

(2015) 05 RAJ CK 0168

In the Rajasthan High Court

Case No : Civil Second Appeal No. 145/2008 and Civil Second Appeal No. 311 of 2007

Virendra Kanwar Rathore and Others

APPELLANT

Vs

Mangi Lal and Others

RESPONDENT

Date of Decision : 19-05-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 3, Order 1 Rule 9, Order 22 Rule 3, Order 41 Rule 31
Constitution of India, 1950 — Article 226
Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 — Section 23, 37

Citation : (2015) 05 RAJ CK 0168

Hon'ble Judges : Pratap Krishna Lohra, J

Bench : Single Bench

Advocate : A.K. Rajvanshy, for the Appellant; Shreyansh Maradia, for Sandeep Shah, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Pratap Krishna Lohra, J.—Imploring annulment of common judgment dated 31st March, 2004 in five appeals, rendered by District Judge, Balotra (learned lower appellate Court), appellants-plaintiffs have laid these two appeals under Section 100 CPC. Learned lower appellate Court, by the impugned judgment, allowed all the appeals and dismissed the suits filed by plaintiff, while reversing the judgment and decree dated 11th August, 1994 passed by Civil Judge (Junior Division), Balotra (learned trial Court) in individual suits including the suits filed against the respondents-defendants in the present appeals.

2. Succinctly stated, the facts of the cases are that Jitendra Singh, original plaintiff, instituted five civil suits for possession before the learned trial Court including the suits against the respondents in both these appeals. In the plaints, it is, inter alia, averred by the plaintiff that a land owned by him, popularly known as Thela Raibariyan Bara (Vagar) at Jasol, is in possession of his ancestors since time immemorial. For demarcating the suit property, a site plan is also

enclosed with the plaint with markings A, B, C, D, E, F, G, H and I. With a view to prove ownership on the land, original plaintiff has asserted, in the plaint, that his ancestors were Jagirdars of village Jasol and, at the time of resumption of Jagir, his grand-father, Jalam Singh was alive and Madho Singh S/o. Jalam Singh, i.e., father of the plaintiff, died in lifetime of Madho Singh. Therefore, as per the assertion of the appellants-plaintiffs, at the time of resumption of Jagir, the suit property was also declared as property of the erstwhile Jagirdar and his grant father Thakur Madho Singh staked claim for various properties to be declared as his personal properties. While making endeavour, lists of properties were also submitted by Shri Madho Singh before Jagir Commissioner, Jaipur, wherein suit property also found mentioned, and the Jagir Commissioner, after undertaking requisite inquiry, declared all the properties, which were incorporated in the lists submitted by Shri Madho Singh, as his properties. A specific case is set out by the plaintiff that the order passed by the Jagir Commissioner dated 9th January, 1970 has taken into account various properties of Thakur Madho Singh including the suit property and declared the same to be owned by erstwhile Jagirdar. Basing on the order passed by the Jagir Commissioner, the plaintiff has asserted that the property was in possession of his ancestors and former Jagirdar of village Jasol, Shri Himmat Singh, as Sarpanch of Gram Panchayat, has also acknowledged the said property of Jagirdar. In that background, the plaintiff has claimed that nobody is having any right to interfere with ownership and possession of the plaintiff on suit property. In order to show cause of action against the respondents-defendants, the plaintiff has asserted that the so-called possession is nothing but illegal encroachment and despite warning and publishing a notice in the newspaper, when the respondents-defendants not mend ways, it became imperative for the plaintiff to file suit for possession. The plaintiff has also claimed mesne profit for use and occupation of the land allegedly encroached over by the respondents-defendants and a decree is also sought for declaring him owner of the suit property.

3. The respondents-defendants submitted written statements refuting all the allegations. In the written statements dimensions and neighbourhood shown in the site plan were also seriously disputed. It is also averred, in the written statements, that suit property never remained in possession of the ancestors of the plaintiff and, as such, plaintiff is having no right, title and interest over the said property. A specific plea was incorporated, in the written statements, that the said land was taken over by Gram Panchayat, Jasol as abadi land in the year 1973 and before that it was a revenue land, which cannot be owned by an individual.

