

WRIN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER**Appeal Decree/TA/4043/2004/Nagaur.**

State of Rajasthan through Tehsildar, Khinvsar Distt. Nagaur.

...Appellant.

Versus

1. Chunnath son of Likhminath
2. Chainnath son of Likhminath
3. Bagatnath son of Gulanath
4. Meghnath ) sons of late Gulanath
5. Motnath )
6. Roopnath )
7. Bhanwarnath )
8. Surajnath son of Motinath
9. Kishannath son of Jethanath
10. Vishannath son of Jethanath
11. Nenuath )
12. Hukamnath )
13. Kalunath )
14. Mohannath ) sons of late Likhminath
15. Bhojnath )
16. Khetanath )
17. Khiyanath )

All by caste Nath residents of village Karnu Tehsil Khinvsar Distt.  
Nagaur.

...Respondents.

**D.B.****Shri Modudan Detha, Member****Shri Rajinder Kumar, Member**Present:-

Shri Sunil Pareek, Dy. Govt. Advocate for the appellant.

Shri Bhiyanram Choudhary, counsel for the respondents.

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

Date:19-02-2019

Per Shri Rajinder Kumar, Member

1. This second appeal at the instance of the State Government has been preferred against the judgment and decree dated 11.6.2004 of the learned Revenue Appellate Authority, Nagaur whereby the first

appeal filed by the respondents was accepted and the judgment and decree dated 2.5.1989 of the trial court dismissing the suit of the plaintiffs/ respondents was set aside.

2. Briefly stated, the facts of the case are that the plaintiffs/ respondents filed a suit in the trial court of the learned Assistant Collector, Nagaur under sections 88 and 188 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as 'the Act of 1955') in respect of the land bearing old khasra No. 538 (new khasra No. 731 and 732) situated in village Karnu. It was alleged in the plaint that the plaintiffs/ respondents are occupying the disputed lands since before the samvat 2010 as khatedars. A patta of the lands was also issued in the name of the plaintiff Likhmi Ram and his father. However, upon the commencement of the 'Act of 1955', the suit lands were not entered in the revenue record in their khatedari. On the contrary, the said lands came to be recorded as 'gair-mumkin-pathar' in the Jamabandi. Therefore, a prayer was made to declare the plaintiffs/ respondents as the khatedars of the disputed lands. A decree of permanent injunction restraining the defendant/ appellant from interfering into the possession of the plaintiffs/ respondents was also sought. The defendant/ appellant contested the suit by filing written statement to the plaint. The learned trial court after recording the evidence dismissed the suit. Assailing the judgment and decree of the trial court, the plaintiffs/ respondents filed an appeal, which was accepted in the manner indicated above and the suit of the plaintiffs/ respondents was decreed for both the reliefs by the learned first appellate court. Hence, this second appeal.

3. We have heard the learned counsels.

4. The questions of law raised in this appeal are:-

(i) Whether the learned first appellate court is right in declaring the plaintiffs/ respondents as khatedars of the disputed lands merely on the basis of the oral evidence of the plaintiffs/ respondents, whereas the nature of the land is recorded as 'gair-mumkin-pathar' in the revenue record and thus the same is uncultivable.

(ii) Whether the learned first appellate court is right in setting aside a well considered judgment of the trial court on the basis of surmises

and conjectures and without dealing with the findings of the trial court?

(iii) Whether the learned first appellate court is right in decreeing the suit without the plaintiffs/ respondents proving that they are cultivating the suit lands as tenants since before the commencement of 'the Act of 1955'?

5. The learned Government Advocate vehemently argued that the learned trial court rightly dismissed the suit of the plaintiffs/ respondents as the nature of the disputed lands right from the beginning till date is uncultivable. Even in the revenue record, the suit lands are recorded as the 'gair-mumkin-pathar' lands. The learned first appellate court set aside the findings of the trial court without appreciating the legal and factual aspects involved herein. The names of the plaintiffs/ respondents were arbitrarily mentioned in the 'parcha lagaan' by the concerned settlement officials and on that basis no decree of declaration could have been passed. The basis of the plaintiffs/ respondents case was that they are cultivating the suit lands since prior to the commencement of the Act of 1955. But they did not lead any documentary evidence in support their version. As the plaintiffs failed to prove their cultivatory possession as the tenants of the suit lands, the court below committed material illegality in decreeing the suit. Therefore, a prayer was made to accept the appeal, set aside the impugned judgment and decree and dismiss the suit.

