

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO.192 OF 2010
(Arising out of Special Leave Petition (C) No. 10805 OF 2008)**

SHYAM GOPAL BINDAL & ORS.

....APPELLANT(S)

VERSUS

LAND ACQUISITION OFFICER & ANR.

.....RESPONDENT(S)

ORDER

SURINDER SINGH NIJJAR, J.

Leave granted.

2. This appeal has been filed against the judgment of learned Single Judge of the Rajasthan High Court, Jaipur Bench, dated 03.01.2008 rendered in S.B. Civil Second Appeal No.305 of 2006 whereby the appeal as well as the application under Order 41 Rule 27 CPC filed by the plaintiff/appellants have been dismissed. The appellants claimed to be owners in possession of the suit land.

3. They claim ownership rights on the basis of the order passed by the Additional District Collector, Ajmer, Rajasthan dated

11.01.1971 passed in Case No.159 of 1970, wherein predecessors-in-interest of the appellants, namely, Meghraj was declared to be owner of the suit land. An application had been filed by Meghraj and his brother on 15.12.1959 in the Court of Additional District Collector, Ajmer, Rajasthan seeking a declaration that the suit land was their personal property. Upon due investigation the declaration was issued that “the lands of the Khasra Nos. 427,440,441,2202,2241 and 2242 admeasuring 6 bighas 6 biswas 10 biswansi are declared personal properties of the applicants under Section 6 of the Rajasthan Biswedari & Abolition of Jamindari Act.”

4. Another order was passed in Revenue Suit No.176 of 1989 by the Sub Divisional Officer, Ajmer, Rajasthan on 20.06.1994 whereby Urban Improvement Trust, Ajmer (hereinafter referred to as “UIT”) was directed “not carry out any construction without applying & initiating legal proceedings, and the Urban Improvement Trust, Ajmer has no restriction in carrying out the proceedings of acquisition in accordance with practice.” This direction was issued on the basis of the averments made in the application that the appellants are the Khatedar cultivators of the land in dispute. It

was apprehended that UIT wants to construct the road through the aforesaid land without legally acquiring the same. The aforesaid judgment of the Sub Divisional Officer was not challenged by the UIT.

5. On 31.10.1994, the appellants submitted an application seeking demarcation of the land in question which was duly ordered by the Sub-Divisional Officer. Thereafter the appellants received a letter dated 23.11.1994 from the UIT disclosing that the land in question had been acquired vide Award dated 25.01.1994. The appellants and the other co-owners were asked to receive the compensation from the office of UIT. On receipt of the aforesaid letter the appellants sent notice challenging the legality of the award. The predecessors of the appellants Meghraj then filed a civil suit in the Court of Additional Civil Judge (A.B.) & Judicial Magistrate First Class, No.2, Ajmer seeking an injunction and declaration. In the suit the entire acquisition proceedings had been challenged on the ground that due notice was not sent to the owner of the land. It was pleaded that the land acquisition procedure as prescribed under Section 4, Section 5(a) and Section 11(a) of the

Land Acquisition Act had not been followed. After completion of the pleadings the trial court framed the following issues:

- “1. If the disputed property has been declared as personal property of the plaintiff?
2. If this court has jurisdiction to hear this suit.
3. If the defendant has a right to dispossess the plaintiff from the disputed property?
4. Relief.”

Issue Nos. 1 and 2 have been decided by the trial court with the following observations:

“The onus of proving the above issues was on the plaintiff. But the plaintiff has not produced any type of oral and documentary evidence in support of the above issues. Hence, under these circumstances, both the above issues are decided against plaintiff and in favour of defendant.”

With these observations the suit of the plaintiff was dismissed by judgment and order dated 26.10.1998.

6. Aggrieved, the appellants filed Civil Appeal No.134 of 1998 in the Court of Additional District Judge No.1, Ajmer, Rajasthan. Along with this appeal an application under Order 41 Rule 27 CPC was also filed to adduce additional evidence. The appellants wanted to place on record the orders dated 11.01.1971 and 20.06.1994.

According to the appellants the same were not produced by the original plaintiff who passed away during the pendency of the suit. The Appellate Court dismissed the appeal as also the application for leading additional evidence on the ground that it was essential for the plaintiff to prove the pleadings mentioned in the plaint from his own evidence. It was noticed that the Trial Court had fixed the case for evidence on behalf of the plaintiff on 21.03.1998 and three opportunities were afforded for adducing evidence. Apart from the aforesaid no other reason is given by the Appellate Court for rejecting the application for additional evidence.

7. Aggrieved by the orders of the lower courts the appellants moved the High Court by way of second appeal which has also been dismissed by the impugned judgment dated 03.01.2008. The High Court dismissed the appeal with the observation that as the land had already been acquired and the award passed as early as on 15.1.1994, under the provisions of the Land Acquisition Act, 1894, no useful purpose would be served by remanding the case to the trial court for affording an opportunity to the plaintiff-appellants to lead evidence when the civil court has no jurisdiction to set aside

the award. In view of the dismissal of the appeal the application under Order 41 Rule 27 was also dismissed.

8. We have heard the learned counsel for the parties. It appears that the documents which were sought to be produced by the appellants formed the very basis of the claim made by the appellants in the civil suit. Their consideration by the court was necessary for a just decision of the case. The original plaintiff passed away during the pendency of the civil suit. The documents were thereafter sought to be brought on record at the earliest opportunity available to the legal representatives of the deceased plaintiff. Therefore, it could not be said that the appellants had not given any reason as to why the documents had not been produced in the trial court. It appears that the dismissal of the suit by the trial court for non-production of evidence by the plaintiff was mechanically affirmed by the Appellate Court. It further appears that none of the issues have been decided by any of the courts below, on merits. All decisions have proceeded on the basis that the plaintiff/appellants have failed to produce evidence in support of their claim. The application was not examined keeping in view the principles laid down in Order 41 Rule 27 of the Civil Procedure

Code. The documents sought to be produced are Judicial Orders declaring the ownership rights of the appellants, that have a crucial bearing on the merits of the claim put forward by the appellants. It was pleaded by the appellants that original plaintiff having died during the pendency of the civil suit the documents could not be brought on record as they were not aware of the orders. A prayer was duly made before the Appellate Court which was repeated before the High Court for remanding the matter with an opportunity to adduce the additional evidence. In the facts and circumstances of this case, we are of the opinion that the Appellate Court as also the High Court erred in law in not accepting the application for additional evidence and not remanding the matter back to the trial court.

9. In view of the above, the appeal is allowed. The judgments of the High Court in S.B. Civil Second Appeal No.305 of 2006 dated 03.01.2008, Additional District Judge No.1, Ajmer in Civil Appeal No.134 of 1998 dated 10.02.2006 and Additional Civil Judge(A.B.) & Judicial Magistrate First Class, No.2, Ajmer in Civil Suit No.34/95(29/95) dated 26.10.1998 are set aside. The application for additional evidence is allowed. The matter is remanded back to

the trial court for a fresh decision on merits. Plaintiffs as well as the defendants shall be permitted to place on record any additional documents.

.....**J**
(TARUN CHATTERJEE)

.....**J**
(SURINDER SINGH NIJJAR)

**NEW DELHI,
JANUARY 11, 2010.**