4. As regards the order of Jagir Commissioner, respondents-defendants have pleaded that, on the strength of that order, plaintiff cannot be allowed to assert his claim over the land in question inasmuch as Jagir Commissioner has not made any endeavour to conduct proper inquiry. Before passing the order, respondents-defendants have set out a specific case that they are bona fide purchasers of the land from one Sobhag Singh by a registered sale-deed and,

when possession was handed over, plaintiff was well-aware about the entire transaction. Respondents-defendants have also asserted in the written statements that land, which was part of the suit property, is allotted to one Misimal by Gram Panchayat, on the strength of long possession, after taking requisite fee wherein plaintiff had objected, but his objections were not sustained by Gram Panchayat. It is also pleaded that not questioning the said allotment by the plaintiff, pre-supposes that entire claim of the plaintiff is baseless, false and untenable. An objection about valuation of the suit and deficit Court fee is also incorporated in the written statements. The respondents-defendants, while assailing the order of Jagir Commissioner, submitted, in the written statements, that earlier two lists containing details about the property were submitted by Madho Singh and in those lists suit property was not mentioned, and subsequently third list is submitted by the plaintiff, wherein suit property is mentioned and as such it is per-se unbelievable that it was the property owned by erstwhile Jagirdar. Once again, it is reiterated that Jagir Commissioner has not made any inquiry as it contemplated under Section 23 of the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 (for short, "the Act"). Respondents-defendants have incorporated a specific plea in the written statements that they are bona fide purchasers of the property from Sobhag Singh and execution of registered sale-deed is within the knowledge of plaintiff, therefore, present suits, which are filed after inordinate delay, are barred by limitation. Objection about non-joinder of necessary parties, namely, Sobhag Singh and Gram Panchayat is also incorporated in the written statements. In order to prove possession, respondents-defendants have also specifically pleaded in the written statements that a notice was issued by Gram Panchayat for removal of possession, which was duly replied by the respondents-defendants through the counsel and subsequently Gram Panchayat, while treating it to be its own land, asked them to pay the requisite amount and, on payment of said amount, possession was regularised. This action of Gram Panchayat is also assailed by the plaintiff by submitting objection, but his effort proved abortive. Therefore, the suits are liable to be rejected. The learned trial Court, on the basis of pleadings of rival parties, framed following issues for determination:--

5. In support of his case, original plaintiff, Jitendra Singh, himself appeared in the witness-box and examined two other witnesses. For substantiating defence, respondents-defendants appeared in the witness-box and examined other witnesses including Sobhag Singh. The learned trial Court decided Issue No. 1 and 5 simultaneously and, on evaluation of evidence and other materials, recorded its finding in favour of plaintiff and against respondents-defendants. While deciding these issues, learned trial Court virtually declared the suit property to be owned by the plaintiff by placing reliance on the order of Jagir Commissioner. As regards Issue No. 2 and 3, by treating possession of respondent-defendant illegal, on the land in question, the learned trial Court allowed mesne profit to the plaintiff at the rate of Rs. 15/- per month for use and occupation. Rest of issues, i.e. Issue No. 4, 6, 7 and 8, were also decided against

the defendant-respondents. Switching on Issue No. 9, the learned trial Court has recorded a definite finding that respondents-defendants have not tendered any evidence to prove this issue as such said issue was also decided against respondents-defendants. Therefore, by deciding all the issues favouring the cause of the plaintiff, the learned trial Court decreed the suits for the reliefs prayed for.

6. Feeling aggrieved by the judgment and decree of the learned trial Court both the respondents-defendants preferred appeals before the learned lower appellate Court. It may be emphasized that besides the respondents-defendants, in these two appeals, three other respondents-defendants also preferred appeals before the learned lower appellate Court and the learned lower appellate Court consolidated the appeals and heard them together.

7. Before the lower appellate Court, during pendency of five appeals, original plaintiff expired and his following legal representatives were brought on record:--

"1. Smt. Virendra Kanwar Rathore W/o Late Shri Jitendra Singh.

2. Smt. Anpurna Rathore W/o Late Shri Jitendra Singh.

3. Rameshwari Devi W/o Martyunjay Dev Singh Ranawat.

4. Maheshwari W/o Anil Singh.

5. Umeshwari W/o Moti Singh Bhati.

6. Rajeshwari W/o Sher Singh Gehlot."

8. The learned lower appellate Court examined the matter afresh by exercising appellate powers under Order 41 Rule 31 CPC and made sincere endeavour to analyze the findings of the learned trial Court on all the issues in conjunction with the documentary and ocular evidence of the litigating parties. Learned lower appellate Court has also made endeavour to critically examine the order passed by the Jagir Commissioner.

