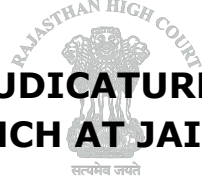




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 3562/2026

Chunki Devi Widow Of Hadmanaram, R/o Sevad Chhoti, Tehsil
Dhod, District Sikar.

-----Petitioner

Versus

1. Singari W/o Late Shri Bhagwanaram D/o Jaluram, R/o
Village Sevad Chhoti, Tehsil Dhod, District Sikar.
2. Dhapu W/o Late Shri Rameshwar D/o Jaluram, Deceased
Through Legal Heirs-
 - 2/1. Sharwan Kumar S/o late Shri Rameshwar,
 - 2/2. Jagdish S/o late Shri Rameshwar,
 - 2/3. Hardayal S/o late Shri Rameshwar,
 - 2/4. Shivpal S/o late Shri Rameshwar,
 - 2/5. Chhotidevi D/o late Shri Rameshwar,
 - 2/6. Kamla Devi D/o late Shri Rameshwar,All residents of Sevan Chhoti, Tehsil Dhod, District Sikar.
3. State Of Rajasthan, Through Tehsildar Dhod, District
Sikar.
4. Sub Registrar Dhod, District Sikar.
5. Shekhawati Gramin Bank, Branch Fagalwa, Tehsil Dhod,
District Sikar Through Branch Manager.

-----Respondents

For Petitioner(s)	:	Mr. Amit Jindal Ms. Dipti Jindal Ms. Nitu Bhansali
For Respondent(s)	:	Mr. Prakhar Gupta Mr. Harsh Dadhich Mr. Sanjay Sharma Ms. Praveshika Singh with Mr. Raghav Mishra for Mr. V.D. Gathala, AGC

**HON'BLE MR. JUSTICE ANUROOP SINGHI****Order****REPORTABLE****18/03/2026**

1. The present writ petition has been filed by the petitioner being aggrieved by the order dated 03.02.2026 (Annexure-6) passed by the learned Board of Revenue Rajasthan, Ajmer (**BOR**) in Appeal Decree/T.A. No. 782/2024/Sikar, whereby the learned BOR has set aside the order dated 31.01.2024 (Annexure-5) passed by the Revenue Appellate Authority, Sikar (**RAA**) and has restored the judgment and decree dated 04.09.2023 (Annexure-4) passed by the Assistant Collector-II, Sikar.

2. The relevant facts leading to filing of the present writ petition are that the original suit bearing Case No. 01/2009 was instituted by respondents No. 1 and 2 before the Assistant Collector-II, Sikar seeking declaration of rights, permanent injunction and correction of revenue entries and it came to be decreed vide judgment and decree dated 04.09.2023, whereby the respondents No. 1 and 2 were declared 1/3rd share holders each in land bearing Khasra Nos. 461, 462 and 464 and 1/24th share holders each in land bearing Khasra Nos. 475 and 476 situated in Village Gram Sevad Chhoti, Tehsil and District Sikar.

Being aggrieved, the petitioner preferred an appeal before the RAA, Sikar which was allowed vide order dated 31.01.2024, whereby the judgment and decree dated 04.09.2023 was set aside and without recording any finding on merits, the matter was remanded back to the Assistant Collector-II, Sikar for afresh





consideration on merits, on the basis of oral and written evidence available on record and after framing an issue of limitation. Thereafter, the respondents No. 1 and 2 so also the petitioner preferred appeals against the order dated 31.01.2024 before the learned BOR, and vide impugned order dated 03.02.2026, while on one hand the appeal filed by the petitioner was dismissed, on the other hand the appeal filed by respondents No. 1 & 2 was allowed vide which not only the remand order passed by the RAA, Sikar dated 31.01.2024 was set aside, but even the judgment and decree dated 04.09.2023 was restored after recording findings on merits.

