**(2019) 01 RAJ CK 0275**

**In the Rajasthan High Court**

**Case No :** Special Appeal Writ No. 35 Of 2019

Ram Gopal And Ors — APPELLANT

Vs

Mahesh Chaudhary And Ors — RESPONDENT

**Date of Decision :** 07-01-2019

**Acts Referred:**

- Rajasthan Tenancy Act, 1955 — Section 92A, 188, 224
- Limitation Act, 1963 — Section 5
- Rajasthan High Court Rules, 1952 — Rule 134
- Constitution Of India, 1950 — Article 225

**Citation :** (2019) 01 RAJ CK 0275

**Hon'ble Judges :** Mohammad Rafiq, J;Goverdhan Bardhar, J

**Bench :** Division Bench

**Advocate :** Mohit Balwada

**Final Decision :** Dismissed

## Judgement

Challenge in the instant appeal has been made to the order dated 29.10.2018 passed by learned Single Judge.

Facts of the case in nutshell are that the appellants filed a suit under section 188 and 92A of the Rajasthan Tenancy Act, 1955 ('the Act of 1955' for short) for permanent injunction in the Court of A.C.M. Amer, District Jaipur in respect of the agricultural land comprised in khasra number 2543/3493 (measuring 0.08 hectare). On 29.03.2016 the respondents did not appear, hence ex-parte proceedings were initiated against them. On 04.04.2016 the suit of the appellants was decreed. Aggrieved with the aforesaid judgment and decree, the respondents filed an appeal in the Court of learned Revenue Appellate Authority, Jaipur (the 'learned first appellate court' for short) along-with an application under section 5 of the Limitation Act. The learned first appellate court vide judgment dated 14.03.2017 dismissed the application filed by the respondents under section 5 of the Limitation Act. Consequent to dismissal of the aforesaid application, the appeal of the respondents was dismissed. Against the aforesaid judgment, the respondents preferred an appeal before the Board of Revenue, Rajasthan, Ajmer. The Board of Revenue vide judgment 21.08.2018 accepted the appeal and set aside the judgment and decree dated 04.04.2016 passed by the learned trial court as also the judgment dated 14.03.2017 passed by the learned Revenue Appellate Authority. Against the judgment dated 21.08.2018 passed by the learned Board of Revenue, the appellants preferred a writ petition which was dismissed vide order dated 29.10.2018.

Learned counsel for the appellants argued that the learned A.C.M., Amer, District Jaipur, rightly decreed the suit exparte. The appeal preferred by the respondents before the learned first appellate authority was time barred as the same was filed after passing of eight months and twenty four days. The defendants filed a wrong affidavit before the learned court below with a false contention and tried to misguide the learned court below. The learned Board of Revenue has gone beyond its jurisdiction while deciding the second appeal on merits, as it could have decided in regard to application filed under section 5 of the Limitation Act. Learned counsel for the appellants also argued that the learned Revenue Appellate Authority dismissed the application filed by the respondents/ defendants under section 5 of the Limitation Act as such against the order of dismissal of the appeal. Consequent to dismissal of the application under section 5 of the Limitation Act, the second appeal is not maintainable. The learned Revenue Appellate Authority dismissed the appeal without going into the merits of the case, which was filed time barred.

In support of his submission, learned counsel for the appellants has placed reliance upon the case of Chhelaram vs. Manak, AIR 1997 Rajasthan 284.

We have heard learned counsel appearing for the appellants, perused the impugned order passed by the learned Single Judge and also scanned the entire material made available to us.

The learned Board of Revenue vide judgment dated 21.08.2018 allowed the second appeal filed by the respondents under section 224 of the Rajasthan Tenancy Act, 1955, and set aside the judgment & decree dated 04.04.2016 passed by the learned trial court decreeing the plaintiffs' suit and also the Judgment of the Revenue Appellate Authority, Jaipur dated 14.03.2017 and while remanding the case to the learned trial court further directed to re-admit the suit to its original number and to decide the same afresh after striking proper issues as per pleadings of the parties and also affording them reasonable opportunity of leading evidence. On the basis of the material, the learned Board of Revenue had held that there was neither inordinate delay nor intentional delay on the part of the respondents to prefer first appeal in the Court of learned Revenue Appellate Authority, Jaipur. The respondents were not going to gain anything by delay filing of the appeal. The learned Board of Revenue has also observed that the matter in dispute is related to immovable property and instead of adopting hyper technical approach, the learned Revenue Appellate Authority, Jaipur, ought to have adopted a realistic approach by remanding the matter to the learned trial court for decision of the suit afresh after affording the opportunity of leading evidence to the parties.

The objection with regard to the maintainability of second appeal against the order of the learned Revenue Appellate Authority was not raised before the learned Board of Revenue as well as before the learned Single Judge. Thus, it is not open for the appellants to make out a new case by raising such objections first time before this Court in the special appeal filed against the order of learned Single Judge under section 134 of the Rajasthan High Court Rules, 1952 read with Article 225 of the Constitution of India. The learned Board of Revenue while deciding the second appeal found that the suit itself was not decided in a proper manner, was decided without following proper procedure, without giving any finding on the issue and allowed the parties to adduce the evidence in support of pleadings. Thus, the learned Board of Revenue rightly exercised its jurisdiction and decided to send the matter back to the learned trial court.

We do not find any substance in the appeal and same is accordingly dismissed in limine.

 