

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal Decree No.2502/2004/TA/Sawaimadhopur :

Suresh Chand S/o Shri Ramprasad, by caste Brahman, resident of Aniyala,
Tehsil Boli, District Sawaimadhopur.
... Appellant.

Versus

1. Narendra Kumar
 2. Arun Kumar
 3. Manoj Kumar
 4. Kamla widow of Shri Ramprasad
 5. State of Rajasthan.
- } sons of Shri Dwarka Prasad
All by caste Brahman, residents of Aniyala, Tehsil Boli,
District Sawaimadhopur.

... Respondents.

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D.B.

Shri Shikhar Agrawal, Member
Shri Ramniwas Jat, Member

Present :

Shri C.P. Sharma : counsel for the appellant.
Shri Ashok Agrawal : counsel for respondents.

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Dated : 30-07-2019

J U D G M E N T

This second appeal has been preferred under section 224 of the Rajasthan Tenancy Act, 1955 (hereinafter to be referred as "the Act") being aggrieved with the judgment & decree dated 15.5.2004 passed by the learned Revenue Appellate Authority, Sawaimadhopur in appeal no. 5/2003 and the judgment & decree dated 03.01.2003 of the learned Sub Divisional Officer, Boli (Sawaimadhopur) in case no. 439/99.

2. The brief facts of the case are that plaintiff/ appellant filed a suit under sections 88, 89 and 188 of the Rajasthan Tenancy Act before

Sub Divisional Officer, Boli for declaration of khatedari rights over the disputed lands situated in village Aniyala. The learned S.D.O. vide his judgment & decree dated 03.01.2003 partially decreed the suit. Against the said judgment & decree, an appeal was filed by the plaintiff/ appellant in the court of learned R.A.A. The learned R.A.A. vide his judgment & decree dated 15.5.2004 dismissed the appeal and upheld the judgment of learned S.D.O. Being aggrieved with the above judgments dated 15.5.2004 and 03.01.2003, this second appeal has been preferred before the Board.

3. We have heard the arguments advanced by learned counsels for the appellant and respondents.

4. The learned counsel for the appellant argued that all the lands bearing khasra no. 200, 428, 511 and 148/4 were ancestral lands. He argued that Sunderlal had two sons viz. Kishanlal and Prabhulal, but the land was wrongly entered in the name of Kishanlal. Kishanlal died issueless. Although it should have been in the names of both Kishanlal and Prabhulal. After the death of Kishanlal, land should have been entered in the name of Prabhulal and after death of Prabhulal, it should have been entered 1/2 - 1/2 share each in the names of legal representatives of his sons Dwarka Prasad and Ramprasad. During the course of time, the land was entered in the name of Dwarka Prasad being elder brother under section 19 of the RT Act, although half of the land was equally in the cultivatory possession of the appellant. But the whole land was entered in the name of Dwarka Prasad being elder son. The plaintiff filed a suit for declaration of khatedari rights over 1/2 share and respondents should be restrained through permanent injunction. The respondents have also admitted the above fact in their written statement. Therefore, it is argued that from this ancestral land of 8 bigha 17 biswa, plaintiff/ appellant be declared khatedar-tenant to the extent of half share of this land. Hence, the appellant requested to accept this appeal.

5. On the other hand, learned counsel for respondents argued that the plaintiff/ appellant has mentioned whole araji land for declaration of khatedari rights, but no document has been produced by him for the khasra no. 148/4 being ancestral one. There is no evidence adduced by the

appellant for his cultivatory possession over the disputed land, although the burden of proof is on the appellant for declaration of khatedari rights. As per RBJ (9) 2002 page 261, in the absence of documentary evidence, on the basis of oral evidence, the land cannot be treated legally as ancestral land. The land is in continuous cultivatory possession of the defendants/ respondents as per Jamabandi of Samvat 2013-2016 and Khasra-Girdawari of Samvat 2013-2016 and other revenue records. Therefore, he has requested to dismiss the appeal of the appellant.

6. We have given our thoughtful consideration to the rival contentions and perused the relevant record carefully.

7. The findings of both the learned lower courts : Revenue Appellate Authority, Sawaimadhapur and Sub Divisional Officer, Boli are concurrent findings. It is proved from the documents presented on the record of the file that defendants/ respondents obtained khatedari tenancy rights in Section 19 of the Rajasthan Tenancy Act on the basis of their cultivatory possession over the disputed land. There is no document presented by the appellant on the record of the file by which it can be proved that disputed lands were ancestral lands. In absence of any documentary evidence, disputed lands cannot be said to be ancestral lands. In this situation, defendants/ respondents rightly obtained khatedari tenancy rights by operation of law. So, we find no illegality or irregularity in the judgments of both the learned lower courts. Therefore, the appeal is liable to be dismissed, hence dismissed. The judgment & decree dated 15.5.2004 passed by the learned Revenue Appellate Authority, Sawaimadhapur and that of learned Sub Divisional Officer, Boli (Sawaimadhapur) dated 03.01.2003 are hereby upheld.

Pronounced in open court.

(RAMNIWAS JAT)
Member

(SHIKHAR AGRAWAL)
Member

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