
(2020) 01 RAJ CK 0154

In the Rajasthan High Court

Case No : Civil Writ Petition No. 15441 Of 2019

Bhanwar Lal And Ors

APPELLANT

Vs

Urban Improvement Trust, Udaipur, Through Secretary
Udaipur (Rajasthan) And Ors

RESPONDENT

Date of Decision : 23-01-2020

Acts Referred:

Rajasthan Land Revenue Act, 1956 — Section 91

Rajasthan Tenancy Act, 1955 — Section 88, 188

Land Acquisition Act, 1894 — Section 4

Code Of Civil Procedure, 1908 — Order 20 Rule 5, Order 41 Rule 24, Order 41 Rule 25

Citation : (2020) 01 RAJ CK 0154

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Ramit Mehta, Tarun Dudia

Final Decision : Dismissed

Judgement

This writ petition has been filed by the petitioners aggrieved against the orders dated 26.02.2018 (Annex.7) passed by the Revenue Appellate Authority, Udaipur ('RAA') and 28.05.2019 (Annex.8) passed by the Board of Revenue, Ajmer ('BOR'), whereby the matter has been remanded to the SDO and the appeal filed by the petitioners has been rejected, respectively.

It is, inter-alia, indicated in the writ petition that the petitioners were having physical and cultivatory possession over the agriculture land comprised in Arajji No. 995, 996, 1005, 1237, 1238 & 1239, situated at Savinda Kheda, Tehsil Girwa, District Udaipur. The land in dispute, it is claimed, was wrongly recorded as 'bilanaam' in the year 1969 on the basis of report of Patwari Halka based on proceedings initiated under Section 91 of the Rajasthan Land Revenue Act, 1956 ('the Act'). The Additional Tehsildar by its order dated 13.05.1969 quashed and set-aside the order passed by the Patwari, however, the land was not recorded in the name of petitioners' father Bhanwar Lal, resulting in petitioners filing a suit for declaration and injunction before the SDO, Udaipur under Sections 88 & 188

of the Rajasthan Tenancy Act, 1955.

Subsequently, the land acquisition proceedings were initiated, wherein qua the land in dispute, notification under Section 4 of the Land Acquisition Act, 1894 was issued.

Aggrieved against that, the petitioners filed SBCWP No.6342/1991, which came to be allowed by order dated 15.05.1992.

The suit continued before the Sub-Divisional Officer ('SDO'), during which, a settlement was arrived at between the petitioners and respondent-UIT in respect of the land in question on 22.08.2008, which, inter-alia, provided that 15% developed land comprised in Khasra Nos. 995, 996, 1005, 1237, 1238 & 1239 was being reserved, which would be given to the petitioners after final decision in the pending matter in favour of the petitioners.

The suit filed by the petitioners came to be dismissed by the SDO, Girwa by its judgment dated 14.09.2015 (Annex.6). In the said judgment, though five issues were framed and evidence was led by the parties, the SDO while observing that the documentary and oral evidence was so much interlinked that instead of determination issue-wise, in one paragraph observed that material documentary evidence to prove the possession has not been produced, the land has never been recorded in favour of the plaintiffs and consequently rejected the suit.

Feeling aggrieved, the petitioners filed first appeal before the RAA. The RAA decided the appeal on 26.02.2018 and by judgment (Annex.7) came to the conclusion that the provisions of Order XX, Rule 5 CPC, whereby issue-wise decision is required to be given, was violated by the SDO, as settlement has been arrived at between the parties, there was prima-facie no basis for ignoring the same and consequently, setting aside the judgment dated 14.09.2015 passed by the SDO, remanded back the matter to the SDO to decide the suit based on available evidence issue-wise.

Feeling aggrieved against the order passed by the RAA to the extent of remand to the SDO, the petitioners filed second appeal before the BOR. The BOR by its impugned judgment dated 28.05.2019 (Annex.8) reiterated the decision of the RAA pertaining to violation of provisions of Order XX, Rule 5 CPC and found that the order of remand was justified. The BOR also came to the conclusion that the additional issue based on the plea raised by the defendant arose in the matter and while framing the said issue, came to the conclusion that in the order of remand passed by the RAA, no interference was called for and rejected the appeal.

