

**IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER**

**Appeal Decree No.6663/2002/TA/Ajmer :**

1. Gulabi widow of Shri Chhitar
2. Durga Lal S/o Shri Chhitar
3. Mahaveer S/o Chhitar (Deceased), represented by :-
  - 3/1. Mumal widow of Shri Mahaveer
  - 3/2. Manju D/o Shri Mahaveer
  - 3/3. Jitendra S/o Shri Mahaveer
  - 3/4. Suman S/o Shri Mahaveer
  - 3/5. Sangeeta D/o Shri Mahaveer
  - 3.6. Chandra D/o Shri Mahaveer

} all minors

All Dholi (Damami) by caste, residents of Village Syar, Tehsil Sarwar, District Ajmer.

... Appellants.

**Versus**

1. Badam widow of Shri Mohan
2. Ramdev S/o Shri Mohan
3. Hansraj S/o Shri Mohan
4. Shivram S/o Shri Mohan

All Dhakar by caste, residents of Village Syar, Tehsil Sarwar, District Ajmer.

5. State of Rajasthan
6. Gram Panchayat, Syar, through Sarpanch, Gram Panchayat, Syar, Tehsil Sarwar, District Ajmer.
7. Parmeshwari D/o Shri Mohan, Dhakar, resident of Village Syar, Tehsil Sarwar, District Ajmer.

... Respondents.

**D.B.**

**Shri Rajinder Kumar, Member**  
**Shri Dhokal Ram Kaswan, Member**

**Argued by :**

Shri Bhiyanram Chaudhary : counsel for the appellants.

Shri V. P. Singh : counsel for respondents.

**J U D G M E N T**

**Dated : 12.9.2018**

**Per Shri Rajinder Kumar, Member :**

1. This second appeal is directed against the judgment & decree dated 14.11.2002 passed by the learned Revenue Appellate Authority, Ajmer in Appeal No. 132/2002. By the impugned judgment, the learned R.A.A., Ajmer dismissed appeal preferred by the plaintiffs/ appellants and upheld the judgment & decree dated 28.02.2002 passed by the learned trial court of Sub Divisional Officer, Ajmer dismissing the plaintiffs' suit.
2. The facts leading to this appeal in nutshell are that the suit land comprised in khasra No. 259 measuring 14 bigha 6 biswa situated in Village Syar was sold by their predecessor-in-interest of the defendants no. 1 to 4 and 7, namely, Shri Mohan on 21.6.1978. Subsequently, the suit land was allowed to be mutated in the name of the contesting defendants by the Gram Panchayat on 28.11.1995. Thus, the defendants became khatedars of the suit land. Thereafter, they started interfering in the possession of the plaintiffs over the suit land, which necessitated them to file the suit. The said suit was filed mainly on the ground that the original khatedar Mohan belonged to a Scheduled Caste category 'Damami Dholi' and thus, the suit land could not have been sold to transferee, who belonged to general category. In this way, the said sale was alleged to be void being in contravention of Section 42 of the Rajasthan Tenancy Act, 1955. The defendants/ respondents No. 1 to 4 and 7 contested the suit alleging that the original khatedar (seller of the land) was 'Damami' by caste, which is comprised in the category of 'O.B.C.' and thus the sale transaction was not void. They also claimed their possession over the suit land after its purchase by their predecessor-in-interest. After full-fledged trial, the suit of the plaintiffs was dismissed. The first appeal filed by the

plaintiffs was also dismissed by the learned Revenue Appellate Authority, Ajmer. Hence, this second appeal.

3. We have heard learned counsels for the parties.
4. Shri Bhiyanram Chaudhary, learned counsel for the plaintiffs has argued that the courts below have misinterpreted the documents on record. It was proved from oral and documentary evidence that the plaintiffs are 'Dholi' by caste. In the passbook Ex.1, death certificate of Chhitar Ex.2, mutation Ex.3, copy of challan Ex.4 and ration card Ex.5, the caste of the plaintiffs has been mentioned as 'Dholi'. Earlier, the caste 'Dholi' was not included in the category of Scheduled Caste and vide Notification dated 27.7.1977, the 'Dholi' caste has been included in the list of Scheduled Caste category persons. The courts below have passed the judgments against the plaintiffs/ appellants on the ground that they beat drums of 'Rajput Family' only, thus, they are 'Damami' by caste. In this regard, the trial court has wrongly believed the version of the Villagers. In fact, the plaintiffs belong to 'Dholi' caste and 'Damami' is their sub-caste. The courts below also ignored this fact that the Gram Panchayat allowed the mutation in favour of the contesting defendants after a lapse of 17 years without giving opportunity of hearing to the appellants. The concerned Police has also filed chargesheet against the contesting defendants under Sections 420, 467, 468, 471 and 120(B) Indian Penal Code. This fact is sufficient to prove that the sale deed was a forged and fictitious document. In this way, a sale of land of the khatedari land of the Scheduled Caste person to a person of general category is void. The trail court has only decided the issue No. 2 in its detail whereas the other issues were left undecided. The learned first appellate court has also passed its judgment in contravention of Order 41 Rule 31 Code of Civil Procedure. The learned R.A.A. did not frame points of determination of appeal and also did not discuss the evidence of the

plaintiffs in a legal manner. Therefore, a prayer was made to accept the appeal and set aside the judgments of courts below and also to decree the suit of the plaintiffs. In support of the above oral arguments, learned counsel has submitted written arguments also. He has relied upon the following cases :-