9. On overall evaluation of evidence of the rival parties and weighing, veracity and reliability of the ocular and documentary evidence, the learned lower appellate Court found that evidence tendered by the appellants-plaintiffs to prove ownership and possession over the suit property is not reliable and mere oral assertion of the plaintiff that suit property was used as stud farm or farm for keeping cattle stock cannot be relied upon. Moreover, the learned lower appellate Court has also noticed that there is no cogent material available on record to show that after resumption of Jagir, suit property was included as part of land of Jagirdar. As against the hazy evidence of the appellants-plaintiffs, which was projecting gloomy picture, the learned lower appellate Court has found that suit property was in possession of Sobhag Singh, as its owner, and he has subsequently transferred the same to the respondents-defendants by executing registered sale-deeds. The subsequent developments, namely, issuance of notices to the respondents-defendants by Gram Panchayat and on being satisfied

with long peaceful possession of the respondents-defendants Gram Panchayat also accepted the requisite amount to allow respondents-defendants to retain the possession, is yet another mitigating factor tilting equity in favour of respondents-defendants. For arriving at this conclusion, the learned lower appellate Court has placed reliance on Exhibit-A/6, whereby objections submitted by one incumbent was rejected by Gram Panchayat. Therefore, in totality, the learned lower appellate Court felt persuaded in recording a finding that respondents-defendants are bona fide purchasers and as such they are not liable to be evicted from the suit property.

10. Analyzing all these undisputed facts with bird's eye-view, the learned lower appellate Court completely repudiated the theory of the appellants-plaintiffs that they were owner of the land and the said land remained in their possession, and eventually reversed the judgment of the learned Court below for the relief of possession and grant of mesne profit for use and occupation. The learned lower appellate Court, while recording affirmative finding favouring the cause of the respondents-defendants, has also relied on the testimony of Sobhag Singh, who has appeared on behalf of the respondents-defendants. Taking cognizance of the fact that the land in question was sold by a registered instrument to the respondents-defendants by Sobhag Singh, the learned lower appellate Court has also found that he is not only a proper party but is a necessary party to the litigation and as such, in want of necessary party, the suit filed by the original plaintiff is not maintainable.

11. The learned lower appellate Court has also taken into account some of the facts indicating involvement of Gram Panchayat for putting the suit property to auction after due permission from District Collector, Barmer. The said action of the Gram Panchayat proved abortive and objections submitted by some of the incumbents claiming possession over land in question were also rejected by Gram Panchayat. The learned lower appellate Court, at that point of time, has also found that the respondents-defendants were in possession and that is why the Gram Panchayat has regularized their possession after accepting amount.

12. In the backdrop of all these facts, the learned lower appellate Court has also found that Gram Panchayat, Jasol was also a necessary party to the litigation to unearth the truth and as Gram Panchayat has not been impleaded as party, the suit filed by the plaintiff is not tenable.

13. While advertng to the order passed by Jagir Commissioner, the learned lower appellate Court has noticed a serious omission inasmuch as, at the threshold, grand-father of original plaintiff submitted two lists indicating Jagir properties wherein the suit property was not included and the suit property was included in the third list, which was submitted by the original plaintiff himself, who was admittedly not a former Jagirdar. In that background, the learned lower appellate Court has found that third list is a brainchild of the original plaintiff and it is nothing but a manipulation and maneuvering, and therefore, the order passed by the Jagir Commissioner cannot render any assistance to the appellants-plaintiffs.

The learned lower appellate Court was of the opinion that if the Jagirdar, at the time of resumption of Jagir, has not mentioned suit property as Jagir property, a prudent man can presume that suit property was not part of Jagir property of the former Jagirdar. The learned lower appellate Court has also completely repudiated the theory propounded by the appellants that Himmat Singh, as Sarpanch has ratified the suit property to be property of the original plaintiff, and held that the said decision is not binding on the respondents-defendants. In totality, the learned lower appellate Court has found that the judgment rendered by the learned trial court as perverse, based on complete misreading of evidence and misconstruction of the documents, and consequently reversed the same dismissing the suits filed by appellants.

14. Before this Court, at the threshold, both these appeals were filed by the legal representatives of original plaintiff Jitendra Singh whose names are mentioned supra. However, during pendency of these appeals one of the legal representative of Jitendra Singh, viz., Virendra Kanwar, his wife, expired and on an application under Order XXII Rule 3 CPC, her adopted son Akshay Kumar Singh is impleaded as appellant No. 1/1.

