

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

1. Appeal/TA/1435/2004/Alwar.

1. Saidpal son of Dhanna
2. Rambabu son of Dhanna
3. Surajbhan son of Dhanna
4. Parmeshwari daughter of Dhanna
5. Jagroshani daughter of Dhanna
6. Shivilahari daughter of Budha
7. Jailal son of Budha
8. Mahaveer son of Budha
9. Harnam son of Budha
10. Mehar Chand son of Budha
11. Chandrabhan son of Budha
12. Mangatu son of Natthu

All by caste Yadav residents of Luhahera Tehsil Tijara Distt. Alwar.

...Appellants.

Versus

1. Bhuriya son of Mangaliya
2. Hariya son of Kanha (deceased) through LRs:-
 - 2/1 Daya Ram son of Hariya
 - 2/2 Bodan Lal son of HariyaBoth caste Ahir residents of village Luhadera Tehsil Tijara Distt. Alwar.
- 2/3 Smt. Krishna daughter of Hariya wife of Vijaypal caste Ahir resident of village Sindrawali Tehsil and Distt. Gurgaon (Haryana)
- 2/4 Smt. Rajesh daughter of Hariya wife of Sube Singh caste Ahir resident of Meerpur Post Kartapur Tehsil Kotkasim Distt. Alwar.
3. Gyasi son of Kanha (deceased) through LRs:-
 - 3/1 Smt. Sheela wife of late Gyasi
 - 3/2 Hansraj son of Gyasi
 - 3/3 Ashok son of Gyasi
 - 3/4 Sunita daughter of Gyasi wife of Raj caste Yadav resident of Gokulpur Tehsil and Distt. Rewari (Haryana)
 - 3/5 Smt. Pappi daughter of Gyasi wife of Satpal caste Yadav resident of Meerpur Tehsil Kotkasim Distt. Alwar.
4. Same Singh son of Bala Ram
5. Ramkishan son of Bala Ram
6. Vijaypal son of Bala Ram
7. Rajpal son of Bala Ram
8. Phoolwati daughter of Bala Ram
9. Shriram son of Sohan
10. Jal Singh son of Sohan
11. Ramkala widow of Lala Ram
12. Ashok son of Lala Ram
13. Rampal son of Lala Ram
14. Vishawjeet son of Lala Ram
15. Basti Ram son of Sohan
- 15/1 Sushila wife of Basti Ram
- 15/2 Subhash son of Basti Ram

- 15/3 Sushma daughter of Basti Ram
- 15/4 Poonam daughter of Basti Ram
- 15/5 Meena daughter of Basti Ram
16. Laxman Singh son of Sohan
17. Pappu son of Sohan

All by caste Yadav residents of village Luhadera Tehsil Tijara Distt.
Alwar.

...Respondents.

2. Appeal/TA/1461/2004/Alwar.

1. Saidpal son of Dhanna
2. Rambabu son of Dhanna
3. Surajbhan son of Dhanna
4. Parmeshwari daughter of Dhanna
5. Jagroshani daughter of Dhanna
6. Shivilahari daughter of Budha
7. Jailal son of Budha
8. Mahaveer son of Budha
9. Harnam son of Budha
10. Mehar Chand son of Budha
11. Chandrabhan son of Budha
12. Mangatu son of Natthu

All by caste Yadav residents of Luhahera Tehsil Tijara Distt. Alwar.

...Appellants.

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All by caste Yadav residents of village Luhadera Tehsil Tijara Distt.
Alwar.

...Respondents.

D.B.
Shri Ravi Dangi, Member
Dr. Sharwan Kumar Bunkar, Member

Present:-

Shri Madhavraj Singh, counsel for the appellants.

Shri Rohit Soni, counsel for the respondents.

Date: 17.5.2022

J U D G M E N T

The twin appeals viz. (a) appeal No. 1435/2004, having the title Sedpal and ors. Vs. Bhuriya and ors. against the judgment of the Revenue Appellate Authority, Alwar dated 18.3.2004 in appeal No. 54/2000 and (b) appeal No. 1461/2004 having the title Sedpal and ors Vs. Shriram and ors. against the judgment of Revenue Appellate Authority, Alwar dated 18.3.2004 in appeal No. 67/2000 are being decided together. A copy of the judgment be kept in both the files. An application dated 9.11.2021 has been filed in both appeals about demise of appellant No. 12 Mst. Chalati wife of Buddha whose LR's are already on record being appellants No. 7 to 11. In the facts and circumstances and in the interest of justice, the applications are allowed and her name is ordered to be deleted and amended cause title is taken on record.

