

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

**Appeal Decree/TA/3822/2003/Jodhpur**

- 1- NenuRam s/o Kisturiji
- 2- Chandra Shekhar s/o Kisturiji
- 3- Ramesh Chandara s/o Laxminarain
- 4- Smt. Mohini w/o Laxminarain
- 5- Jethmal s/o Laxminarain
- 6- Shyam s/o Laxminarain
- 7- Ramdev s/o Laxminarain
- 8- Radhyshyam s/o Pyare Lal
- 9- Smt. Shanta w/o Pyare Lal
- 10- Ramnivas s/o Pyare Lal
- 11- Jugal Kishore s/o Pyare Lal
- 12- Gopal s/o Munni Lal
- 13- Chhindu Bai w/o Munni Lal
- 14- Ramdayal s/o Munni Lal
- 15- Ghanshyam s/o Munni Lal
- 16- Ramnarain s/o Munni Lal

through power of attorney holder Ganeshi Lal s/o Kisturji

- 17- Ganeshi Lal s/o Kisturji

All Ghanchir by caste rs/o Inside Siwanchi Gate, Sindhiyuon ka Chowk  
Muliyon ki Chowki , Jodhpur.

Appellants....

Versus

- 1- State of Rajasthan through Tehsildar, Jodupur
- 2- Rajasthan Industrial and Mineral Development Corporation Ltd.  
(Presently known as Rajasthan Industrial Investment Corpn. Ltd.)  
through Area Manager, Udyog Bhawan. Jodhpur.

Respondents...

**D.B.**

**Shri Rajinder Kumar, Member  
Shri Mohan Lal Nehra, Member**

**Present :**

Shri Ashok Agarwal, counsel for appellants  
Shri Vijendra Choudhary, Addl. Govt. Advocate for respondent no.1  
Shri S.K.Sharma, counsel for respondent no. 2

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

**Dated : 18-07-2018**

1- This second appeal has been preferred under section 224 of the Rajasthan Tenancy Act, 1955 against the judgment and decree dated 29.07.2003 of the learned Settlement Officer and officiating Revenue Appellate Authority, Jodhpur, whereby appeal no. 26/03 filed by the plaintiffs/appellants was dismissed.

2- The facts leading to the present controversy are that the plaintiffs/appellants filed a revenue suit in the trial court in respect of land bearing khasra no. 1030/740 (measuring 8 bighas 3 biswas) situated at village Jodhpur. It was stated in the plaint that the appellants are in physical cultivatory occupation of the disputed land since the time of their forefather, namely, Kisturji even prior to the coming into force of the Rajasthan Tenancy Act, 1952. Therefore, a prayer was made to declare the plaintiffs as khatedars of the disputed land. The defendants did not submit written statement, despite seeking many opportunities. The plaintiffs lead oral and documentary evidence in support of their version. The learned trial court vide its judgment dated 19-03-03 dismissed the suit of the plaintiffs. Feeling aggrieved, the plaintiffs filed first appeal, which was dismissed by learned S.O. cum R.A.A., Jodhpur vide judgment and decree dated 29-07-03. Hence, this second appeal by the plaintiffs.

3- We have heard the learned counsel for both the parties.

4- Shri Ashok Agarwal, learned counsel for the appellants has submitted that the plaintiffs are in physical cultivatory possession of the disputed land since the time of their forefather prior to the coming into force of the Rajasthan Tenancy Act, 1955. They were also regularly paying the lagan to the State Government. The plaintiffs produced rent receipts, copies of Dhal Banchh, Khasra girdawaris, mutation order and jamabandis in support of their version and the defendants did not rebut the ocular and documentary evidence produced by the plaintiffs. The learned courts below gave the finding that the disputed land is a public utility land and conferment of khatedari rights over such land is prohibited by section 16 of the Rajasthan Tenancy Act, 1955, whereas the respondent no. 2 in cross objection submitted before first appellate court, admitted that this land does not belong to Forest Department. Therefore, the findings of both the lower courts are perverse and against the material produced on record. It is a settled legal position that where a person is admitted as tenant, his possession cannot later on be changed and different stand cannot be taken by the opposite party. Therefore, a request has been made to set aside the judgments and decrees of the courts below and to decree the suit filed by the plaintiffs.

5- Learned counsels for the respondents vehemently opposed the above submissions. They argued that there are concurrent findings of fact of both the courts below. No interference is required in this second appeal.

6- We have given our thoughtful consideration to the above submissions and perused the record carefully.

7- There is no denying the fact that the defendant did not submit any written statement to the plaint filed by the plaintiffs. More so, they did not produce any evidence in rebuttal of the evidence produced by the plaintiffs. However, it does not follow from it that the suit filed by the plaintiffs would be decreed due to lapse of the defendants to controvert the plaint allegations. The plaintiffs are required to stand on their own legs and they cannot take advantage of the weakness of defence. There are concurrent findings of fact of the courts below that land in question belongs to Shikarkhana Forest

Department and is a public utility land, thus, conferment of khatedari rights over such land is prohibited by section 16 of the Rajasthan Tenancy Act, 1955. There are further concurrent findings of fact of both the courts below that the possession, much less adverse possession, of plaintiffs over suit land is not proved. The concurrent finding of the facts of both the courts below are based on correct appreciation of material placed on record. Therefore, no interference by this Board is felt necessary. No substantial question of law is involved herein. Therefore, the appeal filed by the plaintiffs/appellants is liable to be dismissed.

8- Resultantly, the appeal filed by Nenu Ram and others is dismissed.

Pronounced.

**(Mohan Lal Nehra)**  
**Member**

**(Rajinder Kumar )**  
**Member**