At this stage, it is relevant to note that vide order dated 31.01.2024, the RAA, Sikar had set aside the judgment and decree dated 04.09.2023 and remanded the matter back to the Assistant Collector-II, Sikar for afresh consideration, without recording any findings on merits.

3. Mr. Amit Jindal, learned counsel for the petitioner submits that as both the petitioner and respondents No.1 & 2 were aggrieved by the order dated 31.01.2024 passed by the RAA, Sikar vide which the matter was remanded back to the Assistant Collector-II, Sikar, respective appeals were filed before the learned BOR which were registered as Appeal No. 782/2024 titled as Singari & Ors. Versus Chunki Devi & Ors. and Appeal No. 954/2024 titled as Chunki Devi Versus Singari & Ors.

4. Learned counsel for the petitioner submits that though both the said appeals were filed under Section 225 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as '**the Act of 1955**'), the learned BOR has adjudicated the same by referring the said





appeals to have been filed under Section 224 of the Act of 1955 as is evident from the inaugural paragraph of order dated 03.02.2026.

The primary argument raised by the learned counsel for the petitioner is that since the RAA, Sikar vide its order dated 31.01.2024 had not adjudicated the appeal on merits and had simply remanded the matter back to the Assistant Collector-II, Sikar for afresh adjudication, in the event the learned BOR was not in agreement with the findings arrived at by the RAA, Sikar, the maximum it could have done was to set aside the order dated 31.01.2024 and remand the matter back to the RAA, Sikar for afresh consideration. Under no circumstances, the suit could have been decreed while arriving at independent findings on merits.

5. Learned counsel further submits that passing of the impugned order has gravely prejudiced the rights of the petitioner, in as much as it has taken away the petitioner's right of appeal, since no adjudication on merits was ever made by the RAA, Sikar.

6. In support of his contentions, learned counsel for the petitioner has placed reliance upon the judgment dated 18.03.2024 passed by the Hon'ble Supreme Court in **Civil Appeal No. 4357 of 2024** titled as **P.E. Prasannakumari & Ors. Versus T.K. Ambujakshi (Dead) Through Lrs.**, which reads as under :

"1. Heard the learned senior counsel appearing for the appellants and the learned senior counsel appearing for the third respondent.

2. The present appellants are the original defendants. A suit filed by the respondents-plaintiffs was decreed by the





Trial Court. Being aggrieved by the decree of the Trial Court, the present appellants preferred an appeal under Section 96 of the Code of Civil Procedure, 1908 (for short, "the CPC") before the District Court being the First Appellate Court. The District Court vide judgment dated 31st October, 2013 allowed the appeal in part. The District Court proceeded to set aside the decree of the Trial Court and remanded the suit for fresh disposal in accordance with law.

3. Being aggrieved by the judgment and decree dated 31st October, 2013 of the First Appellate Court, the appellants preferred an appeal under Clause (u) of Rule 1 of Order XLIII of the CPC before the High Court. By the impugned judgment dated 22nd December, 2022, High Court set aside the order of remand passed by the First Appellate Court and restored the decree of the Trial Court.

4. After having heard the learned senior counsel appearing for the parties, we find that there are more than one glaring errors committed by the High Court.

5. It was an appeal preferred by the appellants before the High Court. If the High Court was of the view that there was no merit in the appeal, the High Court could have at highest confirmed the order of remand passed by the First Appellate Court. However, as stated above, the High Court has proceeded to set aside the order of remand and restored the decree of the Trial Court. The original





plaintiffs were not aggrieved by the order of remand.

6. The second error committed by the High Court is that substantial questions of law were not framed by the High Court as it is well-settled that an appeal from an order under Clause (u) of Rule 1 of Order XLIII of the CPC will be governed by the principles under Section 100 of the CPC.

7. The only logical order which the High Court could have passed was of setting aside the order of remand and directing the First Appellate Court to decide the appeal on merits. The reason is that the First Appellate Court had passed the order of remand by setting aside the decree in its entirety and while doing so, no adjudication was made on the factual and legal issues. The appellants cannot be deprived of the remedy of first appeal.

