

W.R.

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

APPEAL NO.6165/2006/TA/KARAULI

Mandir Shri Govind Devji Maharaj, Virajman Anaj Mandi,
Karauli, through Trustee and Manager Shri Tej Narain S/o
Shri Hajari Lal Agarwal and Shri Nirmal Kumar S/o Shri Hari
Charan Lal Jindal, Purani Truck Union, Karauli.

... Appellant.

Versus

1. Smt. Narendra Kumari widow of Shri Surendra Pal
2. Krishna Chandra S/o late Shri Surendra Pal
Both residents of Bhanwar Niwas, Karauli.
3. Himmat Lal S/o Shri Sawant Pal, by caste Rajput,
R/o Karauli.

... Respondents.

Division Bench

**Shri Sanuj Kulshrestha, Member
Kamla Alariya, Member**

Present :

Shri N.K. Goyal : counsel for the appellant.
Shri Ajeet Lodha : counsel for the respondents.

Dated : 27/2/2026

J U D G M E N T

(I) GENESIS OF APPEAL :-

This second appeal has been filed under section 225 of the Rajasthan Tenancy Act, 1955 (hereinafter to be referred as "the Act") against the order passed by learned Revenue Appellate Authority, Sawaimadhopur dated 14.6.2006 in Appeal No. 159/2003.

(II) BRIEF FACTS :-

1. The plaintiff/ appellant filed a suit for permanent injunction in the trial court stating that the disputed land bearing khatra Nos. 5322 area 2


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biswa and 5323 area 13 biswa situated in Karauli belongs to the Mandir Murti and the Panch Agrawalan, the managers of the plaintiff temple have authorized then to take legal action on the plaintiff's behalf. The Settlement Department illegally removed the plaintiff's name from the Khatedari and transferred it to the defendant. On 16.6.1989, the defendant denied the plaintiff's land rights. The defendant is a rank Tracepasser. The land was Araj Muafi and Khudkasht of the plaintiff, which was wrongly got entered by the defendant in his name in settlement. Mutation No. 1045 has been confirmed in favour of the plaintiff.

2. In reply to the plaint, the defendants have declared the plaintiff's claim as false and have said that neither the land was given to the temple for cultivation nor was the land confiscated. The land was given to the Panch Agrawals for cultivation and the plaintiff has no connection with the land. The defendants stated that the land does not belong to Muafi, they have been cultivating the land before 1955 and they have acquired the land in question through a registered sale deed, on the basis of which the land came in their name during settlement. The Sub Divisional Officer, Karauli vide its judgment & decree dated 01.4.2003 framed 10 issues and gave the finding that the burden of proving this suit lies on the defendants. The plaintiff is essentially a minor, and the purchase and sale of land held by a minor is ab initio void and the defendants do not acquire any rights from such illegal purchase. Hence, the issues framed are decided against the defendants. The trial court ordered to give possession to the plaintiff by evicting the defendants from disputed land and the defendants were ordered through permanent injunction not to do or get any construction or any other work done on the disputed land till the eviction is done. Against the judgment & decree of Sub Divisional Officer, Karauli dated 01.4.2003, the defendant filed first appeal before the appellate court.

3. The Revenue Appellate Authority vide order dated 14.6.2006 partially accepted the appeal and remanded the matter quashing the judgment & decree dated 01.4.2003 passed by Sub Divisional Officer, Karauli directing the trial court to re-examine and decide the matter under the relevant provisions of Order 20 Rule 5 of the Code of Civil Procedure.



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Being aggrieved against the appellate court's order dated 14.6.2006, this second appeal has been preferred by the plaintiff/ appellant before the Board.

(III) ARGUMENTS OF THE COUNSELS :-

1. The learned counsel for the appellant reiterated the facts mentioned in the appeal memo and argued that the learned Revenue Appellate Authority has not given issue-wise decision and the order passed by it is against the law and facts available on record.

2. The learned advocate contended that the first appellate court has allowed the first appeal on the ground that the trial court has not given the decision on each issue separately as per the provisions of Order 20 Rule 5 CPC. This finding is against the record. The appellate court has committed an error of jurisdiction in passing the impugned order. Therefore, the advocate for the appellant requested to allow the present second appeal and set aside the impugned order dated 14.6.2006 passed by learned Revenue Appellate Authority, Sawaimadhopur.