15. Mr. A.K. Rajvanshy, learned counsel for the appellants, submits that findings and conclusions of the learned lower appellate Court are based on complete misreading of evidence and, as such, substantial questions of law are involved in these appeals. Mr. Rajvanshy also submits that the learned lower appellate Court, while reversing the findings and conclusions of the learned trial Court on all the issues, has not properly construed the order passed by the Jagir Commissioner under Section 23 of the Act, therefore, impugned judgment of learned First Appellate Court is founded on perverse conclusions, as such, vulnerable and has to be interfered with in exercise of jurisdiction under Section 100 CPC. Mr. Rajvanshy further submits that the reasons forthcoming in the lower appellate Court's judgment for reversal of findings and conclusions of the learned trial Court are based on mere conjectures and surmises, which are per se not sustainable. Lastly, learned counsel for the appellants would contend that the finding of learned lower appellate Court that Sobhag Singh and Gram Panchayat, Jasol are necessary parties to the litigation is a conclusion de-hors Order 1 Rule 3 CPC, so also the basic tenets of necessary and proper parties to a litigation while eschewing right of a plaintiff to frame the suit as he chooses, i.e., dominus litis. He, therefore, urged that impugned judgment of the learned lower appellate Court involves following substantial questions of law, which require adjudication by this Court in exercise of second appellate jurisdiction:--

"(1) Whether on the facts and in the circumstances Shri Shobhag Singh and Gram Panchayat, Jasole are the necessary party, who does not have any right or title in their favour and against whom plaintiffs has not claimed any relief?

(2) Whether on the facts and in the circumstances of the case the judgment dated 09.01.1970 passed by the Jagir Commissioner cannot be challenged and which has become final and what is this effect of this judgment?

(3) Whether on the facts and in the circumstances of the case the judgment of the learned lower appellate Court vitiated because on the grounds of the judgment of the learned trial Court have not been considered by the learned lower appellate Court?

(4) What is the effect of any sale deed executed by Shobhag Singh in favour of defendant who does not have any title in him?

(5) What is the effect of depositing any amount by the defendant with the gram panchayat?"

16. Learned counsel for the appellants, in support of his contentions, has placed reliance on following authoritative pronouncements:--

? Mohd. Farooq Vs. District Judge and Others, (1992) 2 AWC 1144

? Haren Krishnakumar Mehta Vs. Kamla Pribhdas Nebhanani, AIR 2001 Bom 187 : (2001) 2 ALLMR 67 : (2001) 2 BomCR 678 : (2001) 1 BOMLR 228 : (2001) 2 MhLj 45

? Vijay Lata Sharma Vs. Raj Pal and Another, AIR 2004 SC 4390 : (2004) 6 JT 565 : (2004) 6 SCALE 627 : (2004) 6 SCC 762 : (2004) AIRSCW 5196 : (2004) AIRSCW 5134 : (2004) 6 Supreme 555 : (2004) 6 Supreme 115

? Balvant N. Viswamitra and Others Vs. Yadav Sadashiv Mule (dead) through Lrs. and Others, AIR 2004 SC 4377 : (2004) 6 JT 403 : (2004) 6 SCALE 636 : (2004) 8 SCC 706 : (2004) 3 SCR 519 Supp : (2004) 2 UJ 1440

17. Per contra, Mr. Shreyansh Maradia, appearing on behalf of Mr. Sandeep Shah, learned counsel for the respondents, submits that the learned lower appellate Court has rightly construed the evidence and materials available on record, and a finding of fact recorded by a last Court of fact, being the first appellate Court, is not liable to be upset sans substantial questions of law involved in the appeal. Mr. Maradia has urged that legal position is no more res-integra that this Court is not obliged to investigate the grounds on which the findings were arrived at by the last Court of fact, and even if, in the given set of circumstances, two inferences of fact are possible, one drawn by the lower appellate Court is not liable to be interfered with in second appeal. Elaborating his submission, on this proposition, learned counsel for the respondents has urged that in such circumstances adopting any other approach is not permissible while exercising jurisdiction under Section 100 CPC. Learned counsel for the respondents has urged that there is no semblance of proof that conclusions drawn by the learned lower appellate court are erroneous being contrary to the mandatory provisions of law applicable, or its settled position on the basis of verdicts of Hon"ble Apex Court or are founded upon inadmissible evidence/ignoring material evidence. While joining the issue with the appellants regarding non-joinder of necessary parties, learned counsel submits that when the evidence was available on record to show that respondents have purchased the property from Sobhag Singh and they are bona fide purchasers and subsequent action initiated by Gram

Panchayat, Jasol clearly and unequivocally indicates their active involvement in the matter and that has necessitated joining them as defendants for effectual adjudication of the lis involved in the matter. He, therefore, submits that the impugned judgment, to the extent of non-joinder of necessary parties, is in consonance and conformity with Order 1 Rule 9 CPC warranting no interference. Learned counsel submits that the order passed by the Jagir Commissioner is ex-facie contrary to the requirements of Section 23 of the Act and, therefore, the learned lower appellate Court has rightly declined to place reliance on the said order for recording finding of fact pertaining to suit property in favour of the appellants-plaintiffs. In support of his contentions, learned counsel has placed reliance on a decision of this Court in *Mangilal v. Kalyan Singh* [1973 RLW 505].

