

Worth Reportable

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Revision/LR/2001/3373/Bharatpur

1. Balram
2. Laxman
3. Gopaldas

-sons of Badri Prasad by caste Brahmin resident of Kama Tehsil Kama District Bharatpur

...Revisionists

Versus

1. Murti Shri Gokul Chandrama Ji Maharaj Virajman Mandir Shri Gokul Chandrama Ji Maharaj, Kama Tehsil Kama through Shri Radhey Shyam Shastri son of Shri Hanuman by caste Brahmin resident of Kama, the power of attorney holder and Manager Murti Mandir

...Respondent

2. Laxmi Devi wd/o Bhagwandas by caste Brahmin resident of Kama Tehsil Kama District Bharatpur
3. Pramod adopted son of Bhagwandas resident of Kama Tehsil Kama District Bharatpur)
4. Smt. Vimla Kumari daughter of Badri Prasad wife of Shri Deendayal Pathak by caste Brahmin resident of Pahadi Tehsil Pahadi District Bharatpur.

,,,Performa Respondents

S.B.

Shri Rajinder Kumar, Member

Present :-

Shri J.K.Pareek, Counsel for the revisionist

Shri Virendra Singh Counsel for the respondent no.1

JUDGMENT

Dated 23.4.2019

1. This revision petition under Section 84 of the Rajasthan Land Revenue Act, 1956 is directed against the judgment dated 16.4.2001 passed by the learned Additional Divisional Commissioner in 2nd appeal no.16/2001.

2. Facts mentioned in the revision petition are that the disputed lands were the khatadari lands of the deceased Badri Prasad, who was ancestor of the revisionists and the proforma respondents no.2 to 4. During his lifetime, the deceased Badri Prasad was cultivating the said lands. But in the revenue record, these lands were recorded as the khatadari lands of the respondent no.1 and the deceased Badri Prasad was recorded as Shikami-tenant. After the death of Badri Prasad in the year 1982, the revisionists and the proforma respondents submitted mutation no.149 before the Tehsildar Kama for attesting the same in their names as Shikami Tenants in place of the deceased Badri Prasad. However, the learned Tehsildar Kama vide order dated 8.6.1982 illegally refused to sanction the said mutation. The order of the Tehsildar was unsuccessfully challenged by the revisionists by filing first and second appeals respectively in the courts of the Sub-Divisional Officer, Deeg and the Additional Divisional Commissioner, Jaipur. Hence, this revision petition.

3. I have heard the learned counsels.

4. On behalf of the revisionists, it was argued that the deceased Badri Prasad was cultivating the lands in dispute since before the commencement of the Rajasthan Tenancy Act, 1955 (hereinafter referred as 'the Act of 1955'). As a matter of fact, the deceased Badri Prasad had acquired the status of a tenant under Section 5(43) of the Act of 1955, notwithstanding the fact that he was recorded as Shikami tenant in the Revenue Record. According to Section 38 of 'the Act of 1955', the tenancy rights are heritable. Therefore, the revisionists and the respondents no.2 to 4 are entitled to get the mutation sanctioned in their names in the footsteps of the deceased Badri Prasad. The Courts below have failed to appreciate the factual and legal position obtained in this matter.

4(1). The learned counsel further argued that during the pendency of these mutation proceedings, a suit for permanent injunction was filed by the respondent no.1 against the revisionists in the court of the learned Sub Divisional Officer, Kama. In the said suit, the parties had submitted a compromise which was attested by the trial court. In the said compromise, it was stated that the lands bearing khasra no. 5901(0.089) 5910(0.74), 6017 (0.51), 6018(0.35), 6040(0.30), 6041(0.27), 6042(0.39), 6043(0.22), 6014(0.20) situated in village Khajurwali are in the cultivatory possession of the revisionists and the same shall remain in their possession. The lands bearing khasra nos. 6016 and 6010 shall remain in the cultivatory possession of the revisionists and the respondent no 1 in the share of 3/5 and 2/5 respectively. The remaining lands shall remain under cultivatory

possession of the respondent no.1. The learned counsel further submitted that the revenue suit has since been decided by the trial court on the basis of the said compromise. Thus, the rights of the parties have been decided by the appropriate forum. Therefore, a prayer was made to set aside the order/judgments of the courts below and to direct the Tehsildar Kama to sanction the mutation on the basis of the compromise and the decree passed in the revenue suit.

