

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

ORDER

S.B.CIVIL MISCELLANEOUS APPEAL NO.1009/2002.

Shri Harbuxa @ Hari Singh & Others.

VERSUS

Shri Sultan Singh & Others.

30.04.2008.

HON'BLE MR.JUSTICE DALIP SINGH

Mr.S.N.Shah, for the appellants.

Mr.Dharamveer Tholia, for the respondents.

Heard learned counsel for the parties.

It is not in dispute that the khatedari of the land bearing Nos.33 and 34 in village Mandha(Madani), Tehsil Dantaramgarh, District Sikar was in the joint khatedari and still is in the joint khatedari of the plaintiffs and predecessor-in-title of the defendants Sultan, Gopal and Begaram.

As per the revenue record, the plaintiffs and the defendants have half undivided share in the aforesaid land bearing Khasra Nos.33 and 34.

The defendants purchased an undivided half share belonging to their predecessor-in-title in the land bearing Khasra Nos.33 and 34 vide registered sale-deed dated 09.04.1999. Thereafter, the defendants filed a suit for partition of the land on 12.05.1999 in the court of the Assistant Collector and Executive Magistrate No.2, Sikar being suit No.562/1999.

The present suit has been filed by the plaintiffs-appellants seeking an injunction for restraining the respondents from interfering with their cultivatory possession and also not to obstruct them from entering into their land bearing Khasra Nos.33 and 34 abutting on the road bearing Khasra No.708.

Since the parties themselves want partition of the land bearing Khasra Nos.33 and 34, it is directed that the Assistant Collector, Sikar before whom the suit No.562/1999 filed by the defendants-respondents herein is pending would direct the Tehsildar concerned or any officer subordinate to him to partition equally the land of Khasra Nos.33.

In the first instance, the portion of the land comprising part of Khasra No.34 which is abutting on the road Khasra No.708 of its entire length running East-West and 40 feet deep shall be marked separately and divided equally between the plaintiffs and defendants. In between this strip of land running 40 feet deep, a passage of 15 feet wide would be kept in middle which would form part of the common way passing through the Khasra No.34 upto the boundary of the Khasra No.33. This way would be kept 15 feet wide and would be the common way used by both the parties.

It is made clear that by the aforesaid arrangement, efforts shall be made to divide the portion 40 feet in depth running along Khasra No.708 (the road) of Khasra No.34 equally between both the parties leaving a 15 feet wide opening for the way to reach the two

portions of Khasra Nos.33 and 34. The remaining portion of the Khasra No.34 and the entire portion of Khasra No.33 will be clubbed in its area and then divided into two equal halfs with a way running North-South measuring 15 feet wide East-West.

The revenue authorities (the Assistant Collector No.2, Sikar, where the suit No.562/1999 is pending) shall direct the authorities to partition the land so that the Eastern half in its entirety including the portion of khasra Nos.33, 34 and the strip 40 feet wide goes to one party and the Western part goes to another party.

The aforesaid arrangement shall subsist during the pendency of the suit and shall not affect the rights of the parties in either the suits pending before the revenue courts or before the civil court.

The aforesaid directions be complied with before 30.06.2008. The parties are directed to approach the learned Assistant Collector, before whom the suit No.562/1999 is pending, on 20.05.2008.

Consequently, the appeal as well as the stay application stand disposed of, with the above directions.

(DALIP SINGH),J.

Solanki DS, Jr.P.A.