore, it is not justified to state that the R.A.A. has cursorily dismissed the appeals.

10. The learned counsel has raised a legal issue that the R.A.A. has not complied with the provisions of O.41 rule 31 given in the C.P.C. This court finds it appropriate to cite this provision verbatim here for ready reference:

"Order 41 Rule 31:

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Contents, date and signature of judgment.- The judgment of the Appellate Court shall be in writing and shall state---

- (a) the points for determination;
- (b) the decision thereon;
- (c) the reasons for the decision; and
- (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled;

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

11. The perusal of the above provision makes it clear that the appellate court shall mention the points of determination and decisions as thereon in its judgment. If we go through the impugned judgment of the R.A.A. we find that it rightly gives its findings on all the points raised by the appellants. In this regard the Hon'ble Apex Court has held in :

Thakur Sukhpal Singh Vs. Thakyr Kalyan Singh & Ors. (AIR 1963 SC 146) that the provisions of Rule 31 of Order 41 CPC should be reasonably construed and should be held to require the various particulars mentioned under Rule 31 to take into consideration. The Court placed reliance upon its earlier judgment in Sangram Singh Vs. Election Tribunal, Kota AIR 1955 SC 425, wherein it had observed that the procedural law has been designed to facilitate justice and too technical consideration of the Section that leaves no room for reasonable elasticity of interpretation, should therefore, be guarded against, as the same may frustrate the cause of justice.

The same view has been taken in Girijanandini Devi Vs. Bijendra Narain Choudhary, AIR 1967 SC 1124, the Apex Court has observed that when the Appellate Court agrees with the view of the trial Court in evidence, it did not re-state the effect of evidence or reiterate reasons given by the trial Court. The expression of general agreement with reasons given by the court's decision, which is under appeal, would ordinarily be adequate.

The Apex court has also held in G. Amalorpavam Vs. R.C. Diocese of Madurai, (2006) 3 SCC, 224, that the substantial compliance of the provisions of Order 41 Rule 31 is enough, in case, it is made out from a bare reading of the judgment that, while making substantial compliance of the said statutory provisions, justice has not suffered. Where entire evidence has been considered and discussed in detail, the findings are supported by reasons, even though it has not been done after framing the points, the order is good.'

12. In these appeals, the lower appellate court has concurred with the judgment of the trial court. It has not dissented with the findings of the trial court. The Appellate Court in its impugned judgment has explicitly manifested its opinion on possession and declaration of khatedari rights pertaining to the disputed land. This court is aware that the judgment of the Larger Bench of this court (2011(2) RRT 721) has been stayed by the High Court. In this particular case, the uninterrupted hostile possessions of the appellants have not been proved. The trial court or the appellate court did consider their evidence but their hostile possession for the period of more than 12 years could not be established.

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The judgment of the trial court has not taken any support from the judgment of the Larger Bench of this court. The appellate court has also just mentioned it.

13. We also considered the case laws referred by the learned counsel of the appellants. It is very pertinent to mention here that all the four case laws referred by the learned counsel relate to such a situation where the appellate court reversed/varied the judgment of the trial court but failed to accord reasons or grounds of reversal. In this case the appellate court has shown full conformity with the judgment of the trial court after analyzing the evidence available on file. Therefore, in our humble opinion the case laws referred by the learned counsel do not come to his succor.

14. As discussed above, the judgment & decree of the lower appellate court does not suffer from any legal infirmity. Also the judgment & decree of the trial court are based on findings on all the issues framed in this case. Therefore, this court is not inclined to interfere with the concurrent findings of the courts below. Consequently, the appeals fail and are dismissed in limine.

15. Pronounced in the open court.

ls
30.9.2011
(D.R. Meena)
Member

ls 30.9.2011
(Bajrang Lal Sharma)
Member