8. Accordingly, we set aside the impugned judgment dated 22nd December, 2022 passed by the High Court as well as the impugned judgment dated 31st October, 2013 passed by the District Court in the Appeal bearing AS No.87/2008. We restore the Appeal bearing AS No.87/2008 to its original number to the file of the District Court at Alappuzha. We direct that the restored Appeal be listed before the Principal District Judge at Alappuzha on 22nd April, 2024 when the parties to this Appeal will remain present before the District Court.





9. Considering the fact that the restored Appeal is of the year 2008, the District Court will give necessary priority to the hearing of the Appeal.

10. All questions are left open to be decided by the District Court.

11. The Appeal is partly allowed on the above terms."

(EMPHASIS SUPPLIED)

7. Thus, learned counsel for the petitioner prays that considering the facts obtained and in view of the judgment of the Hon'ble Supreme Court in the case of **P.E. Prasannakumari (supra)**, the impugned order dated 03.02.2026 passed by the learned BOR deserves to be set aside and the matter be remanded back to the RAA, Sikar for afresh consideration on merits.

8. *E-converso*, Mr. Prakhar Gupta, learned counsel for respondents No. 1 & 2, vehemently submits that the impugned order has been rightly passed by the learned BOR and the findings have been arrived at on the basis of facts on record and submissions advanced. He submits that the learned BOR has all the competence and jurisdiction to adjudicate and decide the matter on its own merits.

9. Learned counsel further submits that Section 208 of the Act of 1955 makes the provisions of Code of Civil Procedure, 1908 (**CPC**) duly applicable to the proceedings under the Act of 1955 and thus, in addition to Section 227 of the Act of 1955, the following provisions of CPC viz., **Section 107** – Powers of Appellate Court; **Section 108** – Procedure in appeals from appellate decrees and orders; **Order XLI Rule 24** - Where evidence on record sufficient Appellate Court may determine case





finally; **Order XLI Rule 33** – Power of Court of appeal; **Order XLII** – Appeals from appellate decrees and **Order XLIII Rule 2** – Procedure, are duly applicable and have to be read in a harmonious manner along with the provisions of the Act of 1955 for considering the scope of the powers of the learned BOR.

10. Learned counsel further submits that a composite and a conjoint reading of the aforesaid provisions makes it manifest that the learned BOR had all the requisite powers and jurisdiction to decide the matter on merits and merely because the RAA, Sikar has not arrived at any finding on merits and has simply remanded the matter, it will not take away the right and authority of the learned BOR to adjudicate and decide the appeal on merits.

11. Learned counsel further submits that in light of the provisions referred above, the learned BOR being the second appellate authority has all the powers to consider the evidence available on record, and thus, no error can be found in the impugned order.

12. In support of his submissions, learned counsel for the respondents has placed reliance upon judgment of the Hon'ble Allahabad High Court in the case of **Smt. Bhagwati Devi Versus Board of Revenue** reported in **1981 Supreme (All) 1131**, wherein, though it has been held that a second Appellate Court should not go beyond considering the legality and propriety of the order of remand but the legislature has conferred necessary powers to decide even those question which were not decided by the Court below.

Reliance has also been placed upon judgment of the Hon'ble Supreme Court in the case of **Mahant Dhangir and Anr. Versus**





Shri Madan Mohan & Ors. reported in **1987 Supp SCC 528**, wherein, after referring to Order XLI Rule 22 and 33 of the CPC, the powers of Court of appeal have been discussed in entirety.

Learned counsel for the respondents has also relied upon a recent judgment of the Hon'ble Supreme Court in the case of **Sujej Singh Versus Ram Naresh & Ors.**, arising out of **S.L.P. (C) No. 1681 of 2024**, wherein, it has been held that any unnecessary remand by higher Court generates a fresh round of litigation and it should be avoided.