5. Per contra, the learned counsel for the respondent no.1 opposed the above submissions. He has argued that the respondent no.1 Deity is a perpetual minor and the compromise in question was attested by the trial court in breach of the provisions contained in Section 46 of the Act of 1955. There is no evidence on record to show that the deceased Badri Prasad was cultivating the disputed lands as a 'tenant' since prior to the commencement of the Act of 1955. No khatedari rights over the lands of the Deity could be acquired by any person by entering into agreement with the trustees of the Deity. The trial court has also not passed any decree in favour of the revisionists or the respondent no. 1 on the basis of the compromise. On the contrary, the suit for permanent injunction was dismissed by the learned trial court. Therefore, the mutation cannot be sanctioned on the basis of the unlawful compromise. A prayer was made to dismiss the revision petition.

6. I have given my thoughtful consideration to the above submissions and perused the record carefully.

7. There is no denying the fact that the lands in dispute are the khatedari lands of the respondent no.1, which is a perpetual minor. There is no evidence on record to show that the name of the deceased Badri Prasad was entered in the revenue record as a khatedar, pattedar, Khadamdar or under any other description implying that he was a 'tenant' having heritable and full transferrable rights in the lands of the Deity immediately preceding the commencement of the Jagir Act. On the contrary, the deceased Badri Prasad was entered in the revenue record as Shikami Tenant. The subletting of the agricultural holdings beyond five years is clearly barred by the provision of the Act of 1955. The three courts below have, therefore, rightly come to the conclusion that no right would accrue in favour of the legal representatives of the deceased Badri in these proceedings. It appears that under the pre-text of getting the mutation sanctioned on the basis of Shikami tenancy, the revisionists infact want the

khatedari rights of the lands in dispute, which is in clear violation of the tenancy laws.

8. It is also pertinent to note that the mutation proceedings are effected only for 'fiscal purposes' and the real rights of the parties can only be determined by the courts in regular suits. The compromise submitted in the trial court by the parties was not lawful because khatedari rights in respect of the agricultural lands in the State of Rajasthan can only be accrued in terms of the legal provisions mentioned below :-

(1) Where khudkasht land is transferred against the provisions of section 10(2), the transferee becomes khatedar tenant under Section 12(2) of the Act

(2) Under Section 13, on resumption or abolition of estate, the estate holder to become khatedar or Malik, as the case may be.

Both these provisions are contained in Chapter II of the Act of 1955 and these provisions have lost their practical implications because the 'Estates' have been resumed and now the State Government alone is the land holder.

(3) Under Section 15, by operation of law.

(4) Under Section 19, a tenant of the khudkasht or a sub-tenant in possession of the land as per the terms contained therein.

(5) Under Section 189(2), where rent is assessed at a favourable rate, the grantee shall be deemed to be a khatedar.

(6) Under Section 193, if the District Collector declares that the services of a village servant are no longer desired, such village servant shall become khatedar of the land under village service grant.

(7) Under Section 194(2), when a grove land ceases to be a grove land, the grove-holder would become a khatedar tenant.

9. Therefore, the compromise in question was not lawful in view of the provisions contained in Order-23 of the Code of Civil Procedure, 1908. The learned trial court, which has attested the compromise, was also acquainted with the legal position that the Deities deserve a protection under Section 46 of the Act of 1955 and that is why the khatedari rights were not declared in favour of the revisionists and the suit was dismissed by it. In fact, Section 19 of the Act of 1955 itself says that khatedari rights shall not accrue if land is held from any of the persons enumerated in Section 46 of the Act. Therefore, there is no illegality in the impugned order/judgment passed by the Courts below. The mutation

cannot be ordered to be sanctioned on the basis of unlawful compromise entered into by the parties.

10. Resultantly, the revision in hand is dismissed.

Pronounced.

(Rajinder Kumar)
Member