18. Heard learned counsel for the parties, perused judgments rendered by both the Courts below and thoroughly scanned the record of case.

19. An interesting question has cropped up in these appeals, which deserves credence, at the threshold, before entering into merits of the case.

20. On recapitulation of the background of the litigation, it has come to the fore that original plaintiff, Jitendra Singh, laid five civil suits before the learned trial Court arraying five different defendants for claiming reliefs of possession and mesne profit pertaining the suit property popularly known as Thela Raibariyan Bara (Vagar) at Jasol. The edifice of all the suits for craving the reliefs was order passed by the Jagir Commissioner, Jaipur, whereby, according to the plaintiff, the suit property was declared as property of former Jagirdar of Jasol. The learned trial Court, by separate judgments of even date, decreed all the suits, which are Civil Original Suit Nos. 30/1982, 31/1982, 32/1982, 33/1982 and 35/1982. Against the verdict of learned trial Court, all the defendants preferred separate first appeals before the learned lower appellate Court and those appeals were registered as Civil Appeal Decree Nos. 30/1994, 31/1994, 32/1994, 33/1994 and 36/1994 respectively. The learned lower appellate Court, after consolidating all the appeals, decided the same by a common judgment and decree dated 31st March, 2004 and reversed the judgment and decree passed by the learned trial Court in all the cases. Therefore, net result of the verdict of the learned lower appellate Court is that findings arrived at by the learned trial Court favouring the cause of the original plaintiff were reversed in toto. Although legal representatives of original plaintiff have suffered judgment in all the five appeals, who have stepped into shoes of the original plaintiff, but the judgment of learned lower appellate Court is effectively assailed in only two appeals and for rest of three cases, appellants have accepted the impugned judgment inasmuch as appeals preferred against the verdict of learned lower appellate Court vis-?-vis Civil First Appeal Decree No. 31/1994, 32/1994 and 33/1994 are withdrawn ex-parte. Withdrawal of three appeals against the common judgment and decree, which is impugned in these two appeals, makes it crystal clear that the impugned judgment has not been varied, reversed or set aside and therefore findings recorded in the judgment against the appellants cannot be permitted to be

eschewed by them to make out a case for assailing these findings in the instant appeals. The judgment of the learned lower appellate Court has, thus, attained finality between the litigating parties. Now, in that background, fate of these two appeals is under serious cloud. In fact, this sort of situation has obviously put a question mark on the righteousness of the claim of the present appellants who are legal representatives of the original plaintiff and have stepped in his shoes and its direct ramification on the present two appeals cannot be prima facie ruled out. In common parlance by withdrawal of appeals with respect to three cases, which were decided by common judgment by learned lower appellate Court, it can very well be presumed that appellants have accepted those verdicts without any demur. This sort of situation has substantially diminished the rights of the appellants to challenge verdicts vis-?-vis two cases and principle of res-judicata can very well be romped in to non-suit the appellants in their pursuit vis-?-vis these two appeals.

21. A litigant, who has lost a legal battle vis-?-vis his five opponents in a common judgment, cannot be allowed to pick and choose his opponent for challenging the verdict, which it has suffered. It may be reiterated here that claim of the original plaintiff against all the defendants in five suits was founded on identical facts and the suit property was also common, viz, Thela Raibariyan Bara (Vagar) at Jasol. A finding of fact arrived at by the last Court of fact, being the first appellate Court, vis-?-vis five different appeals cannot be allowed to be impeached by a litigant who has lost battle before the first appellate Court in relation to two cases only at its whims and fancy. That being the situation, maintainability of both these appeals on the principle of res-judicata is undeniable and principle of res-judicata is applicable to bring an end to the litigation. Reliance, in this behalf, can be profitably made to a decision of Constitution Bench of Hon'ble Apex Court in case of Badri Narayan Singh Vs. Kamdeo Prasad Singh and Another, AIR 1962 SC 338 : (1962) 3 SCR 760 , wherein the Court held as under:--

