

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

**Appeal Decree No.4451/2003/TA/Udaipur :**

1. Moti Bai widow of Shri Shobha Lal
2. Sushila Devi D/o Shri Shobha Lal
3. Anandi S/o Shri Shobha Lal
4. Shyamlal S/o Shri Shobha Lal

All Mochi by caste, residents of Village Dabok, Tehsil Vallabhnagar, District Udaipur.

... Appellants.

**Versus**

1. Ekling S/o Shri Moti (Deceased), represented by :-

1/1. Magi Bai widow of Shri Ekling

1/2. Jagdish

1/3. Devilal } sons of Shri Ekling

1/4. Dalchand }

1/5. Sunder Devi

1/6. Narayani } daughters of Ekling

1/7. Mithu Bai }

2. Bhagwan Lal S/o Shri Moti

All Kumhar by caste, residents of Dangiyon Ki Toos, Tehsil Vallabhnagar, District Udaipur.

... Respondents.

3. Pappu S/o Shri Shobha Lal, Mochi, residents of Village Dabok, Tehsil Vallabhnagar, District Udaipur.

... Proforma-respondents.

**D.B.**

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

**Argued by :**

Shri Yogendra Singh : counsel for the appellants.

Shri P.S. Dashora : counsel for respondents.

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

**Dated : 24.8.2018**

**Per Shri Rajinder Kumar, Member :**

1. This second appeal is preferred against the judgment & decree dated 06.8.2003 of the learned Settlement Officer-cum- Revenue Appellate Authority, Udaipur, whereby the first appeal filed by the plaintiffs was accepted and their suit was decreed reversing the judgment & decree of the learned trial court.
  
2. The facts leading to the filing of this second appeal in nutshell are that the plaintiffs filed a suit in the trial court of Sub Divisional Officer, Vallabh Nagar for permanent injunction against the defendant Shobha Lal on the premise that they are the khatedar-tenants of the disputed land bearing khasra no. 2592 measuring 3 bigha 2 biswa and the defendant is interfering into their peaceful possession. The plaintiffs also averred in their suit that they had come into possession of the suit land by purchasing the same from the original khatedar through registered sale deed. The defendant Shobha Lal contested the suit by filing written statement. His averment was that he is the khatedar-tenant of the disputed land and is continuing in its possession since the year 1969. The defendant also averred that he was in illegal possession of the disputed land, for which proceedings were initiated against him by the S.D.O., Vallabh Nagar, however, the disputed land was regularized in his favour in case no. 91/74. Thus, the story of the plaintiffs that they are in possession of the suit land is false and made up one. On the basis of these pleadings, the trial court framed as many as four issues. The parties produced their oral and documentary evidence and after hearing both the parties, the learned trial court dismissed the suit of the plaintiffs. Feeling aggrieved, the plaintiffs filed first appeal before the learned R.A.A. against the legal representatives of the sole defendant. The learned

Revenue Appellate Authority, Udaipur vide impugned judgment dated 06.8.2003 accepted the appeal and decreed the plaintiffs' suit in its entirety. Hence, the second appeal by the legal representatives of the defendant.

3. The substantial question of law involved in this appeal is whether the report of Halka Patwari regarding possession of defendants over the suit land can supersede the oral and documentary evidence produced on record?
4. We have heard learned counsels at length.
5. Shri Yogendra Singh, Advocate for appellants has submitted that the judgment & decree of the learned first appellate court is patently illegal and has been passed without considering the factual aspects involved in the case. The plaintiffs failed to prove their khatedari rights and possession over the disputed land. The defendant-appellants, on the contrary, submitted voluminous oral and documentary evidence to substantiate their plea that they are in actual physical cultivatory possession of the disputed land as khatedars thereof. The learned trial court correctly appreciated the material placed on record and dismissed the suit of the plaintiffs observing that they had failed to prove their possession on the disputed land. But the learned first appellate court, without considering the reasoning returned by the learned trial court, illegally accepted the version of the plaintiffs. The learned first appellate court failed to take into account the fact that the defendant-appellants were in possession of the disputed land since the year 1969 and also the fact that the said land has been regularized in their favour on the basis of their settled possession. The possession of the defendant-appellants over the suit land was fully established on the basis of the evidence of Halka Patwari Mangilal DW-2 and his report Ex.A-4, which was prepared by him on

the spot. The plaintiffs produced no evidence in the form of Jamabandi to show their khatedari rights over the suit land. The learned first appellate court decreed the plaintiffs' suit mainly on the basis of mutation entry in their favour. By now, it has become an established principle of law that the mutation entries do not carry significance and they also do not create any right in favour of the person concerned. In support of the aforesaid arguments, learned counsel has placed reliance on AIR 1995 SC 2185 'Major Pakhar Singh Atwal & ors. Vs. State of Punjab & ors.' In this way, there was no reason to disbelieve the documentary evidence evincing the khatedari of the defendant-appellants. The learned first appellate court also did not consider the documents produced by the defendant-appellants along with the applications filed by them under Order 41 Rule 27 CPC even after accepting the same vide order dated 13.5.2003. On the basis of these documents also, the khatedari of the defendant-appellants and their possession over the suit land was fully established. Thus, a prayer has been made to accept the appeal and to set aside the judgment & decree passed by the learned first appellate court.

