

IN THE BOARD OF REVENUE FOR RAJASTHAN : AJMER

Appeal Decree No.770/2015/TA/Jaipur :

Prabhu alias Prabhu Dayal S/o Shri Arjun Nath, by caste Jogi,
R/o Village Khavarani Ji, Tehsil Jamwaramgarh, District Jaipur.

... Appellant.

Versus

1. Lalchand
 2. Ramgopal
 3. Ramswaroop
 4. Ramkishan
 5. Saju Devi D/o Shri Arjun Nath W/o late Shri Mulinath, by caste Jogi,
R/o Village Dhoret, Tehsil Jamwaramgarh, District Jaipur.
 6. State of Rajasthan through Tehsildar, Jamwaramgarh.
- ... Respondents.

* * *

D.B.

Shri Ravi Dangi, Member
Dr. Shrawan Kumar Bunkar, Member

Present :

Shri Pradeep Vishnoi : counsel for the appellant.
Shri Ajeet Singh Rathore : counsel for respondents.

* * *

Dated : 17.5.2022

J U D G M E N T

This appeal has been filed under section 224 of the Rajasthan Tenancy Act, 1955 against the judgment of the learned Revenue Appellate Authority, Jaipur dated 09.12.2014 in appeal No. 257/13 and also the judgment & decree of Assistant Collector, Fast Tract, Jamwaramgarh dated 07.6.2013 having the title 'Prabhu Vs. lalchand & ors.' in suit No. 87/2006.

2. Heard learned counsels for the parties.

3. The counsel for the appellant/ Prabhu reiterated the averments made in the memo of appeal and argued vehemently that both the learned lower courts below have not passed the judgment as per the facts & law which needs to be set aside. The plaintiff/ appellant argued that it is undisputed that the disputed land belongs to the 'Asan'. Siddhanath Chela Shankarnath was in cultivatory possession of the land and used to look after the temples etc. of the Nath Sect. In his lifetime, due to Chela custom, he had declared and given the rights pertaining to the disputed land and worship. Thus, on his demise, the land got recorded in the name of Ladunath and Prabhu, which is supported by the Khasra Girdawari of Svt. 2008-11 (Ex.P-4) and Ex.P-5, which endorsement was never ever disputed by Ladunath & ors. If the endorsement in the name of Ladunath is correct, then the endorsement in the name of plaintiff/ appellant Prabhunath cannot be incorrect. Thus, prayed that the appellant's share is 7/12 in the disputed Aaraji and to allow the appeal and set aside both the judgments & decrees of learned trial and that of the first appellate court.

4. Per contra, the counsel for the respondents argued that both the learned lower courts have passed the judgment issuewise and as per the law & facts. The concurrent judgments are based on sound reasoning. The appellant should have filed two appeals, one against the rejection of the suit and second against the counter claim being allowed. The burden to prove the issues No. 1 to 4 was not discharged by him. No any documentary or ocular evidence was forwarded by him to claim 7/12 part of the disputed land. In support of his contentions, he has filed the following judgments :-

1. 1959 RRD page 173 HC
2. 2006 RRD page 73 HC
3. 2004 (11) RBJ page 556 HC
4. RRT 2001 Part I page 244 HC
5. RRT 2008 Part I page 151 HC

Thus, prayed to reject the appeal.

5. Considered the arguments of both the learned counsels and perused the material available on record.

6. To begin with, a suit under section 53, 188 of the Rajasthan Tenancy Act bearing No. 87/2006 was filed before the Sub Divisional Officer, Jamwaramgarh, District Jaipur by the plaintiff/ appellant against the defendants/ respondents praying the following relief :

“अतः वाद वादी बाबत तकासमा (बटवारा) डिक्री किया जाकर उक्त शामलाती भूमि खसरा नम्बर 428 रकबा 11 बीघा 19 बिस्वा स्थित ग्राम खवारानी जी, तहसील जमवारामगढ का बाई मीट्स बाउण्ड्स विधिवत बटवारा किया जाकर वादी का हिस्सा 7/12 एवं प्रतिवादी संख्या 1 से 5 के संयुक्त हिस्से 5/12 की भूमि का खाता व लगान अलग कायम किया जावे तथा नक्शा अलग कायम किया जावे तथा प्रतिवादी संख्या 1 से 4 को जरिये स्थाई निषेधाज्ञा प्रतिबंधित किया जावे कि वह वादी के हिस्से की भूमि में उसका किसी प्रकार की मजाहमत उत्पन्न नहीं करे तथा उसके शांतिपूर्वक कब्जे काशत में दखलंदाजी नहीं करे। अन्य अनुतोष जो न्यायालय श्रीमान परिस्थिति विशेष में वादी के हक में मुनासिफ समझे वादी को दिलाया जावे।”

To which, written statement and counterclaim was filed by the defendants/ respondents No. 1 to 4 who claimed the following relief :