13. Learned counsel for the respondent further submits that the petitioner cannot be permitted to blow hot and cold, as the petitioner herself in the appeal filed before the learned BOR had prayed not only for quashing of the order passed by the RAA, Sikar but also for dismissal of the suit filed by the respondents. Thus, the petitioner herself was aware about the wide powers available with the learned BOR.

Learned counsel, in furtherance of his submissions, also submits that even before this Court, the prayer made by the petitioner is to set aside the judgment dated 03.02.2026 passed by the learned BOR, so also the judgment dated 31.01.2024 passed by the RAA, Sikar and the judgment and decree dated 04.09.2023 passed by the Assistant Collector-II, Sikar. Thus, he prays that the writ petition deserves to be dismissed and order passed by the learned BOR deserves to be upheld.

14. Heard learned counsel for the parties and perused the orders impugned as well as the judgments relied upon.

15. The focal issue to be considered is that once the statutory provisions of law provides for an appellate mechanism and





designated specific forums for filing such appeals, whether the said hierarchy of the appellate forums can be altered or taken away and whether a determination which leads to depriving any of the parties from availing the said appellate remedy can be sustained.

16. In the instant case, once the RAA, Sikar vide its judgment dated 31.01.2024, without travelling into the merits of the matter has remanded the matter back to the Assistant Collector-II, Sikar, and has not recorded any findings on the merits, it goes without saying that the evidence submitted before it was not adjudicated on merits, which is also evident from bare perusal of the said order. Hence, the challenge made by both the parties before the learned BOR was against the order which has remanded the matter back to the Assistant Collector-II, Sikar and thus, a determination on merits by the learned BOR, in the absence of any adjudication on merits by the RAA, Sikar would certainly deprive the petitioner of the remedy of first appeal.

17. The scope of the learned BOR while exercising the jurisdiction of appeal against an order of remand passed by the RAA, without recording any findings on merits, is certainly restricted to examining and evaluating the legality and validity of the remand order. Given the said limited scope, any determination on merits by the learned BOR would certainly lead to bypassing the first appellate authority. The said discipline is necessarily required for maintaining the hierarchy of the appellate forums and any deviation in the same would not only lead to the travesty of justice but would even run contrary to the statutory provisions of appeal.





18. The provisions of CPC and so also of the Act of 1955, to which attention has been drawn by the learned counsel for the respondents, though *in extenso* provide for the powers and scope of the second appellate authority, however, under no circumstances by any interpretation, permit curtailment or deprivation of the statutory remedy of first appeal.

19. Guidance *qua* the said proposition is taken from the judgment passed by the Hon'ble Supreme Court in the case of ***PE Prasannakumari (supra)***, wherein, in a similar set of circumstances, it has been held that when an order of remand is challenged before the appellate authority, the only logical order which could be passed is setting aside the order of remand and directing the Court below to decide the appeal on merits. The aforesaid finding squarely applies to the facts of the present case.

20. Also the said remand would, under no circumstances, fall within the category of an unnecessary remand as specific rights of the parties are to be determined and thus, the judgment in the case of ***Suvej Singh (supra)*** will not apply in the present case and in view thereof, the present writ petition deserves to be allowed.

21. Accordingly, the present writ petition is allowed, and the order dated 03.02.2026 passed by the learned Board of Revenue Rajasthan, Ajmer is set aside and the matter is remanded back to the Revenue Appellate Authority, Sikar, to decide the appeal on its own merits, without being influenced by the findings arrived at by the learned Board of Revenue Rajasthan, Ajmer in its order dated 03.02.2026 and so also by this Court in the present order.





22. Considering the fact that the Revenue Suit was filed way back in the year 2009, the Revenue Appellate Authority, Sikar may make all possible efforts to decide the appeal expeditiously, preferably within a period of four months from today, i.e. 18.03.2026, strictly in accordance with law.

23. Pending application(s), if any, stand disposed of.

(ANUROOP SINGHI),J

DIPESH CHAYAL /182 S

