

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

1. Appeal Decree/TA/3830/2002/Ajmer.

Nagar Sudhar Nyas, Ajmer

...Appellant.

Versus

1. Bahadur son of Khuma caste Cheeta
2. Smt. Naini widow of Khuma caste Cheeta
Both residents of village Somalpur Tehsil & Distt. Ajmer.
...Respondents.
3. State of Rajasthan through Tehsildar, Ajmer.
...Proforma respondent.

2. Appeal Decree/TA/3305/2010/Ajmer

1. Bahadur son of Khuma caste Cheeta
2. Smt. Naini widow of Khuma caste Cheeta
Both residents of village Somalpur Tehsil & Distt. Ajmer.
...Appellants.

Versus

1. State of Rajasthan through Tehsildar, Ajmer
2. Secretary, Nagar Sudhar Nyas, Ajmer.
...Respondents.

D.B.

**Shri Rajeshwar Singh, Chairman
Shri Ravi Dangi, Member**

Present:-

In Appeal No. 3830/2002

Shri Girish Pareek, counsel for the appellant.

Shri Surendra Sethi, counsel for the respondents No. 1 and 2.

Shri Shankar Lal Choudhary, Govt. Advocate for State.

In Appeal No. 3305/2010

Shri Surendra Sethi, counsel for the appellants.

Shri Shankar Lal Choudhary, Govt. Advocate for respondent No.1

Shri Girish Pareek, counsel for respondent No.2.

Date:03.12.2021

J U D G M E N T

These two appeals have been filed under section 224 of the Rajasthan Tenancy Act, 1955 against the judgment and decree dated 18.4.2002 passed by Revenue Appellate Authority, Ajmer in appeal No. 41/2002/223.

2. Both these appeals have been filed against judgment and decree dated 18.4.2002 and common arguments have been advanced by the learned counsels of the parties, facts and legal points involved in the matter are same and parties to the appeals are same. Therefore, both these appeals are being disposed of by this common judgment. A copy of the same may be placed in each file separately.

3. Briefly stated the facts of the instant second appeal are that the respondents No. 1 and 2 filed a suit under section 88 and 188 of the Rajasthan Tenancy Act in the court of Sub-Divisional Officer, Ajmer stating that khasra No. 1501 measuring 6 bigha 19 biswa 10 biswansi situated in village Somalpur (new No. 1725 measuring 6 bigha 19 biswa 10 biswansi) in their tenancy and cultivatory possession since their forefathers. The disputed land is in the name of their father and husband, Khuma and after the death of Khuma, his son and widow succeeded him in his tenancy land. During settlement, the Settlement Department has entered their khatedari land as siwai chak government land. Learned trial court after framing three issues and decided all the issues against the plaintiffs/ respondents and dismissed the suit vide its judgment and decree dated 16.1.2001. Aggrieved by the judgment and decree dated 16.1.2001, the plaintiffs/ respondents filed first appeal under section 223 of the Rajasthan Tenancy Act before the learned Revenue Appellate Authority, Ajmer who vide its judgment and decree dated 18.4.2002 partially allowed the appeal and declared plaintiffs/ respondents khatedars of 3 bigha land of khasra No.1501 (present khasra No. 1725). Aggrieved by the impugned judgment and decree dated 18.4.2002, these second appeals are preferred before the Board.

4. Heard the learned counsels of the parties.

5. Learned counsel for the appellant/ Nagar Sudhar Nyas, Ajmer while reiterating the facts mentioned in the memo of appeal, has further argued that the soil classification of the disputed land bearing khasra No. 1501 (new No. 1725) measuring 6 bigha 19 biswa 10 biswansi is shown as 'chattan' (rock). Chattan, river, drainage and mountains has been declared as government land after coming into existence of section 6 of the Jamindari, Biswedari Abolition Act, 1959. If the plaintiffs had any grievance, they should have raised objections but no action or objection

had been raised before the competent court and illegally sown the crop of jawar and Moong in svt. 2015-19. He further contended that learned first appellate court has passed the impugned judgment without summoning the record, where the appellant has been in possession of the disputed land since the year 1994. He further contended that the respondents have no cultivatory possession on the disputed land, even then learned first appellate court has committed grave illegality in conceding the possession of the respondent No. 1 and 2 on the disputed land. Lastly, the learned counsel prayed for accepting the appeal and setting aside the impugned judgment and decree.