3. In support of his arguments, advocate of the appellant submitted judicial pronouncements, viz. :-

- a. RBJ (8) 2001 page 75
Jagdish Vs. Shyokaran
- b. RLR 2003 (3) page 152
Prahlaad Rai Dhand Vs. Smt. Savitri Devi

4. Per contra, learned counsel for the respondents argued that the suit has been filed by the Manager of the Mandir, but he was not managing the temple nor was he the priest of the temple, hence he has no right to make any claim on behalf of the temple. He argued that the land does not belong to Govind Devi Ji of the temple and the temple has no right over the land in any way because the land is not a Muafi land. Mutation No. 1045 has been made in favour of the plaintiff/ appellant. Mutation is a fiscal proceeding, not any rights can be acquired through such proceedings, hence mutation cannot be made the basis for the plaintiff's right to khatedari.



5. The argument of the advocate respondents has been that they have acquired the land in question through a registered sale deed and the entries made in the name of the seller were recorded in their name in the revenue records during settlement. Hence, the respondents have been in possession of the land in question under the legal provisions. The issues framed by learned trial court were not made on the basis of documentary & oral evidence, rather these had to be made according to the provisions of Order 20 Rule 5 and Order 14 Rule 2 CPC.

6. The advocate of the respondents further contended that the learned first appellate court has passed reasonable order remanding the matter to the trial court to re-examine the case and decide it under the relevant provisions of Order 20 Rule 5 of the Code of Civil Procedure. Hence, he prayed to dismiss the present second appeal and upheld the order of the learned first appellate court dated 14.6.2006.

(IV) DISCUSSION OF THE COURT :-

1. Before dwelling upon the discussion of this court, it is worthwhile to mention that the original second appeal petition papers are torned out in the file, except the original cause title and the affidavit of second appellant Tej Narain. Therefore, during the course of arguments, with the consensus of both the parties through advocate, a copy of second appeal petition (in white papers) was placed on record, which is to be treated for all practical purpose as the petition of second appeal.

2. The scope of second appeal is no more *res integra* as provided under section 225 of the Rajasthan Tenancy Act. For the purpose of clarity, the same is being reproduced hereunder :-

"225. Appeal from orders —

(1) An appeal shall lie from the final order passed on an application on the nature specified in the Third Schedule and from such other orders as are mentioned in Section 212 of this Act and in Section 104 of the Code of Civil Procedure, 1908 (Central Act, V of 1908) —



- (i) to the Collector, if such order is passed by a Tehsildar,
- (ii) to the Revenues, Appellate Authority, if such order is passed by an Assistant Collector, a Sub-Divisional Officer or a Collector, and
- (iii) to the Board if such order is passed by a Revenue Appellate Authority.

(1-A) The provisions of sub-section (1) shall apply to all suits, applications or proceedings pending on the date of the commencement of the Rajasthan Revenue Laws (Amendment) Ordinance, 1975

(1-B) All pending appeals from orders other than those from which an appeal lies under sub-section (1) shall abate on the date of the commencement of the Rajasthan Revenue Laws (Amendments) Ordinance (Ordinance No. 13 of 1975).

(2) No appeal shall lie from any order passed in appeal under this section."

3. In the context of the disposal of the second appeal, the judgment of the Hon'ble Supreme Court in Inder Singh vs. State of MP [2025 INSC 382] provides necessary guidance :-

"We are of the opinion that the second appeal deserves to be heard, contested and decided on the merits..."

This judgment is also clearly supported by Section 227 of the Rajasthan Tenancy Act. For convenience, Section 227 is read as follows :-

"227. No decree or order to be reversed or modified for error or irregularity -

No decree or order shall be reversed or substantially varied, nor shall any case be remanded in appeal, on appeal, on account of any mis-joinder of parties or causes of action or any error or irregularity in any proceedings, not affecting the merits of the case."