- (i) 1992 RRD 205 'Hira Ram Vs. Mst. Narayani & ors.' In this case, the Board of Revenue held that 'Dholi' was not a member of the Scheduled Caste. It was included in the list on 27.7.1977.
- (ii) 1978 RLW 442 'Ram Chander Vs. Om Prakash'. In this case, it was held by the Hon'ble Rajasthan High Court that a sale of agricultural holding by a member of the Scheduled Caste in contravention of Section 42 of the Rajasthan Tenancy Act, 1955 would be void and not voidable.
- (iii) 1990 RRD 141 'Mangla Ram Vs. State of Rajasthan'.
- (iv) 2000 (7) RBJ 33 'Shri Jota Ram Vs. State of Rajasthan.
- (v) 2001 (8) RBJ 37 'Nathu Vs. Chatra'

In the above cases, it was held by the Board of Revenue that a sale of land in contravention of the provisions of Section 42 Rajasthan Tenancy Act, 1955 would be void.

- (vi) 1989 RRD 538 'Chhotia Vs. Karana'. In this case, it was held by the Board of Revenue that where sale is void, the suit for its cancellation is triable by Revenue court.

5. Shri V.P. Singh, learned counsel for the respondents no. 1 to 4 and 7 vehemently opposed the above submissions. According to him, the plaintiffs have miserably failed to prove that they belong to the Scheduled Caste category and thus, the sale in question could not be termed as void. The plaintiffs have also failed to prove their possession over the suit land. The concurrent findings of facts of the courts below are based on correct appreciation of evidence. Therefore, a prayer was made to dismiss the appeal.

6. We have given our thoughtful consideration to the rival submissions and perused the record carefully. We have also respectfully studied the law laid down in the above citations.
  
7. There is no dispute with the legal proposition that a sale of agricultural land made by a member of the Scheduled Caste in contravention of the provisions of Section 42 of the Rajasthan Tenancy Act, 1955 would be void. The first question which arose for consideration in the instant case was whether the plaintiffs have been successful in proving that they and their predecessor-in-interest belong to the category of 'Scheduled Caste'? The trial court after examining the material on record gave a specific finding that the plaintiffs are 'Damami' by caste, which is comprised in the category of 'Other Backward Class' and not the 'Scheduled Caste'. The findings of the trial court have been confirmed by the learned first appellate court. In this regard, both the courts below have heavily relied upon the disputed sale deed Ex.D1, Jamabandi and Girdawari of the disputed land Ex.1 and 2, wherein the caste of the vendor, namely, Chhitar is mentioned as 'Damami'. The conclusions of the courts below find corroboration from the caste certificate got issued at the instance of the grandmother of the plaintiff Jitendra. This caste certificate also states that the plaintiffs belong to 'Other Backward Class'. These concurrent findings of facts of the courts below are neither perverse nor illegal and are based on correct appreciation of the material placed on record.
  
8. The courts below have also observed that in the State Government Gazette Notification, both the castes, namely, 'Dholi' and 'Damami' have been entered separately. In the list of 'Scheduled Caste' category, the caste 'Dholi' appears at Sr. No. 23, whereas in the list of 'Other Backward Class', the caste 'Damami' appears at Sr. No. 10. It is not mentioned in these lists that 'Damami' is a sub-caste of 'Dholi'

caste. Therefore, there are concurrent findings of fact of the courts below that 'Damami' and 'Dholi' are different castes and belong to different categories.

9. Though, the sale deed was executed in the year 1978 and the mutation was got sanctioned in the year 1995, but this fact by itself does not prove that the sale deed was executed in contravention of the provisions of the Rajasthan Tenancy Act, 1955.
10. The learned first appellate court has considered and discussed the entire evidence in detail and its conclusions and findings are supported by reasons also. Therefore, substantial compliance with the provisions of Order 41 Rule 31 CPC has been made by the learned Revenue Appellate Authority. In our considered opinion, the non-framing of points by the first appellate court has not prejudiced the case of the plaintiffs-appellants. In this way, the judgment of first appellate court cannot be said to be vitiated. Reliance in this regard is placed on 2006 (4) SCC 224 'G. Amalorpavam & ors. Vs. R.C. Diocese of Madurai & ors.'
11. Therefore, no illegality or perversity is found in the judgments and decrees of the courts below, whereby suit and appeal of the plaintiffs-appellants were dismissed. No question of law is involved herein. Hence, the appeal is liable to be dismissed.
12. Resultantly, the appeal is dismissed.

Pronounced.

**(Dhookal Ram Kaswan)**  
Member

**(Rajinder Kumar)**  
Member

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