"It is true that both the appeals Nos. 7 and 8 before the High Court arose out of one proceeding before the Election Tribunal. The subject-matter of each appeal was, however, different. The subject-matter of appeal No. 7 filed by the appellant related to the question of his election being bad or good, in view of the pleadings raised before the Election Tribunal. It had nothing to do with the question of right of respondent No. 1 to be declared as duly elected candidate. The claim on such a right is to follow the decision of the question in appeal No. 7 in case the appeal was dismissed. If appeal No. 7 was allowed, the question in appeal No. 8 would not arise for consideration. The subject matter of appeal No. 8 simply did not relate to the validity or otherwise of the election of the appellant. It related to the further action to be taken in case the election of the appellant was bad, on the ground that a Ghatwal holds an office of profit. The decision of the High Court in the two appeals, though stated in one judgment, really amounted to two decisions and not to one decision common to both the appeals. It is true that in his appeal No. 8, the respondent No. 1 had referred to the rejection of his

contention by the Election Tribunal about the appellant and respondent No. 2 being holders of an office of profit. He had to challenge the finding on this point because if he did not succeed on it, he could not have got a declaration in his favour when respondent No. 2 was also in the field and had secured a larger number of votes. He could, however, rely on the same contention in supporting the order of the Election Tribunal setting aside the election of the appellant and which was the subject-matter of Appeal No. 7. This contention was considered by the High Court in Appeal No. 7 in that context and it was therefore that even though the High Court did not agree with the Election Tribunal about the appellant's committing a corrupt practice, it confirmed the setting aside of his election on the ground that he held an office of profit. The finding about his holding an office of profit served the purpose of both the appeals, but merely because of this the decision of the High Court in each appeal cannot be said to be one decision. The High Court came to two decisions. It came to one decision in respect of the invalidity of the appellant's election in Appeal No. 7. It came to another decision in Appeal No. 8 with respect to the justification of the claim of respondent No. 1 to be declared as a duly elected candidate, a decision which had to follow the decision that the election of the appellant was invalid and also the finding that respondent No. 2, as Ghatwal, was not a properly nominated candidate. We are therefore of opinion that so long as the order in the appellant's appeal No. 7 confirming the order setting aside his election on the ground that he was a holder of an office of profit under the Bihar Government and therefore could not have been a properly nominated candidate stands, he cannot question the finding about his holding an office of profit, in the present appeal, which is founded on the contention that that finding is incorrect.

We therefore accept the preliminary objection and dismiss the appeal with costs."

22. Relying on the case of Badri Narayan (supra), the Hon"ble Apex Court in case of Premier Tyres Limited Vs. Kerala State Road Transport Corporation, AIR 1993 SC 1202 : AIR 1992 SC 1202 : (1993) 2 SCC 146 Supp reiterated the same principle and held as under:--

"Although none of these decisions were concerned with a situation where no appeal was filed against the decision in connected suit but it appears that where an appeal arising out of connected suits is dismissed on merits the other cannot be heard, and has to be dismissed. The question is what happens where no appeal is filed, as in this case from the decree in connected suit. Effect of non-filing of appeal against a judgment or decree is that it becomes final. This finality can be taken away only in accordance with law. Same consequences follow when a judgment or decree in a connected suit is not appealed from.

Mention may be made of a Constitution bench decision in Badri Narayan Singh v. Kamdeo Prasad Singh. In an election petition filed by the respondent a declaration was sought to declare the election of appellant as invalid and to declare the respondent as the elected candidate. The tribunal granted first relief only. Both appellant and respondent filed appeals in the High Court. The

appellant's appeal was dismissed but that of respondent was allowed. The appellant challenged the order passed in favour of respondent in his appeal. It was dismissed and preliminary objection of the respondent was upheld. The Court observed,

"We are therefore of opinion that so long as the order in the appellant's Appeal No. 7 confirming the order setting aside his election on the ground that he was a holder of an office of profit under the Bihar Government and therefore could not have been a properly nominated candidate stands, he cannot question the finding about his holding an office of profit, in the present appeal, which is founded on the contention that that finding is incorrect.

Thus the finality of finding recorded in the connected suit, due to non-filing of appeal, precluded the court from proceeding with appeal in other suit. In any view of the matter the order of the High Court is not liable to interference."

23. In yet another judgment in case of Hope Plantations Ltd. Vs. Taluk Land Board, Peermade and Another, (1998) 7 JT 404 : (1998) 6 SCALE 19 : (1999) 5 SCC 590 : (1998) 2 SCR 514 Supp , the Court held as under:--

"26. It is settled law that principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated as a branch of the law of estoppel though these two doctrines differ in some essential particulars. Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstrably wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are "cause of action estoppel" and "issue estoppel". These two terms are of common law origin. Again, once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that the issue was wrongly determined. Their only remedy is to approach the higher forum if available. The determination of the issue between the parties gives rise to, as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operates in subsequent suits between the same parties in which the same issue arises. Section 11 of the Code of Civil Procedure contains provisions of res judicata but these are not exhaustive of the general doctrine of res judicata. Legal principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities as they are based on public policy and justice.