It is submitted by learned counsel for the petitioners that the RAA and the BOR were not justified in remanding back the matter to the SDO, inasmuch as, evidence on record was sufficient for the RAA to determine the case finally and on account of unnecessary remand, the petitioners, who otherwise, are entitled for developed land in compensation, are being deprived of the same.

Submissions were made with reference to provisions of Order XLI, Rule 24 CPC that the RAA was bound to decide the matter based on the evidence available before it and the remand of the matter specially in view of the circumstances noticed by it pertaining to there apparently now being no dispute between the parties on account of the settlement already arrived at, the remand under the circumstances was wholly unjustified. It was emphasized that the BOR also fell in error in upholding the order of remand passed by the RAA and in going a step further by framing an additional issue and therefore, the orders passed by the RAA and BOR to the extent of remanding the matter / upholding the same deserve to be quashed and set-aside.

I have considered the submissions made by learned counsel for the petitioners and have perused the material available on record.

The facts are not in dispute, wherein the settlement was arrived at between the petitioners and respondent No.1 with a specific stipulation that the same was 'subject to the outcome of the pending litigation in favour of the petitioners' and therefore, heavy reliance placed on the settlement for claiming that in view of the settlement essentially no dispute remains between the parties in relation to the title / right of the petitioners, cannot be countenanced.

As already noticed, the settlement is subject to the outcome of the pending litigation and therefore, the litigation has to come to an end in favour of the petitioners for perfecting their right as per the settlement.

A bare look at the judgment passed by the SDO reveals that though five issues were framed, as already noticed, in a most cursory manner without discussing the ocular and documentary evidence led by the parties, by a one paragraph order, the suit was dismissed, which was ex-facie contrary to the provisions of Order XX, Rule 5 CPC, which requires that a suit, in which issues have been framed, the Court is required to state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issue is sufficient for the decision of the suit. The SDO did not decide the suit on any preliminary issue and therefore, the violation of mandate of provisions of Order XX, Rule 5 CPC was apparent.

The RAA though observed that the settlement could not be ignored on finding that provisions of Order XX, Rule 5 CPC have been violated, remanded back the matter, which aspect has been upheld by the BOR.

The plea raised by learned counsel for the petitioners regarding the RAA and BOR failing to appreciate their power under Order XLI, Rule 24 CPC, apparently has no substance. The provisions of Order XLI, Rule 24 CPC reads as under :-

"24. Where evidence on record sufficient, Appellate Court may determine case finally.- Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, after resetting the issues, if necessary, finally determine the suit, notwithstanding that the

judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds."

A bare perusal of the above provision reveals that the same is an enabling provision for the appellate court, which has the discretion to finally determine the suit based on the evidence available on record, on finding the same sufficient. The provision cannot be read as a mandate in every case for the appellate court to decide the suit itself irrespective of the nature of determination made by the trial court.

As already noticed herein-before, the SDO did not deal with any of the issues and in a most slipshod and cursory manner, rejected the suit. The onus of recording of finding on the issues settled in a case based on oral and documentary evidence is that on the court of first instance i.e. the trial court and the appellate court is required to examine its validity. The enabling provision of Order XLI, Rule 24 CPC cannot be read to mean that on failure of the trial court to decide the suit issue-wise and in a cursory manner, the appellate court would take it upon itself to record the issue-wise finding thereby discharging the onus of the trial court.

A meaningful reading of the provisions of Order XLI, Rule 24 CPC would reveal that only in cases where some resettlement of issues is required and the evidence is sufficient for deciding the said resettled issue and/or the trial court has proceeded on a wholly irrelevant ground, the appellate court on some relevant ground has the power based on the evidence available on record to pronounce judgment.

So far as framing of additional issue by the BOR is concerned, the said power is conferred on an appellate court under Order XLI, Rule 25 CPC, exercise of which power in the circumstances of the case cannot be faulted.

In view of the above discussion, the challenge laid by the petitioners to the order of remand passed by the RAA and judgment of the BOR rejecting the appeal filed by the petitioners and framing the additional issue apparently has no substance.

Consequently, the writ petition has no substance, the same is, therefore, dismissed. The SDO in the circumstances of the case is directed to decide the suit most expeditiously.