6. On the contrary, the learned counsel for the respondent No. 1 and 2 argued that the respondents and their forefathers has been in possession of the disputed land and they are the recorded khatedars in cultivatory possession of the disputed land. The judgment and decree passed by the learned trial court is against the revenue record. The learned counsel prayed for dismissal of the appeal.

Respondent No. 1 and 2 filed an application under Order 41 Rule 27 of the Civil Procedure Code in the appeals, along with the certified copy of the order dated 29.3.2006 in appeal No. 2002/3830 and photocopy of the order in the appeal No. 2010/3305, passed by the Assistant Secretary, UIT, Ajmer in case No. 4/2004. On perusal of the documents filed under Order 41 Rule 27 of the Civil Procedure Code, it comes to the fore that this order was passed on 29.3.2006 in the light of the judgment passed by the first appellate court on 18.4.2002. However, against the judgment of the first appellate court dated 18.4.2002 these two appeals have been filed. Thus, any order passed on the basis of the impugned judgment is not relevant to decide the appeal against the impugned judgment. Therefore, the applications filed in both the appeals under Order 41 Rule 27 of the CPC are rejected.

7. We have given our thoughtful consideration to the rival contentions of the parties and perused the material available on record.

8. A perusal of the Ex.-P1, jamabandi of svt. 2014-2017 shows that khasra No. 1501 measuring 6 bigha 19 biswa 10 biswansi situated in village Somalpur in the name of Makbuja Malkan. Jamabandi Svt. 2018-21, Ex.-P2 shows khasra No. 1501min 3 bigha 19 biswa 10 biswansi as

siwai chak and khasra No. 1501 measuring 3 bigha situated in village Somalpur Tehsil and Distt. Ajmer is shown in the name of Khuma son of Kaja caste Cheeta (predecessor of the present respondents No. 1 and 2). Soil classification of land in both these exhibits shown as 'chattan'. Khasra girdawari of svt. 2015-18, Ex.P3, khasra girdawari of svt. 2019-22 Ex,P4, khasra girdawari svt. 2020-23 Ex.P5. khasra girdawari svt. 2023-26 Ex.P6, khasra girdawari 2027-30 Ex.P7, khasra girdawari 2033-36 Ex.P8, 2037-40 Ex.P9 clearly show that the disputed land is mentioned as siwai chak government land. As such it is crystal clear that the disputed land was never remained in khatedari or cultivatory possession of the respondents No. 1 and 2 and their claim that they had been in possession of the disputed land since last fifty years is clearly baseless and without any supporting document. The disputed land bearing khasra No. 1725 measuring 6 bigha 19 biswa 10 biswansi situated in village Somalpur was transferred to Nagar Sudhar Nyas, Ajmer vide letter No. उखअ/राजस्व/89/8556-57 dated 23.6.1989 by the District Collector, Ajmer.

9. That learned trial court after considering the entire material and legal preposition decided the issue No. 1 against the plaintiff which is reproduced herewith:-