6. Learned counsel for the plaintiffs/ respondents vehemently opposed the aforesaid submissions. He argued that the learned trial court failed to take into account the oral and documentary evidence produced by the plaintiffs. The learned trial court did not pass issuewise judgment, therefore, mandatory provisions of Order 20 Rule 5 of the Civil Procedure Code, 1908 were ignored by it. The learned trial court also failed to notice that the evidence of the four witnesses examined by the plaintiffs/ respondents remained unrebutted, as they were not cross examined by the defendant/ appellant. No evidence in rebuttal was produced. Therefore, there was nothing on record to disbelieve the version of the plaintiffs/ respondents. Learned counsel further canvassed that on the basis of the evidence of the plaintiffs/ respondents, including the 'parcha lagaan' , it stood established that

the disputed lands though recorded as 'gair-mumkin-pathar' lands in the revenue record, the same are being cultivated by the plaintiffs/respondents since before the commencement of 'the Act of 1955'. Therefore, the judgment and decree of the court below is neither perverse nor illegal and the same is based on correct appreciation of the material placed on record. A prayer was made to dismiss the appeal.

7. We have given our thoughtful consideration to the rival submissions and perused the record carefully.

8. In support of their case, the plaintiffs/ respondents examined four witnesses. In addition, they produced five documents as well, viz. the parcha lagaan (Ex.-1), khatauni (Ex.-2), Site plan (Ex.-3), copy of notice given to the State Government before filing suit (Ex.-4) and postal receipt (Ex.-5). Although the verbal and documentary evidence led by the plaintiffs/ respondents remained unrebutted yet the plaintiffs/ respondents have to stand or fall on their own legs and they cannot take the advantage of the weakness, if any, in the defence of the opponent. Keeping this legal position in mind, we have examined the material on record. It is revealed from the record that the basis of the suit of the plaintiffs/ respondents is the factum of their alleged possession over the suit land since prior to the commencement of 'the Act of 1955'. However, to substantiate this plea, the plaintiffs/ respondents have not lead any documentary evidence. Therefore, the bald statement of four witnesses cannot be taken to prove that the plaintiffs/ respondents are occupying the suit lands in the capacity of the tenants, as alleged by them, since prior to the commencement of 'the Act of 1955'. In the 'parcha lagaan' (Ex.-1) produced by the plaintiffs/ respondents, it is clearly stated that the suit lands are 'khalsa lands of the State Government'. It is trite that the settlement authorities cannot create new entry in favour of a person without the order of a competent authority. In this regard, we are fortified by a judgment of the Revenue Board reported as 2016 (1) RRT 374 'Ladu Vs. Nand Lal and ors.'. Therefore, the plaintiffs/ respondents cannot seek any advantage on the basis of this document. As this 'parcha lagaan' was issued in favour of the plaintiffs/ respondents by an incompetent authority and in arbitrary manner, the same carries no legal sanctity.

Likewise, the plaintiffs/ respondents cannot seek any assistance from the jamabandi Ex.-2 because in this record of rights, the nature of the lands has been entered as 'pathar lands', which proves that the disputed lands are not cultivable. The remaining three documents are of formal nature. As a matter of fact, the plaintiffs/ respondents miserably failed to substantiate their contentions on the basis of the verbal and documentary evidence led by them. The learned trial court after taking into account the entire evidence produced on record rightly came to the conclusion that the plaintiffs/ respondents have failed to prove their case. There is no evidence to prove that before the issuance of the 'parcha lagaan', the disputed lands were the khatedari lands of the plaintiffs/ respondents. Mere fact that the learned trial court has not passed issuewise judgment cannot render the same as illegal. In all three issues were framed by the learned trial court The first issue relates to the declaration sought by them, the second issue relates to decree of permanent injunction and the third is related to the relief. The learned trial court has given specific findings on each of these aspects. Therefore, no fault could be found with the well considered, brief and concise judgment of the trial judge.

9. The learned first appellate court, however, mis-interpreted the verbal and documentary evidence produced by the plaintiffs/ respondents and merely on the basis of the 'parcha lagaan' issued by an incompetent authority came to erroneous finding that the plaintiffs/ respondents are occupying the suit lands in the capacity of the khatedars. The first appellate court felt influenced by the fact that the State Government has not rebutted the evidence led by the plaintiffs/ respondents. The findings of the learned first appellate court in this regard are totally perverse and illegal. The possession of the plaintiffs/ respondents cannot be found proved only on the basis of the verbal statements of the four witnesses, even if the same went unrebutted.

10. From the foregoing discussions, it is revealed that the learned first appellate court is not right in reversing the well considered judgment passed by the trial court. The questions of law framed above are found proved in favour of the defendant/ appellant. This appeal, therefore, succeeds.

11. Resultantly, the appeal is allowed. The judgment and decree dated 11.6.2004 of the learned Revenue Appellate Authority, Nagaur is set aside and the judgment and decree dated 25.9.1989 of the trial court dismissing the suit of the plaintiffs/ respondents is maintained.

Pronounced.

(Rajinder Kumar)  
Member

(Modudan Detha)  
Member