4. Clearly, the prayer in the present second appeal is for setting aside the Order & Decree of first appellate authority- Revenue Appellate Authority, Sawaimadhopur dated 14.6.2006. Impugned order/ judgment is assailed on the ground that the finding given by the court of Revenue Appellate Authority regarding the judgment of trial court not being in tune with the provisions of Order 20 Rule 5 of the Code of Civil Procedure, is not factually correct. No other ground for assailing the impugned order has been taken in the second appeal petition. Apparently, a bare perusal of the



order of trial court reveals that trial court has framed 10 issues as on 13.8.2001. In spite of framing detailed issues, the judgment was rendered by trial court only on issues No. 1 and 2, collectively, issues No. 4 and 9A, collectively. All other issues were cursorily touched but not decided by discussing the evidence on record through proper analysis and factual appreciation. Technically, it cannot be said that the judgment was not delivered on all the issues; however, a bare perusal of the judgment also reveals that instead of discussing the facts on record and the evidences, the trial court proceeded to decide the issues No. 1 & 2 on its own conjectures & surmises, wherein it was assumed that any person who cultivates the agricultural land of perpetual minor would confer a presumption as to the cultivation for the perpetual minor only as a khudkasht. The trial court proceeded simply on the basis of mentioning the definition clauses, to declare the rights of parties. With regard to the locus standi and capacity of the persons represented at behest of the deity for which issue No. 4 was made; it was concluded that just because the defendant fails to produce any pleading or proof that the plaintiff does not have any interest contrary to the interest of perpetual minor, the issue was decided in favour of the plaintiff. This perse is *dehors* the settled legal proposition that plaintiff cannot take the benefit of the lacunas in defendants' case. It must stand on its own feet. The proposition of law has been reaffirmed in the catana of judgments. One such authoritative pronouncement is in the case of Union of India Vs. Vasani Cooperative Housing Society Ltd. [(2014) 2 SCC 269] wherein while dealing with dispute pertaining to revenue laws, Hon'ble Apex Court has held that :-

".....In our view, such an exercise was totally unnecessary. Rather than finding out the weakness of GLR, the courts ought to have examined the soundness of the plaintiff's case. We reiterate that the plaintiff has to succeed only on the strength of his case and not on the weakness of the case set up by the defendants....."

Therefore, in deciding above issue No.4, trial court has erred in relying upon the lacuna of defendant to question the locus and authority of plaintiff qua their rights in the suit which requires reconsideration on merits, in tandem with the discussions and observations of this court.

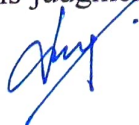

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5. Even otherwise as well, it is incumbent upon the trial court to decide upon all issues on merits and not cursorily touching upon the issues without proper appreciation of evidences and factual analysis. In this regard, the judgment of Hon'ble Supreme Court in Sathyanath & ors. Vs. Sarojamani [2022 LiveLaw (SC) 458] categorically provides that the non-compliance with the provisions of Order 14 Rule 2 read with Order 20 Rule 5 CPC would render the judgment as bad in law. For the reference, the relevant para 33 is being reproduced hereunder :-

"33. Keeping in view the object of substitution of sub-Rule (2) to avoid the possibility of remanding back the matter after the decision on the preliminary issues, it is mandated for the trial court under Order XIV Rule 2 and Order XX Rule 5, and for the first appellate court in terms of Order XLI Rules 24 and 25 to record findings on all the issues."

6. Further, an insightful look on the Order and Judgment of learned first appellate court reveals that the learned first appellate court also proceeds to deal with the above aspect in detail and has remanded the case back to the trial court. However, while doing so, the first appellate court has reflected observations upon certain factual aspects pertaining to Jamabandis and mutations, related to respondents/ respondents' interests which, this court feels, are not apt. However, for the purpose of present order, they deserve to be considered as nonest and the learned trial court may not be bound by them. In essence, learned trial court is free to evaluate the facts, evidences and record through proper appreciation and analysis applying its own judicial prudence as per law and in the interest of justice.