2. A brief factual matrix giving rise to the appeals is as follows:-

To begin with, a suit was filed in the year 1988 by Dhanna, Buddha and Mangtu against Bhuriya and others under section 88, 89 and 188 of the Rajasthan Tenancy Act claiming the following relief:-

“1- डिक्री इजाय इश्तकरार हक इसके कि वादीगण साबिका आराजी खसरा सं0 76/2 रकबा 3-1 हाल खसरा संख्या 201/2-5, 202/0-10, 203/0-10 बिश्वा वाके ग्राम लुहादेरा तहसील तिजारा जिला अलवर के खातेदार व काश्तकार है। जिसमें

वादी नं० 1 निस्फ भाग व वादी नं० 2, 3 का निस्फ हिस्सा शामिल है। इन्द्राज मिसल हकीमत सं० 2029 व ताहाल रिकार्ड प्रतिवादीगन के नाम विरुद्ध वादीगन बातिल व बैअसर है, नाकाबिल पाबन्दी वादीगन है। वादीगन रिकार्ड को दुरुस्त कराने व प्रतिवादीगन का अमल कलमजन कराकर अपने नाम का अमल दर्ज कराने व खातेदारी करार पाने के मुश्त हक है।

2— डिक्री इजाय हुकम इम्तनाई दवामी इसके कि प्रतिवादीगन मुतनाजा आराजी से वादीगन को बेदखल न करे न कब्जाकाशत में रूकावट पैदा करे न आराजी को खुर्द बुर्द व मुन्तकिल करे।

3— हर्जा खर्चा मुकदमा वादीगन को प्रतिवादीगन से दिलाया जावे। एवं

4— दीगर दादरसी जो बनजदीक अदालत हो अता फरमाई जावे।”

The defendants filed the written statement and thereon the following issues were framed:-

“1— आया वादीगण विवादित आराजी साबिक ख.न. 76/2 हाल ख.न. 201/2-05, 202/0-10, 203/0-10 वाके ग्राम लुहादेरा तहसील तिजारा के काबिज खातेदार काशतकार है एवं इसी प्रकार अपने आपको खातेदार काशतकार घोषित कराने के अधिकारी है।

2— आया वादीगण उपरोक्त आराजी की बाबत हुकम इम्तनाई दवामी की डिक्री पाने के अधिकारी है।

3— आया प्रतिवादीगण स्पेशल कोस्ट पाने के अधिकारी है।

4— दादरसी।

During the suit, plaintiff No. 1, 2 and defendant No. 4 passed away and their legal representatives were taken on record. On written statement being filed, the following amended issues were again formulated viz.:-

1— आया वादीगण ने रूपाराम, छीतर पुत्रान मोती को फरीक मुकदमा नहीं बनाया है। इस बिना पर वाद वादीगण खारिज होने योग्य है।

2— आया वादीगण ने साबिक खसरा नम्बर 76 के हाल ख.न. सम्पूर्ण की बाबत दावा पेश कर रिलीफ नहीं चाही गई है। इस बिना पर दावा खारिज किये जाने योग्य है।

3— अनुतोष”

Thereafter, evidence was taken. PW1 Sedpal, PW2 Kishan Lal, PW3 Mangaliya and PW4 Sardara appeared as witness on behalf of the plaintiff, while Bhuria (DW1), Patram (DW2), Pappu (DW3), Kishan (DW4) deposed as witnesses on behalf of the defendants. Thirteen documents were exhibited on behalf of the plaintiff and seven documents on behalf of the defendants. After hearing the arguments, learned trial court after discussing each issue,

passed the judgment on 10.5.2000 decreed the suit in favour of the plaintiff. The operative part of the judgment is as follows:-

“दवा बहक वादीगण विरुद्ध प्रतिवादीगण डिक्री किया जाता है आ.ख.न. 201/2-02, 202/0-10, 203/0-10 वाके ग्राम लुहादेरा तहसील तिजारा के वादीगण 1/1 लगायत 1/6 को 1/2 भाग का तथा वादीगण 2/1 लगा0 2/7 व 3 को 1/2 भाग का खातेदार काश्तकार घोषित किया जाता है। जमाबंदी सम्वत् 2029 ता हाल में प्रतिवादीगण के नाम के अमल का कलमजन किया जाकर वादीगण के नाम का अमल किया जावे। तदनुसार पर्चा डिक्री जारी हो। खर्चा फरीकेन अपना अपना वहन करें।”

Aggrieved by this judgment dated 10.5.2000, twin appeals were filed before the Revenue Appellate Authority, Alwar viz. (a) appeal No. 54/2000 by Bhuria, Haria and Gyasi, which was decided on 18.3.2004. (b) Appeal No. 67/2000 by Shriram, Jalsingh, Lalaram, Bastiram, Laxman Singh and Pappu which was also decided on 18.3.2004, vide separate judgments.

