

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

APPEAL/TA/2003/4927/Barmer

Lumbaram son of Bagaram by caste jat resident of Chokhla resident of Tehsil Baytu District Barmer.

...Appellants

Versus

1. Smt. Lali wife of Habib by caste Muslim resident of Rohili Tehsil & District Barmer.
2. The State of Rajasthan through Tehsildar Barmer.

D.B.
Shri V.Srinivas, Chairman
Shri R.K.Jaiswal, Member

Present:-

1. Shri Hagamilal Chaudhary, Counsel Counsel for the appellants
2. Shri Dungar Singh Rathore, Counsel for the respondent

JUDGMENT

The appellant has approached the Board of Revenue in 2nd Appeal under Section 224 Rajasthan Tenancy Act, 1956 aggrieved by the judgment and decree of the Revenue Appellate Authority Barmer, in appeal No.133/2002 dated 14.8.2003. The appellant submits that the judgment and decree of learned R.A.A. Barmer is not consistent with provisions of O.41 R 31 of Civil Procedure Code, and not consistent with the legal provisions of Rajasthan Tenancy Act, 1955 and no issue based order has been issued. The appellant has purchased the suit land khasra number 153 area 86 bighas and 6 biswa Village Rohili Tehsil Barmer by registered scheduled and has proven possession before the court of S.D.O. Barmer, but the learned R.A.A., Barmer did not take cognizance of the possession of appellant. The learned S.D.O. Barmer had decreed the suit on 27.11.2003 and declared the appellant as khatedar tenant and has also issued an order of permanent injunction against the respondent-defendant.

The appellant submits that the rights of the defendant stand transferred following the sale of land by registered sale deed dated 17.7.1973 to the purchaser-appellant. The registered sale deed has been upheld by a competent civil court on 23.11.1978. As the respondent-defendant was interfering in the peaceful possession of the appellant, a suit for declaration and permanent injunction was filed in the court of SDO, Barmer on. On

27.11.2002 the suit was decreed in favour of the appellant-plaintiff. Aggrieved by this order; the respondent-defendant approached the R.A.A. court in 1st appeal who set aside the judgment & decree of the trial court and allowed the appeal. Aggrieved by the order of the learned R.A.A., Barmer dated 14.8.2003 the appellant has filed the 2nd appeal in the court of Board of Revenue.

The learned counsel for appellant pleads that despite the validity of the registered purchase deed duly recognized by competent civil court on 23.11.1978 the respondent-defendants continue to interfere with the possession of the appellant-plaintiff, who has also been denied khatedari rights. The learned counsel for appellants pleads that the interest of khatedar tenant on suit land stands duly transferred to him based on the legitimate sale and the appellant's khatedari rights may be duly recognized by the Board of Revenue. The learned counsel for respondent pleads that the learned R.A.A. has observed the possession following registered sale deed has not been transferred and as such the provisions of S.183 Rajasthan Tenancy Act 1955 cannot be invoked. Hence, the learned R.A.A. has set aside the orders of the learned Trial court S.D.O. Barmer.

We have heard the arguments of both learned counsels and examined the case details. Following the registered sale deed dated 17.7.1973 and following its due recognition by the competent civil court on 23.11.1978, the respondent-defendant's khatedari rights on the suit land stand duly transferred to the appellant-plaintiff. The respondent-defendant has no any legality for continued possession on the suit land.

The appellant-plaintiff is entitled to be declared a khatedar tenant and the respondent-defendant is liable for ejection from the suit land. Accordingly the order of the learned R.A.A., Barmer dated 14.8.2003 is set aside and the order of S.D.O. Barmer Dated 27.11.2002 upheld. The appellant-plaintiff is hereby declared a khatedar tenant and the respondent-defendant shall be ejected from the suit land khasra no: 153 of area 86 bighas and 6 biswas Village Rohili Tehsil Barmer by the Tehsildar Barmer.

Pronounced in open court.

(R.K.Jaiswal)
Member

(V.Srinivas)
Chairman