7. Be that as it may, apart from above observations as to factual omission qua the order of first appellate court, this court does not find any ground to interfere with the order of first appellate court. At the same time, the judgment & order of the trial court suffers from the vice of procedural irregularity and apparent flaws. It is also worthwhile to mention the judgment of the Hon'ble Rajasthan High Court cited by the appellant "Prahlaad Rai Dhand Vs. Smt. Savitri Devi" reported in RLR 2003 (3) page 152, which relies upon the judgment of Hon'ble Supreme Court in P. Puroshottam Reddy Vs. Pratap Steels Ltd. [(2002) 2 SCC 686]. The ratio of this judgment in Hon'ble Supreme Court's pronouncement reaffirms the



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power of a superior court to remand the matter back in the following words:-

"To wit, the superior court, if it finds that the judgment under appeal has not disposed of the case satisfactorily in the manner required by Order 20 Rule 3 or Order 41 rule 31 CPC and hence it is no judgment in the eye of law, it may set aside the same and sent the matter back for rewriting the judgment so as to protect valuable rights of the parties. An appellate court should be circumspect in ordering a remand when the case is not covered either by Rule 23 or Rule 23-A or Rule 25 CPC. An unwarranted order of remand gives the litigation an undeserved lease of life and, therefore, must be avoided."

8. In the light of above verdict of Hon'ble Supreme Court, an important aspect which escaped the eyes of learned trial court as well as learned appellate court is that the order of learned trial court dated 20.6.2001 under Order 32 Rule 11 whereby the present appellant was declared as Manager and next friend of Murti Mandir Deity (perpetual minor). The learned trial court has also skipped upon the appreciation of two documents pertaining to Omprakash and Mahesh Dalal wherein they have said that out of their plots, only a portion of land belongs to Murti Mandir for which they are agreeable to enter into any compromise with Panch Agrawalan (appellant and the plaintiff in the instant litigation). Apart from the factual appreciation, the learned trial court also fails to duly appreciate the nature and impact of khasra girdawari for Samvat 2010 to 2013 wherein along with appellants shown as tenants (in blue ink), the name of those through whom respondents claimed their title is also shown as sub-tenants (in red ink). This document has been exhibited before the court, but not appreciated appropriately.

9. Therefore, as per the Hon'ble Supreme Court's decision in P. Puroshottam Reddy Vs. Pratap Steels Ltd. (supra), the import of Order 41 Rule 25 CPC could be invoked as the learned trial court failed to determine the question/ questions of fact which in the opinion of this court were essential to the right decision of the suit upon merits.

10. It is true that the Order of first appellate authority Revenue Appellate Authority, Sawaimadhopur is also not based on points of consideration and analysis as mandated by Order 41 of the Code of Civil



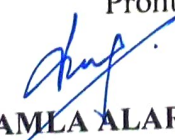
Procedure. But it is also to be appreciated that in this Order, a substantively procedural flaw was carved out in the order of the learned trial court and without discussing facts and their indepth appreciation (except to the extent discussed by this court in para (IV) 6 and 7), the impugned order dated 14.6.2006 was passed by the first appellate court Revenue Appellate Authority, Sawaimadhopur. As discussed earlier, the process of deriving conclusions and findings may be flawed or considered as irregularity in the order of Revenue Appellate Authority, but the conclusion and operative para do not call for any interference.

11. In the light of above discussion, perusal of the record and case file and upon careful consideration of the relevant judicial pronouncements, this court is of the opinion that the conclusion and operative part of the Order of learned Revenue Appellate Authority, Sawaimadhopur be kept intact, whereby the learned Sub Divisional Officer, Karauli was directed to rehear the matter and pass judgment on all the issues complying with the provisions of Order 14 Rule 2 and Order 20 Rule 5 of the CPC after proper appreciation of documentary & oral evidences as per law. Therefore, this second appeal deserves to be allowed partially and the matter is remanded back in tune with the discussions hereinabove to the learned trial court. Be it ordered accordingly.

ORDER

Consequent upon the discussion hereinabove, this court, after considering the factual matrix of this case and upon careful analysis of relevant law and authoritative judicial pronouncements, proceeds to declare that instant second appeal is partially allowed. The Order of learned Revenue Appellate Authority, Sawaimadhopur dated 14.6.2006 is upheld to the extent mentioned above and the matter is remanded back to Sub Divisional Officer, Karauli, with the direction to decide the matter expeditiously in accordance with law and procedure. This second appeal, is accordingly disposed off. Decree be drawn as per rule.

Pronounced in open court.


(KAMLA ALARIYA)
Member


(SANUJ KULSHRESTHA)
Member