“दोनों वकीलों ने अपनी बहस में वादग्रस्त आराजी की भूमि पर अपना अपना कब्जा होना कथन किया है। वादी की ओर से प्रस्तुत खसरा गिरदावरी सं. 2015-18 प्रदर्श पी-3 में साबिक ख.न. 1501 प्रान्तीय सरकार मकबूजा मालकान 6-19-10 चट्टान होना व खूमा पुत्र कजा द्वारा 3 बीघा में कुलथ एवं 3-19-10 में ज्वार काशत करना अंकित है। सं. 2019 की खसरा गिरदावरी जो कि प्रदर्श पी-4 हैं, में किसी प्रकार की कोई काशत होना नहीं पाया जाता है। खसरा गिरदावरी सं. 2020 से 2023 में मकबूजा मालकाना श्री सरकार के नीचे खूमा वल्द कजा चीता अंकित है किन्तु किसी प्रकार की काशत का अंकन नहीं है। खसरा गिरदावरी सं. 2023 से 2026 में श्री सरकार मकबूजा मालकान के बाद सं. 2025 में 3 बीघा में ज्वार बाजरा काशत अंकित है व 3-19-10 चट्टान अंकित है। इसके अंतिम कॉलम में बतौर अतिक्रमी खूमा का विवरण अंकित करते हुए वादग्रस्त इस साबिक ख.न. 1501 में सबीर हुसैन द्वारा 5-6 फीट लम्बा व गहरा गड्डा खोदना भी अंकित है। इसके पश्चात् सं. 2027-30 की प्रस्तुत खसरा गिरदावरी प्रदर्श प-7 में, खसरा गिरदावरी सं. 2033 से 2036 प्रदर्श पी-8 में बतौर अतिक्रमी सबीर हुसैन का नाम अंकित है व खसरा गिरदावरी सं. 2037-40 प्रदर्श पी-9 में बतौर अतिक्रमी किसी का नाम अंकित

नहीं है। इस प्रकार दस्तावेजी साक्ष्य से वादीगण के क्रमशः पिता/पति एवं इनकी मृत्यु उपरांत वादीगण का वादग्रस्त आराजीयात पर नियमित रूप से कब्जा काश्त होना नहीं पाया जाता है इसलिए यह तनकी वादीगण के विरुद्ध निर्णित की जाती है।”

10. Learned first appellate court without any material or contrary to the material partly decided the issue No. 1 in favour of the plaintiff and held that the plaintiff is having possession on 3 bigha land. This finding is contrary to the material available on record. Continuous khasra girdawari have not been filed by the plaintiff since svt. 2012 and even then khasra girdawari do not confer any right and title. Plaintiff is shown as gair khatedar kashtkar in jamabandi svt. 2018-21 and not of svt. 2012. The plaintiff who files the suit the burden is on him to prove the contents of his plaint. As neither the plaintiff nor any one on his behalf appeared as a witness, the plaintiff failed to prove his averments made in the plaint. On the contrary only one witness DW Prem Raj Bhatti appeared for the defendants.

11. The learned trial court decided the issue No. 2 which is reproduced herewith:-

“.....विवादित पुराने ख.न. 1501 की भूमि वादीगण के पिता/पति की खातेदारी की भूमि नहीं है चूंकि इनकी पुष्टि जमाबन्दी सं. 2014 से 2017 एवं संवत् 2018 से 2021 जो की प्रदर्श पी-1 एव 2 है, दस्तावेजी साक्ष्यों से होती है एवं प्रतिवादी संख्या 1 के जवाब से भी इसको बल मिलता है। अतः यह तनकी भी वादीगण के विरुद्ध निर्णित की जाती है।”

12. The first appellate court reversed the finding of the learned trial court on the ground that once enter the name of the plaintiff as a gair khatedar in the jamabandi of svt. 2018-21 thereafter this entry cannot be deleted. Issue No. 2 is “Has the land been acquired by the State and transferred to UIT and is in their possession?”

13. In this issue it is to be decided that before allotment to UIT whether acquisition was to be done or not. Admittedly land in question entered in the name of the State, therefore, no need to acquire the land before allotment. Therefore, the finding of the learned first appellate court deserves to be rejected and is hereby rejected and the finding of the learned trial court is upheld.

14. Moresoever, plaintiff failed to take any remedy against the allotment of land to the Nagar Sudhar Nyas, Ajmer before the appropriate court/forum. Therefore, this suit cannot be decreed. In light of the above discussion, appeal No. 3830/2002 ‘Nagar Sudhar Nyas Ajmer Vs. Bahadur and ors’ is allowed and appeal No. 3305/2010 ‘Bahadur and ors. Vs. State and ors’ is rejected at this stage. If any application is pending, also disposed of accordingly.

Pronounced in open court.

(Ravi Dangi)
Member

(Rajeshwar Singh)
Chairman