

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal Decree/TA/5079/2003/Sawai Madhopur.

1. Gopi son of Kana
2. Ramphool son of Kana
3. Punya son of Gopi
4. Ram Kalyan son of Maddu
5. Sita Ram son of Maddu
6. Panna son of Maddu

All by caste Kumhar residents of village Mahesra Tehsil Baulin
Distt. Sawai Madhopur.

...Appellants.

Versus

1. Om Prakash son of Raghav Das
2. Prahalad son of Raghav Das
3. Satyanarain son of Raghav Das
4. Chandra Mohan son of Raghav Das
5. Parmeshwar son of Raghav Das
6. Mangi widow of Raghav Das
7. Mst. Sampati daughter of Raghav Das
8. Mst. Gandori daughter of Raghav Das
9. Mst. Ganpati daughter of Raghav Das

All by caste Bairagi residents of village Mahesra Tehsil Baulin
Distt. Sawai Madhopur.

10. Mangya son of Kalu
11. Gangadhar son of Kalu
12. Kanhaiya son of Bhagya
13. Ramdayal son of Mangya
14. Dhanpal son of Gangadhar
15. Heera son of Ramnarain
16. Hanuman son of Ramnarain

All residents of village Mahesra Tehsil Baulin Distt. Sawai
Madhopur.

...Respondents.

D.B.

**Shri V. Srinivas, Chairman
Shri Indra Singh Rao, Member**

Present:-

Shri V.P. Singh, counsel for the appellants.

Shri Ashok Agarwal, counsel for the respondents.

Date:11.06.2018

J U D G M E N T

The appellants have filed this second appeal under section 224 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as 'the Act') against the judgment and decree dated 14.8.2003 passed by Revenue Appellate Authority, Sawai Madhopur in appeal No. 155/2002, whereby the learned first appellate court has upheld and confirmed the judgment and decree dated 1.8.2002 passed by learned Sub-Divisional Officer, Baulin (Distt. Sawai Madhopur) in suit No. 483/2002.

2. The facts, in brief, of the appeal are that the respondents/ plaintiffs filed a revenue suit under section 88, 89 and 188 of the Act against the appellants/ defendants before the court of Sub-Divisional Officer, Baulin and prayed for declaration of khatedari rights and permanent injunction against the defendants in connection with the disputed land bearing khasra No. 222/3 measuring 2 bigha situated in village Mahesra Tehsil Baulin Distt. Sawai Madhopur. The trial court by his judgment dated 1.8.2002 has declared the plaintiffs khatedar of land measuring 1 bigha 9 biswa out of 2 bigha of khasra No. 222/3 and restrained the defendants/ appellants from permanent injunction. Aggrieved by the judgment and decree dated 1.8.2002 passed by the learned trial court, the appellants/ defendants preferred first appeal under section 223 of the Act before the learned Revenue Appellate Authority, Sawai Madhopur after hearing both the parties dismissed the first appeal and upheld the judgment dated 1.8.2002 passed by the trial court through its judgment and decree dated 14.8.2003. Having aggrieved by the judgments and decrees dated 1.8.2002 and 14.8.2003 passed by learned Sub-Divisional Officer, Baulin and learned Revenue Appellate Authority, Sawai Madhopur respectively, the appellants have preferred this second appeal before the Board of Revenue.

2. We have heard the learned counsels of the parties.

3. The learned counsel for the appellants has submitted an application under Order 41 Rule 27 of the Civil Procedure Code and along with the application submitted two documents, namely, mauka report dated 27.12.2017 and Fard Mauka Gram Mahesra of khasra No. 222 of Janta Prakostha 2004. The learned counsel for the respondents has no objection in accepting this application and taking these

documents on record. Therefore, the documents submitted along with application are taken on record.

