

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal Decree No.142/2002/TA/Jaipur :

Ramkaran S/o Shri Suva, Jai (Deceased), represented by :-

1. Muli widow of Shri Ramkaran
2. Shrawan S/o Shri Ramkaran
3. Babulal S/o Shri Ramkaran
4. Ambalal S/o Shri Ramkaran, minor through his mother Smt. Muli
5. Kalu Lal S/o Shri Suva

All Jat by caste, residents of Village Doonsari, Tehsil Chaksu,
District Jaipur.

... Appellants.

Versus

1. Narain S/o Shri Bhura Ram
2. Ramnath
3. Kana
4. Sitaram
5. Laxman
6. Heeralal S/o Shri Motiram
7. Shaitan S/o Shri Motiram

} sons of Shri Sundaram

All Jat by caste, residents of Village Doonsari, Tehsil Chaksu,
District Jaipur.

... Respondents.

D.B.

Shri Rajinder Kumar, Member
Shri Dhookal Ram Kaswan, Member

Argued by :

Shri J.K. Pareek and Shri Vaibhav Krishna Pareek : counsels for the
appellants.

Shri O.L. Dave and Shri Gaurav Dave : counsels for respondents.

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J U D G M E N T

Dated : 29.8.2018

Per Shri Rajinder Kumar, Member :

1. This second appeal is preferred against the judgments & decrees dated 07.02.2001 and 13.12.2001 of the trial court of learned Sub Divisional Officer, Chaksu and learned Revenue Appellate Authority, Jaipur respectively, whereby the suit and first appeal of the plaintiffs-appellants were dismissed.

2. The facts of this case in nutshell are that the appellants filed a suit in respect of the part of land bearing khasra no. 122 measuring 1 bigha (new khasra no. 853 area 0.24 hectare) in the trial court seeking the relief of permanent injunction against the defendant-respondents. It was alleged in the plaint that the said land was allotted to their father in the year 1977 on the basis of his old possession. After the death of their father, the plaintiffs are continuing in physical cultivatory possession of the disputed land as khatedars. The defendants have no right, title or interest over the suit land and they are illegally interfering into their peaceful possession. The defendants controverted the plaint allegations in their written statement, wherein they alleged that their land and the land of the plaintiffs fall in the same khasra number. Both the parties are in cultivatory possession of their own shares. The plaintiffs have filed the suit just to harass them. Thus, a prayer was made to dismiss the suit. The plaintiffs submitted replication on 06.12.1995. The trial court after framing issues recorded evidence of the parties and vide judgment dated 07.02.2001 dismissed the suit observing that the plaintiffs have failed to prove their possession and on the contrary, the defendants are in cultivatory possession of the suit land. In this regard, the learned trial court mainly placed reliance on the report of Naib-Tehsildar, Chaksu. Feeling aggrieved, the plaintiffs filed first appeal before the learned R.A.A. Jaipur, which also came to be dismissed vide impugned judgment dated 13.12.2001. Hence, this second appeal.
3. The substantial question of law involved in this appeal is whether the suit filed by the plaintiffs can be dismissed solely on the basis of the report of the Naib Tehsildar, Chaksu ignoring the other oral and documentary evidence produced by the parties ?
4. We have heard learned counsels at length.
5. Shri J.K. Pareek, Advocate assisted by Shri Vaibhav Krishna Pareek vehemently argued that the suit land was allotted to the father of

the appellants in the year 1977 and since then, they are in physical cultivatory possession of the same as its khatedars. They are also paying lagan to the State Govt. The defendants led no significant evidence in rebuttal of the evidence of the plaintiffs. Still the learned trial court dismissed the suit of the plaintiffs merely on the basis of the inspection report of Naib Tehsildar, Chaksu. The site inspection report cannot be made the basis of rejection of the suit, ignoring the oral and documentary evidence in the shape of revenue record. The first appellate court also failed to appreciate the arguments advanced before him by the plaintiffs-appellants and thus, the appeal was also dismissed in an illegal manner. A request has been made to accept the appeal & decree the suit filed by the appellants. To buttress the above contentions, learned counsel has placed reliance on the following citations :-

- (i) 2012 RRD 393 = 2012 (2) RRT 1079 'Suleman Khan Vs. LRs of Bhanwaru Khan'. In this case, it was held by Board of Revenue that suit cannot be decided merely placing reliance on the report of the local commissioner.
- (ii) 2012 (2) RRT 967 'Chandra Singh Vs. Udai Singh & ors.'. In this case, it was held by Board of Revenue that suit for permanent injunction cannot be decided on the basis of report of local commissioner obtained in the application for temporary injunction.

