

Nopla and ors. Vs. Mula and ors.

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Court : Rajasthan

Decided On : Sep-11-1956

Reported in : AIR1957Raj342

Judge : Bapna, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 9; Rajasthan Revenue Courts (Procedure and Jurisdiction) Act, 1951 - Sections 42

Appeal No. : Civil Ref. No. 18 of 1956

Appellant : Nopla and ors.

Respondent : Mula and ors.

Judgement :

ORDER

Bapna, J.

(1) This is a reference under Section 40 of the Rajasthan Revenue Courts (Procedure and Jurisdiction) Act, 1951.

(2) Respondents Mulla, Ralia and Ghisa, brought a suit against the defendant-appellants Nopla, Mahadeva, Sheosahai, Ramnath and Par-bhati, praying for a permanent injunction res-training the latter from obstructing them and their cattle from passing through a Nala constituting the way to the Banjar land and from

obstructing their cattle being grazed in the area. Plaintiffs' allegations were that the defendants by laying hedges across the said Nala had obstructed the passage of the plaintiffs and their cattle to the pasture land. The defendants denied the plaintiffs' right of way through the Nala.

(3) The suit was valued at Rs. 2100/- and was originally instituted in the Court of the Civil Judge, Alwar, who returned the plaint holding that the suit was triable by a revenue Court, When the case came before the Sub-Divisional Officer, Behror, an objection was raised by the defendants that the suit was triable by a civil court and not by a revenue court. The Sub-Divisional Officer, Behror, however, rejected the objection and after evidence gave a decree to the plaintiffs by order dated 23rd April, 1955. On appeal by the defendants the question of jurisdiction was again raised and the learned Additional Commissioner, Jaipur, was of opinion that the suit was for an injunction not covered by any of the items in the First Schedule to the Rajasthan Revenue Courts (Procedure and Jurisdiction) Act and was, therefore, triable by a civil court. He has accordingly made this reference.

(4) The dispute is regarding the right of way to the pasture land and is not covered by Item 25 of Group 'B'. The dispute is not over any common grazing ground as well and, therefore, it is not covered by Item 28, and the case does not come under any of the other Items as well. I, therefore, declare that the suit was triable by a civil court. The difficulty, however, does not end here for Section 42 of the aforesaid Act provides:

'(1) If in any such suit objection was taken in the court of first instance and the appellate court has before it all the material necessary for the determination of the suit, it shall dispose of the appeal as if the suit had been instituted in the right court

The learned Additional Commissioner has not stated that the materials before him are not sufficient for decision of the case on merits. While, therefore, the answer to the reference is that a revenue court had no jurisdiction to entertain the suit for issue of a permanent injunction restraining the defendants from obstructing the passage of the plaintiffs and their cattle to the pasture land, it is further held that this objection has to be dealt with by the appellate court in the manner provided by

Section 42 of the Rajasthan Revenue Courts (Procedure and Jurisdiction) Act.

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