31. Law on res judicata and estoppel is well understood in India and there are ample authoritative pronouncements by various courts on these subjects. As noted above, the plea of res judicata, though technical, is based on public policy in order to put an end to litigation. It is, however, a different if an issue which

had been decided in an earlier litigation again arises for determination between the same parties in a suit based on a fresh cause of action or where there is continuous cause of action. The parties then may not be bound by the determination made earlier if in the meanwhile, law has changed or has been interpreted differently by higher forum. But that situation does not exist here. Principles of constructive res judicata apply with full force. It is the subsequent stage of the same proceedings. If we refer to Order XLVII of the Code (explanation to Rule 1) review is not permissible on the ground

"that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment".

24. Although it is not imperative for this Court to examine merits of the case and both the appeals are liable to be thrown away solely on the basis of findings recorded supra, about the doctrine of res-judicata being a rule of public policy, but as the parties have addressed on the merits of the case, I propose to switch on the merits of the case.

25. To bring home the points urged, learned counsel for the appellants has placed reliance on a decision rendered by learned Single Judge of Allahabad High Court in Mohd. Farooq (supra), wherein Court has discussed provisions under Order 1 Rule 3 CPC for impleadment of party. The Court held as under:--

"I have heard the learned counsel for the petitioner and examined the case law cited. The case law cited is of no assistance for the decision of the present case. The law is settled on the point that the plaintiff is sole architect of his plaint. It is the plaintiff who has a right to choose his own adversary against whom he seeks a relief. In the present case, there is no allegation or any cause of action against the petitioner who seeks to be impleaded as defendant in the suit. The mere apprehension of the petitioner that the plaintiff and defendants of the suit may collusively get their suit decided which would adversely affect the rights of the petitioner is misconceived. It is well settled that any decree or order passed by a Court would not affect a person who is not a party in the suit or the proceedings. It is made clear that if any collusive judgment or decree is obtained by the party to the suit, it shall have no legal effect on the rights of the present petitioner. It is not always necessary to implead a person in a suit. Only it is settled that impleadment is necessary to avoid multiplicity of the suit. There must be such facts and circumstances to show that unless the person is impleaded in the suit or a proceeding, there is likelihood of further litigation in the same matter. The facts of the present case are altogether different. The petitioner after having failed in the civil revision has now come to this Court under Art. 226 of the Constitution of India. A relief which could have been given by the court below under Art. 226. The present writ petition is misconceived and calls for no interference under Article 226 of the Constitution of India."

26. Similarly, on that issue, learned counsel has also placed reliance on a

decision of Hon"ble Apex Court in Balavant N. Viswamitra (supra), wherein the Court held as under:--

"In our considered opinion, the present respondents could not be said to be "necessary party" to the suit. Non-joinder of respondents, hence, would not make a decree passed by the Court of small Causes, Bombay nullity or inexecutable. The High Court erroneously proceeded against the well settled principle of law by observing in the impugned judgment that since the respondents (petitioners before the High Court) were claiming through Papamiya and as they were not joined as "party" in the suit, the orders passed by the Court "would in no way affect or bind them". The above observation, in our opinion, did not lay down the law correctly."

27. Hon"ble Apex Court in yet another judgment in Vijay Lata Sharma (supra) has reiterated the same principles.

28. Ratio decidendi of all these judgments is unquestionable, but, in the factual backdrop of the instant case, these judgments are clearly distinguishable.

29. The doctrine of dominus litis, i.e., plaintiff is the master of the suit having full liberty to implead party-defendants to the litigation is an established principle which cannot be doubted. However, the said right is circumscribed if necessary party is not impleaded whose presence is necessary for complete and effectual determination of all the questions involved in the suit.

30. In the present matter, umpteen material was available on record to show that respondents-defendants in order to prove their title over the suit property have romped in Sobhag Singh and Gram Panchayat, Jasol from whom they have derived title, and therefore, the learned lower appellate Court has rightly concluded that both Sobhag Singh and Gram Panchayat, Jasol were not only proper parties, but necessary parties to the litigation. Such finding of the learned Court below, on that aspect of the matter, cannot be categorized as infirm, nor the said finding can be faulted even on the touchstone of doctrine of dominus litis in conjunction with Order 1 Rule 10 CPC. The legal position is no more res-integra that the plaintiff is dominus litis of the suit and a party objected to by him cannot be impleaded in the proceeding is not an absolute principle or rule. The provisions of Order 1 Rule 10 CPC are exception to this rule. The parties to a suit are governed and regulated by the provisions of Order 1 Rule 10 CPC which would finally be the guiding factor for the Court to determine whether someone is a necessary or a proper party to a suit and in whose absence no effectual adjudication of the suit is possible. Avoidance of multiplicity and unnecessary expenses is a relevant factor which needs to be considered by the Courts concerned. In that background, if the Court comes to the conclusion that the necessary party has not been impleaded, denial of relief to the plaintiff is the only course left with the Courts. The learned lower appellate Court, therefore, rightly decided issue relating to impleadment of necessary party after examining facts and circumstances of the case and the same has not culminated into any

question of law much less substantial question of law requiring adjudication under Section 100 CPC.