4. The learned counsel for the appellants has contended that both the lower courts have overlooked the documentary and oral evidence produced by the appellants/ defendants. As per khasra girdawari of Svt. 2013 to 2030 possession of the appellants/ defendants was proved and mauka commissioner report dated 15.8.1985 also proved the possession of the appellants/ defendants on the disputed land. Except this, plaintiff Raghav Das (deceased) had also executed a written document (tehrir) on 15.7.1957 by which it was proved that on the western side of the disputed land the appellants had their possession and this fact was asserted by one witness Durga Singh. He further contended that both the lower courts have found the tehrir as ambiguous because the thumb impression of the plaintiff Raghav Das was on the back side of the tehrir, but in fact all the five witnesses also signed on the back side of the tehrir. The learned counsel further contended that during pendency of the suit in the trial court, witness of the then Jagirdar who helped in partition of the land was taken. He was the only person who was alive and other witnesses were no more. The trial court has mentioned in its judgment dated 1.8.2002 that though the document is unregistered it can be considered for the collateral purposes. On legal issue, the learned counsel for the appellants argued that on the day of registration of the suit, the respondents were not in possession of the disputed land. It is a must that the relief under section 188 of the Act can be sought only if the plaintiff is in possession of the land. If we were in unlawful possession then the respondents/ plaintiffs should have brought a suit under section 183 of the Act. It is settled law that a person in possession cannot be dispossessed under the garb of temporary injunction or permanent injunction. Mauka report dated 27.12.17 which shows that the appellants are in possession of the land which has been endorsed by Om Prakash. Hence, looking to the law and facts the appeal of the appellants be accepted. In support of the contentions, the learned counsel for the appellants has submitted following pronouncements:-

(1) 1986 RRD 6 (Chhote Vs. Gambhir Singh)

- (2) 1988 RRD 703 (Jeeva Vs. Ghasi)
- (3) 2013 RBJ 497 (Bagh Singh Vs. Rampat)
- (4) 2010 RBJ 215 (SC) (Dubaria Vs. Har Prasad)
- (5) 1989 RRD 527 (State Vs. Smt. Kunpawat Ji)
- (6) 1987 RRD 202 (HC) (Mishri Lal Vs. Ram Khilari)
- (7) 1973 RRD 231 (Chhitardan Vs. Ramkaran)
- (8) 1973 RRD 400 (Heera Vs. Nathu)
- (9) 1975 RRD 371 (Ganga Ram Vs. Madan and ors.)
- (10) 2010 RRT 819 (S. Kaladevi Vs. V.R. Somasundaram)
- (11) AIR 2003 (SC) 1905 (Bondar Singh Vs. Nihal Singh)
- (12) 1994 RRD 780(L.R.s of Chatru Vs. Kalyan and ors.)
- (13) 2010 RBJ 564 (Babu Lal Vs. Shankar Lal)

5. The learned counsel for the respondents contended that the mauka record which has been prepared on 27.12.2017 though has been taken on record yet it cannot be read in evidence because it has been prepared during pendency of the appeal and without any order of the competent court. In this report only one-half part of the land is in possession of the purchase has been mentioned which does not give any right to the appellants. Regarding tehrir of the year 1957, the cross suit has been dismissed. At the same time no original tehrir has been submitted in the court rather it is a photocopy, unregistered and unstamped which can never be considered for collateral purposes. Khasra girdawari is not a record of right and it is established law that khatedar deems to be in possession of the land unless prove otherwise. Both the courts below have established possession of the respondents before coming into force of the Rajasthan Tenancy Act. Hence, it is prayed that the present appeal deserves to be dismissed.

6. We have given thoughtful consideration to the rival contentions and perused the case file and have minutely gone through the legal pronouncements submitted by the learned counsel for the appellants.

7. A perusal of the revenue record shows that the plaintiffs/ respondents are the recorded khatedars of the disputed land. The plaintiffs/ respondents have their possession on the disputed land bearing khasra No. 222/ 3 in svt. 2043. In khasra girdawari svt. 2031-35 also the possession of disputed land has been shown to be of Raghav Das (one of the plaintiffs). The contention of the defendants/

appellants that they have tehrir in their favour does not help them in any way because the so-called tehrir is an unregistered and unstamped document which has thumb impression on its back, which cannot be relied upon. The contention of the appellants/ defendants that they had purchased the half share of the disputed land is not proved by any document. In ample pronouncements of the higher courts it is propounded that concurrent findings of the facts of the lower courts cannot be interfered with unless there is factual or legal error. It is the duty of the State to protect right of tenancies of the khatedar tenants. We have given our thoughtful deliberations to the citations submitted by the learned counsel for the appellants and in our humble opinion these citations are not applicable looking to the facts and circumstances of the case in hand. In our opinion there is no legal or factual error committed by both the lower courts. Therefore, we find no force in this second appeal which deserves to be dismissed.

8. Resultantly, this second appeal filed by the appellants is hereby dismissed and the judgments and decrees dated 14.8.2003 and 1.8.2002 passed by learned Revenue Appellate Authority, Sawai Madhopur and Sub-Divisional Officer, Baulin respectively are upheld and confirmed.

Pronounced.

(Indra Singh Rao)
Member

(V. Srinivas)
Chairman