6. Shri P.S. Dashora, learned counsel for the plaintiffs-respondents vehemently opposed the aforesaid arguments. He has argued that both the courts below have concurrently held that the plaintiffs-respondents are khatedars of the disputed land. Regarding possession, the learned trial court did not appreciate the oral and documentary evidence produced by the plaintiffs-respondents and gave undue weightage to the report of the Patwari. The learned first appellate court rightly observed that in view of the evidence produced by both the parties, the report of the Patwari has no significance. The learned first appellate court also rightly observed that the plaintiffs have been successful in proving their possession over the suit land and the defendants have failed to show their

possession as khatedars or in any other capacity. In this way, the judgment of the learned first appellate court is perfectly justified. The learned counsel has placed reliance on the following citations :

- (i) 1998 RBJ 283 = 1990 RRD 44 'Moharpuri Vs. Lochan Singh'. In this case, it was held by the Board of Revenue that contents of registered document must be accepted at its face value.
- (ii) 1989 RRD 620 'Ajim Mohammad Vs. Maharaja Vijay Singh'.
- (iii) 1988 RRD 470 'Ramcharan Vs. Ramhet'.

In the above cases, it was held by the Board of Revenue that the contents of a registered deed must be interpreted as they stand and no oral evidence can be accepted for the purpose of contradicting, varying, adding to or subtracting from its terms.

- (iv) 2011 RBJ 703 'Meghwal Samaj Shiksha Samiti Vs. Lakh Singh'. In this case, it was held by the Board of Revenue that the report of Patwari cannot supersede the entries of the revenue record.
- (v) 2012 (1) RRT 43 'Bhikha Ram Vs. Naina Ram'. In this case, it was held by the Board of Revenue that the report of Commissioner cannot be used for the purpose of proving possession of the party over the suit land.
- (vi) 1995 RRD 517 'Ramchandra Vs. Guman Mal'. In this case, it was held by the Board of Revenue that the report of receiver cannot be used for the purpose of proving possession.

7. We have given our thoughtful consideration to the above submissions and perused the record carefully. We have also studied the law laid down in above citations.

8. The plaintiffs filed the instant suit on the basis of khatedari rights over the suit land. The defendants also claimed themselves to be the khatedars of the same land. Both the courts below came to the conclusion that the plaintiffs are successful in establishing their khatedari rights over the said land. The concurrent findings of fact of both the courts below in this regard are based on correct appreciation of the material produced on record. The findings in this regard are neither perverse nor illegal in any manner. Therefore, the only controversy that remains to be decided is which party was in possession of the suit land on the date of the filing of the suit ? Both the courts below have given divergent findings on this issue. As per the observations of learned trial court, the defendants were in possession over the disputed land on the date of the suit, whereas as per the observations of learned first appellate court, the plaintiffs were in its possession.
  
9. The learned trial court in arriving at above conclusions has observed that though the plaintiffs purchased the disputed land from original khatedar through registered sale deed, yet its possession was not delivered to them as the seller himself was not in possession of that land on the date of execution of sale deed. The learned trial court also observed that the plaintiffs had no means of cultivating the land and they were getting its cultivation through Dhula Dangi, who has not been produced in witness box. The learned trial court also observed that there are other contradictions in the oral statements of the witnesses of the plaintiffs. It also observed that the version of the defendants that they are in cultivatory possession of the suit land is corroborated by the statement of Patwari DW-2 and his report Ex.A-4. The learned trial court in arriving at the aforesaid conclusions did not consider the other evidence available on record, which would clearly establish the possession of the plaintiffs over suit land. It was specifically mentioned in the sale deed that the seller viz. Ram Singh has physically handed over the possession of

suit land to the plaintiffs. The mutation of the suit land was also sanctioned in favour of the plaintiffs on 24.10.1978. The said mutation was sanctioned on the basis of the report Ex.2. This documentary evidence was enough to corroborate the oral statements of the plaintiff and his witnesses examined during trial. The learned trial court misread the statement of these witnesses and did not take into account the above mentioned documents while examining the matter. It appears that the learned trial court did not appreciate the fact that it was a civil matter, which is decided on the basis of preponderance of probabilities and not on the principle of proving a case beyond shadow of reasonable doubt. The learned trial court also gave undue weightage to the report of Patwari Ex.A-4. This report was prepared in the year 1983 whereas on the basis of registered sale deed executed in favour of the plaintiffs, their possession over the suit land stands proved since the year 1978. Even the statement of Halka Patwari Mangilal DW-2 is full of contradictions and is vague. All these aspects were taken care of by the learned first appellate court in the judgment impugned before us. Most relevant factor regarding the report of Patwari Ex.A-4 is that it was not prepared in the presence of the plaintiffs. Thus, no significance can be attached to such a report and decision passed by learned trial court on the basis of this report could not have been maintained and it was rightly set aside by the learned first appellate court.

10. In our considered opinion, the plaintiffs have been successful in establishing their possession over the suit land, who had purchased the same through a registered sale deed. In that sale deed, it has been specifically stated that possession of the suit land had been delivered to the plaintiffs. In such circumstances, the oral evidence led by the defendants was meaningless. Therefore, there is no infirmity in the judgment passed by the learned first appellate

court. The substantial question of law framed above is answered in terms that the report of Halka Patwari regarding possession of defendants over the suit land cannot supersede the oral and documentary evidence produced on record. The appeal filed by the defendant-appellants merits dismissal.

11.Resultantly, the appeal is dismissed.

Pronounced.

**(Dhookal Ram Kaswan)**  
Member

**(Rajinder Kumar)**  
Member

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