“अतः जवाब दावा तथा बयान मजीद मय प्रतिदावा प्रस्तुत कर निवेदन है कि झूठे तथ्यों पर प्रस्तुत वादी का वाद खारिज फरमाया जावे एवं उत्तरदातागण का काउण्टर क्लेम स्वीकार कर वादग्रस्त भूमि खसरा नम्बर 428 व 429 में वादी को हिस्सा 1/5 एवं प्रतिदावाकर्ता 1 ता 4 प्रत्येक को हिस्सा 1/5—1/5 अनुसार खातेदार काशतकार घोषित किया जाकर तदानुसार रिकार्ड दुरुस्तीकरण कराते हुए विधिवत तकासमा करने हेतु डिक्री जारी करने की कृपा करे एवं वादी को स्थाई निषेधाज्ञा से पाबन्द किया जावे कि वह वादग्रस्त भूमि को बेचान हस्तांतरण नहीं करे। रेकार्ड एवं मौके की यथास्थिति कायम रखे एवं प्रतिदावाकर्ताओं की शांतिपूर्वक उपयोग व उपभोग में किसी प्रकार मुजाहमत, बाधा, दखल पेदा नहीं करें एवं न ही अपने ऐजेन्ट सर्वेन्ट आदि से करावे।”

The plaintiff/ appellant filed the reply to it and in turn the counter reply was also filed.

7. On 06.4.2010, seven proposed issues were submitted on behalf of the plaintiff. On 03.5.2010, eleven issues proposed by the defendants' counsel were framed.

On behalf of the plaintiff, Prabhu PW1 deposed on oath while Ramgopal, Ramjilal, Suresh Chand and Ramswaroop deposed as witness on behalf of the defendants side. After hearing the arguments, on 07.6.2013, the learned trial court deciding issuewise passed the following judgment :-

“हमने उभय पक्षों की बहस सुनी तथा पत्रावली पर उपलब्ध रेकार्ड का अवलोकन किया। हमारी विनम्र राय में प्रतिवादी अपने द्वारा पेश प्रतिदावा को बखूबी साबित करने में सफल रहा है। जिसकी पुष्टि तनकी के विवेचन से भी होती है। अतः प्रतिदावा प्रतिवादी का स्वीकार किया जाता है कि ग्राम खवारानी जी में स्थित खसरा नम्बर 428 रकबा 11 बीघा 19 बिस्वा भूमि, खसरा नम्बर 429 रकबा 6 बिस्वा भूमि में वादी का हिस्सा 1/6 व प्रतिदावाकर्ता 1ता 5 प्रत्येक को 1/6-1/6 के अनुसार काश्तकार घोषित किया जाता है। इसी अनुसार राजस्व रेकार्ड दुरुस्त किया जावे तथा इसी अनुसार सरस-नरस के आधार पर बटवारा किया जावे तथा सभी पक्ष एक दूसरे के कब्जे काश्त में मजाहमत नहीं करें। निर्णय खुले न्यायालय में सुनाया गया। पत्रावली दाखिल दफ्तर हो।”

8. Aggrieved by it, an appeal No. 257/2013 was filed by the plaintiff/ appellant Prabhu before the learned Revenue Appellate Authority, Jaipur. Vide Judgment dated 09.12.2014, the learned R.A.A., Jaipur deciding the appeal issuewise, passed the following judgment :-

“अतः अपील अपीलान्त अस्वीकार की जाती है तथा अधीनस्थ न्यायालय का निर्णय दिनांक 7-6-2013 यथावत रखा जाता है। अधीनस्थ न्यायालय की पत्रावली निर्णय की प्रति सहित लौटाई जावे। तदनुसार अपील फैसल शुमार होकर नम्बर से कम हो।

निर्णय आज दिनांक 9-12-2014 को मेरे द्वारा लिखाया जाकर सरे इजलास सुनाया गया।”

Thus, this appeal has been preferred by the plaintiff/ appellant Prabhu before the Board.

9. Both the learned courts below have passed the judgments issuewise. Judgments are concurrent. The counterclaim filed by the defendants was allowed by the learned trial court. The share of the parties have not been decided as per the plaint and on the contrary, decided as per the counterclaim. However, only one appeal has been preferred against the suit and counterclaim and before the Board also, there is a single appeal. Be that as it may be. While deciding the principal issues no. 1 & 7, both the

courts below rightly reached the conclusion that appellant/ plaintiff failed to bring documentary evidence, that he is having 7/12 share in the disputed land and no documentary or other material has been exhibited in support of his averments. The appellant and respondents no. 1 to 5 are the only LRs of Arjun Nath. Therefore, both the learned courts below rightly held 1/6th share each of each LR. There is no illegality or perversity in these and the other issues.

10. Thus, we find no any material illegality or perversity in the judgments & decrees passed by both the learned lower courts and hence this appeal deserves to be and is hereby dismissed.

11. All application(s), if any, pending also disposed of accordingly.

Pronounced in open court.

(Dr. Shrawan Kumar Bunkar)
Member

(Ravi Dangi)
Member