31. As regards other issue relating to order passed by Jagir Commissioner, under Section 23 of the Act of 1952, suffice it to observe that Madho Singh had submitted two lists of Jagir property and the third list was submitted by original plaintiff, Jitendra Singh, after his death, who was admittedly not Jagirdar at the time of resumption of Jagir. From the order passed by Jagir Commissioner (Ex. 3), it nowhere transpires that requisite inquiry for determining private property of erstwhile Jagirdar was conducted in accordance with law. Even the recitals contained in the so-called inquiry report are not mentioned in the order of Jagir Commissioner. The original plaintiff, during his deposition, has admitted in clear and unequivocal terms that his grand-father, Madho Singh, submitted two lists of his Jagir property and subsequently one more list was submitted by him, and the order of Jagir Commissioner was passed on the basis of list submitted by him. How a list submitted by the original plaintiff was considered conclusive, when he was admittedly not a former Jagirdar is a question of great significance, which has been rightly addressed by the lower appellate Court to non-suit the appellants. There remains no quarrel that the list submitted by the original plaintiff was subsequent to death of his grandfather, i.e., former Jagirdar.

32. That apart, the learned lower appellate Court has also recorded a categorical finding of fact that the appellants-plaintiffs have failed to prove their possession over the suit property. While passing the order under Section 23 of the Act of 1952, Jagir Commissioner was acting as a quasi judicial authority, but bare reading of the order clearly and unequivocally reveals that order is absolutely vague, cryptic and unspecific. As a matter of fact, no finding as such has been recorded by the Jagir Commissioner for arriving at the conclusion. It is really strange that Jagir Commissioner has not even made a whisper in the order about possession of former Jagirdar on the suit property or any other property, which has rightly persuaded the learned lower appellate Court to record a finding of fact that appellants-plaintiffs have failed to prove their possession on the suit property. In that background, the conclusions of the learned lower appellate Court for not relying on the order passed by the Jagir Commissioner is neither infirm, nor dehors the law, and the same cannot be categorized as perverse so as to make out a case involving substantial question of law. Reliance, in this behalf, can be profitably made to a decision in Mangi Lal's case (supra), on which learned counsel for the respondents has placed heavy reliance. In this verdict, while finding fault with the order of Jagir Commissioner, the Court held as under:--

"As I have already observed, S. 37 was not applicable to the case and the case fell within ambit of S. 23 thereof. The material that is available on record does show that the Jagir Commissioner had not dealt with the question in the manner he should have done. I have quoted the order of the Jagir Commr. Ex. 2 in extenso. It leaves many gaps. It does not state the date on which the list was

sent. It also leaves something blank after reference to the Collector's order of reference and the order does not contain any reasons whatsoever for holding the property shown in the list to be the personal property of the Jagirdar. It cannot be gainsaid that the Jagir Commissioner was acting quasi judicially and he should have given some reasons for coming to the conclusion why he was holding the property to be the personal property of the Jagirdar. As I have already referred to Ex. 1 it does not show whether the plot was enclosed or that it had been used for agricultural or domestic purposes."

33. It goes without saying that it is not within the domain of the High Court to investigate the grounds on which findings are arrived at, by the last Court of fact, being a first appellate Court. In a case where from a given set of circumstances two inferences of fact are possible, one drawn by the lower appellate Court will not be interfered with by this Court in second appeal. Adopting any other approach is not permissible. In exercise of second appellate jurisdiction, the Court will, however, interfere where it is found that the conclusions drawn by the lower appellate Court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Hon'ble Apex Court, or was based upon inadmissible evidence or arrived at by ignoring material evidence.

34. In totality, no such eventualities are available in the instant case. Even on probing the matter and scanning the available material thoroughly, I am afraid, no question of law is involved in this appeal, which is fairly arguable requiring discussion at some length for exploring possibilities of alternative views within the four corners of law. Substantial questions of law proposed and quoted supra, when examined, in conjunction with factual backdrop of the instant case, then it has clearly revealed that the so-called questions of law cannot be categorized as of substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradiction with-technical, of no substance or consequence, or academic merely.

35. Therefore, viewed from any angle, I am not persuaded that substantial questions of law are involved in the matter requiring adjudication.

36. The upshot of the above discussion is that both these appeals are devoid of any force and as such are dismissed on merits as well as on the principle of res-judicata.

37. No order as to costs.