6. Shri O.L. Dave, learned counsel assisted by Shri Gaurav Dave, Advocate for the respondents have vehemently opposed the above submissions. It has been argued that the plaintiffs miserably failed to prove their possession over the suit land and thus, the trial court rightly dismissed the suit. No such legal principle can be formulated that report of commissioner cannot be made the basis of rejection of a suit. There are concurrent findings of facts of the courts below and the same are also not perverse. Therefore, interference by this

Board is not required in the facts and circumstances of the case. In support of above arguments, reliance has been placed on 1980 RRD 750 'Kewal Kumar Vs. State of Rajasthan' and AIR 2001 SC 2282 'Hamida & ors. Vs. Md. Kahlil'. In both these cases, it was held that if the findings are neither perverse nor illegal, interference by taking different view on re-appreciation of evidence is not proper in second appeal.

7. Having considered the rival submissions and upon perusal of record, it is revealed that the learned trial court was convinced that the plaintiff-appellants are the recorded khatedars of the land in dispute. However, the learned trial court further observed that this land has been wrongly entered in the name of the plaintiff-appellants by the settlement authorities and in lieu of the said land, the appellants must be the khatedar tenants of another land bearing khasra nos. 839 and 858. This finding of the learned trial court is perverse, as it has been passed only on the basis of report of the Naib Tehsildar, Chaksu, wherein it is mentioned that the khatedari land of the plaintiffs is lying vacant and on the contrary they are in possession of some other land. It is pertinent that it was nobody's case that the plaintiffs are not occupying their own khatedari land or that they are in occupation of some other land. In this way, the learned trial court laid undue emphasis on the report of Naib Tehsildar, Chaksu. The learned trial court did not consider the oral and documentary evidence available on record. We have examined the oral statements of the witnesses and the documents produced by both the parties. The evidence led by the plaintiff Kalu PW-1 & Sheokaran PW-2 is categoric in terms that the plaintiffs are occupying the suit land as its khatedars. The statements of these witnesses are corroborated with the revenue record Ex.-1 Jamabandi & Ex.-2 Khasra Girdawari. The said oral and documentary evidence could not be rebutted by the oral statements of Narain DW-1, Nenulal DW-2, Sitaram DW-3 &

Sheojiram DW-4. Thus, we are fully convinced that the plaintiffs were able to prove their possession over the suit land.

8. In 2015 (2) RRT 1077 'Jethudan Vs. Megha & ors.', it was held by the Board of Revenue that recorded khatedari could not be ignored on the basis of oral evidence and the report of local commissioner. Therefore, both the courts below committed illegality in appreciating the legal position in right perspective and dismissed the suit and first appeal of the plaintiff-appellants in an illegal manner.
9. Although the findings of both the courts below are concurrent, but they are based on assumptions and the report of Naib Tehsildar, Chaksu could not have been made the sole basis for coming to the conclusion that the plaintiff-appellants are not in possession of the disputed land. This Board is not bound to accept such perverse findings of the courts below; therefore, interference by this Board is necessary in the facts & circumstances of the case. The appeal filed by the plaintiff-appellants deserves to be accepted.
10. Resultantly, the appeal filed by the plaintiff-appellants Muli & others is accepted and the judgments and decrees of the courts below are set aside. The suit filed by the plaintiff-appellants is decreed and the defendant-respondents are restrained from interfering into their peaceful possession over the land bearing khasra no. 122 measuring 1 bigha [new khasra no. 853 measuring .24 hectare] situated in Village Doonsari, Tehsil Chaksu, District Jaipur. However, if the plaintiff-appellants are found to be in illegal possession of the land other than their khatedari land, the law will take its own course and the land-holder must initiate appropriate proceedings for their eviction.

Pronounced.

(Dhookal Ram Kaswan)
Member

(Rajinder Kumar)
Member

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