In both the appeals the following judgment was passed:-

“अतः अपील अपीलान्टान आंशिक रूप से स्वीकार की जाकर विद्वान तहत न्यायालय के निर्णय एवं डिक्री दिनांक 10-5-2000 निरस्त किये जाते है। प्रकरण विद्वान तहत न्यायालय को इस निर्देश के साथ प्रतिप्रेषित किया जाता है कि वाद में सभी सह काश्तकारों को पक्षकार बनाकर साक्ष्य व सुनवाई ली जाकर पुनः निर्णय पारित करें। पक्षकारान को निर्देश दिये जाते है कि वो तहत न्यायालय में दिनांक 3-4-2004 को उपस्थित हो।”

Thus, both the appeals were partially allowed and the judgment and decree dated 10.5.2000 of the learned trial court was set aside and the matter was remanded to the learned trial court to pass fresh orders after evidence and assimilating all the other co-tenants as party to the suit.

3. Heard the learned counsels.

4. The counsel for the appellant/ plaintiff reiterated the facts mentioned in the memo of appeal and argued vehemently that the learned first appellate court set aside the judgment of the learned trial court, without deciding the appeal issue wise. As per the old revenue record the area of the plaintiff/ appellant was reduced and that of the defendants was increased.

5. *Per contra*, the counsel for the respondents/ defendants argued that the judgment passed by the learned first appellate court was just and proper and as per the law. They are in cultivatory possession. The commissioner report dated 5.12.1999, on which basis the suit was decreed by the learned trial court, but that report did not reveal any particular person's possession. The

plaintiff had not inculcated all the co-tenants as party in the suit. The old khasra No. 76 was a huge khasra, but suit has been filed pertaining to haal khasra No. 201, 202 and 203 only. The suit is liable to be dismissed due to non-joinder of recorded khatedars. In support of his contention, he cited 2019 RBJ 502 'Kishan Singh and ors. Vs. Jasu Singh and ors.' and 2017 (2) RRT 1051 'J. Balaji Singh Vs. Diwakar Cole and Ors.'

6. Considered the arguments of both the learned counsels and perused the material available on record.

7. The learned first appellate court reached the following conclusion:-

“उपरोक्त विवरण से यह जाहिर हो रहा है कि विद्वान विचारण न्यायालय में वादीगण द्वारा वाद में सभी सह काश्तकारों को पक्षकार नहीं बनाया गया है। जब कि कानूनन सभी सह काश्तकारों को पक्षकार बनाया जाना चाहिए। साबिक खसरा नम्बर 76 का कुल रकबा 9 बीघा 12 बिस्वा था, जिसके 7 हाल खसरा नम्बर बनाये गये हैं। इन सभी नम्बरों का विवरण वाद में नहीं दिया गया है। वाद को पूर्णतया समझने के लिए सभी खसरा नम्बरान का विवरण दिया जाना आवश्यक है।”

We are in agreement with the findings given by the learned first appellate court as all the co-tenants of the land in dispute have not been impleaded as a party although they were necessary and proper party. The old khasra No. 76 area 9 bigha 12 biswa, whose seven present khasra numbers have been made, but in the suit, these khasra numbers were not mentioned, which are necessary to understand the suit. Apart from this, the commissioner report dated 5.12.1999 was also made in absence of the parties and at the same time is not crystal clear as to who was cultivating the land in question.

Thus, the judgment passed by the learned first appellate court/ Revenue Appellate Authority, Alwar dated 18.3.2004 in setting aside the judgment of the learned trial court and in remanding the matter to the learned trial court to decide afresh after evidence and assimilating the tenants was just and proper and as per the law. We find no material illegality in the impugned judgment. Therefore, both the appeals No. 1435/2004 'Sedpal and others Vs. Bhuria and others and appeal No. 1461/2004 'Sedpal and others Vs. Shriram and others' deserve to be and hence dismissed. Parties are directed to appear before the learned trial court on 31.5.2022. All application(s), in any, pending, also disposed of accordingly.

Pronounced in open court.

(Dr. Sharwan Kumar Bunkar)
Member

(Ravi Dangi)
Member