

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

**Revision/TA/5356/2013/Jaipur.**

Lali daughter of Kana wife of Kalu Ram caste Balai resident of village  
Bhadsiya Tehsil Parbatsar Distt. Nagaur.

...Petitioner.

Versus

1. Rampyari widow of Gordhan
2. Kanta minor daughter of Gordhan
3. Kali minor daughter of Gordhan  
Both through guardian mother Rampyari widow of Gordhan caste  
Balai resident of village Mamana presently residing at Bobas Tehsil  
Phulera Distt. Jaipur.
4. Nandu Devi daughter of Kana wife of Panchu Ram caste Balai  
resident of village Harsauli Tehsil Maujmabad Distt. Jaipur.
5. Chhoti daughter of Kana wife of Sharwan Lal caste Balai resident of  
village Bhadsiya Tehsil Parbatsar Distt. Nagaur.
6. Jhela daughter of Kana wife of Ratan Lal caste Balai resident of  
Suvakheri Tehsil Maujmabad Distt. Jaipur.
7. Ramchandra son of Mohan Lal caste Balai resident of Manpuriya  
Tehsil Kishangarh presently residing at Bobas Tehsil Dudu Distt.  
Jaipur.
8. Sub-Registrar, Dudu.
9. State of Rajasthan through Tehsildar, Maujmabad.

...Non-petitioners.

**S.B.**

**Shri Bajrang Lal Sharma, Member**

**Present:-**

Shri R.P. Sharma, counsel for the petitioner.

Shri Rakesh Arora, counsel for the non-petitioners.

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Date: 2.12.2013

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

This revision petition has been filed under section 230 read with section 221 of the Rajasthan Tenancy Act, 1955 (in short 'the Act') being aggrieved by the order passed by Revenue Appellate Authority, Ajmer on 10.7.2013 and 2.9.2013 in appeal No. 212/13.

2. The factual matrix of the case in hand is that the petitioner and non-petitioners No. 1 to 4-plaintiffs filed a regular suit under section 88 and 188 of the Act before Assistant Collector, Dudu (Distt. Jaipur). Along with the regular suit, an application under section 212 of the Act was also filed. The learned trial court passed an ad-interim order on 27.9.2012 whereby the non-applicants were restrained not to alienate and mortgage the disputed land and maintain status quo of record and possession till next date of hearing. Being aggrieved by the order passed by the learned trial court, an appeal was preferred by Rampyari, the non-petitioner No.1 and others before Revenue

Appellate Authority, Ajmer on 10.7.2013. The learned appellate court stayed the order on 10.7.2013 passed by the learned trial court dated 27.9.2012 in this time barred appeal till next date of hearing. Being aggrieved by the order passed by the impugned appellate court, this revision petition has been preferred before this court.

3. Heard the learned counsels of the parties.

4. The learned advocate for the petitioner contended that the petitioner is the daughter of Kana, the deceased tenant, who had four daughters and one son but after death of Kana, the tenant, mutation was sanctioned in favour of the non-petitioners No. 1 to 3 who were widow and daughters of Gordhan son of Kana. He further contended that the petitioner being natural daughter of the deceased tenant, has one-fifth share in the disputed land as inheritor of Kana's tenancy land and the order passed by the trial court on 27.9.2012 on her application filed under section 212 of the Act was in larger interest of justice but the learned appellate court arbitrarily interfered with the ad-interim order passed by the trial court and stayed it on 10.7.2012 which resulted in sale of the disputed land. He further contended that the impugned order passed by the appellate court was passed just to capriciously enrich the non-petitioners whereas the order passed by the trial court was in larger interest of justice by not putting either party to irreparable loss. The learned advocate urged the court that the learned appellate court did not consider the mandatory issue of section 5 of the Indian Limitation Act and in violation of the explicit legal provision passed the impugned order which deserves to be quashed and set aside.

5. The learned advocate for the non-petitioner No. 1 contended that the impugned order passed by the learned appellate court is an ad-interim order which cannot be termed as a case decided, therefore, this revision petition is not maintainable before this court. He also argued that all the sisters of late Gordhan son of Kana (including the petitioner) executed a release deed in his favour, therefore, the petitioner has no right, title in the disputed land after releasing her share through the release deed. He finally urged the court that the revision petition has been filed just to harass the non-petitioners No. 1 to 3, therefore, be dismissed.

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

7. Indisputably, a document of release deed has been produced before this court dated 12.1.2006 which has also been signed by Lali, the petitioner. In this registered document of release it has been explicitly mentioned that after death of late Kana, their father, the entire land of his tenancy situated in village Mamana Tehsil Maujmabad will devolve solely on Gordhan son of Kana who is their brother. This registered release deed has been signed by Nandu Devi, Chhoti Devi, Lali Devi and Jhamari Devi daughters of Kana. Besides this fact, the bare perusal of the interim order passed by the trial court on 27.9.2012 evidently makes it clear that it was an ad-interim order and was passed in larger interest of justice. In ordinary course the appellate court should not have entertained the time barred appeal of the impugned order dated 27.9.2012 which was passed in larger interest of justice restraining both the parties to maintain status quo of record and possession till next date of hearing. The perusal of the impugned order passed by the learned appellate court on 10.7.2013 and 2.9.2013 manifestly reveals that the appeal filed before the appellate court was time barred and the learned appellate court had no jurisdiction to pass an interim stay order on the first date of hearing without giving an opportunity of hearing to the respondents. There is obviously an explicit mandatory provision for the court to comply with before passing any stay order as per Order 41 Rule 3-A of the Civil Procedure Code. In view of this court, the order passed by the appellate court is ex-facie illegal and beyond jurisdiction.

8. This court finds it appropriate to observe here that the appellate court should abstain from interfering with the orders passed by the trial courts which are in larger interest of justice and ad-interim in nature. The appellate courts have been created to dispense justice when the trial court has committed a manifest error and misused its jurisdiction in an arbitrary and capricious manner. In this particular case there was hardly any need to interfere with the order passed by the trial court at the stage of appeal. In view of this court the appellate court misused its jurisdiction and unnecessarily complicated the matter which resulted in sale of the disputed land.

9. This court is mindful of this fact that the order passed by the appellate court is an ad-interim order and does not fall in the category of a case decided and in ordinary case such interim orders should not have been interfered with by this court in jurisdiction provided under section 230 of the Act. Since this petition has been filed under section 230 read with section 221 of the Act, therefore, looking to the extraordinary facts of this case this court finds it appropriate to invoke its jurisdiction under section 221 of the Act. In backdrop of circumstances, the revision petition filed by the petitioner is hereby accepted and the impugned order passed by the appellate court on 10.7.2013 and on 2.9.2013 are quashed and set aside. The order passed by the trial court on 27.9.2012 is upheld. The trial court is directed to dispose of the application filed before it under section 212 of the Act within next sixty days on merits.

Pronounced.

(Bajrang Lal Sharma)  
Member