

W.R.**IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER****1. Appeal Decree/TA/4467/2004/Jodhpur.**

State of Rajasthan through Tehsildar, Jodhpur.

...Appellant.

Versus

1. Mod Singh son of Sajaan Singh (deceased) through LRs:-

1/1 Smt. Samandar Kanwar wife of Mod Singh

1/2 Kan Singh son of Mod Singh

1/3 Manohar Singh son of Mod Singh

1/4 Pep Singh son of Mod Singh

All residents of village Devliya Tehsil & Distt. Jodhpur.

...Respondents.

2. Appeal Decree/TA/4470/2004/Jodhpur.

State of Rajasthan through Tehsildar, Jodhpur.

...Appellant.

Versus

Jabar Singh son of Bhanwar Singh caste Rajput resident of village

Devliya Tehsil & Distt. Jodhpur.

...Respondent.

D.B.**Shri Mukesh Kumar Sharma, Chairman****Shri Rajinder Kumar, Member****Present:-**

Shri V.P. Singh, Govt. Advocate for State.

Shri Virendra Singh, counsel for the respondents.

J U D G M E N T

Date:06.02.2019

Per Shri Rajinder Kumar, Member

1. The appeal No. 2004/4467 has been preferred against the judgment and decree dated 3.8.2004 passed by the learned Revenue Appellate Authority, Jodhpur in first appeal No. 169/2004. The appeal No. 2004/4470 has been preferred against the judgment and decree dated 27.8.2004 passed by the learned Revenue Appellate Authority, Jodhpur in first appeal No. 164/2004. By the said judgments and decrees, the learned first appellate court accepted the appeals filed by

the respective plaintiffs/ respondents and set aside the judgments and decrees passed by the trial court of Assistant Collector and Sub-Divisional Officer, Jodhpur in suits No. 154/95 and 22/2002. In this manner, the learned first appellate court decreed the suits of the plaintiffs/ respondents.

2. The questions of law involved in both these appeals are common and counsels for both the parties are also same. Therefore, these appeals are being decided by this common judgment.

3. Both the suits were filed by the plaintiffs/ respondents for declaration of their khatedari rights, correction of revenue records and permanent injunction in respect of the agricultural lands situated in village Devliya Tehsil & Distt. Jodhpur. It was, *inter-alia*, alleged in the plaints that the plaintiffs/ respondents are in physical possession of the disputed lands since the time of their forefathers and even at the time of settlement, the ancestors of the plaintiffs/ respondents were in occupation of the disputed lands. However, before the filing of the suits, the halka patwari came on the spot and threatened the plaintiffs/ respondents to dispossess them from the suit lands casting cloud over their right, title and interest on these lands. Therefore, a prayer was made to decree the suits. The suit No. 154/95 filed by the original plaintiff Mod Singh (since deceased) was contested by the State Government by filing a written statement alleging, *inter-alia*, that the possession of the plaintiff over the suit land is in the capacity of a trespasser. The proceedings under section 91 of the Rajasthan Land Revenue Act, 1956 were also initiated against the plaintiff Mod Singh. It was also submitted that the possession of the plaintiff over the government land in dispute is not since the time of settlement and, therefore, a prayer was made to dismiss the suit. The learned trial court after framing the issues, commenced the trial and after recording evidence, dismissed the suit of the plaintiff Mod Singh. In suit No. 22/2002, the State Government did not submit any written statement despite availing a number of opportunities for the purpose. After recording evidence, the learned trial court dismissed that suit also. Both the set of plaintiffs filed separate appeals in the court of learned Revenue Appellate Authority, Jodhpur, which came to be accepted in

the manner indicated above. Hence, these second appeals by the State Government.

4. The main grounds of dismissal of both the suits of the plaintiffs/ respondents by the learned trial court were that the plaintiffs have failed to prove their possession over the disputed lands since prior to the commencement of the Rajasthan Tenancy Act, 1955 and that too in the capacity of a tenant. The learned first appellate court, however, after re-appreciating the evidence set aside the said findings and decreed the suit of the plaintiffs/ respondents on the ground that the possession of the plaintiffs/ respondents over the suit lands is proved since prior to commencement of the said Act. Therefore, the questions of law which arise in these appeals are as under:-

(1) Whether the learned first appellate court is right in stating that the plaintiffs/ respondents are tenants of the disputed lands since prior to the commencement of the Rajasthan Tenancy Act, 1955?

(2) Whether the learned first appellate court is right in re-appreciating the evidence produced by the parties and setting aside the judgment passed by the trial court without meeting out the reasons given by the trial court in support of its findings?

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

6. On behalf of the State Government, it was argued that once the State Government initiated the proceedings under section 91 of the Rajasthan Land Revenue Act, 1956 against the plaintiffs/ respondents, it would become clear that they were occupying the suit lands in the capacity of a trespasser and the learned first appellate court failed to appreciate this aspect of the matter before decreeing the suits of the plaintiffs/ respondents. The learned counsel also canvassed that basically there are only three provisions under the Rajasthan Tenancy Act, 1955, whereby khatedari rights can be obtained by a person. The plaintiffs/ respondents failed to prove their case under any of the said provisions, namely, section 13, 15 and 19 of the said Act. The trial court passed a well considered judgment after appraisal of evidence and rightly dismissed the suits of the plaintiffs/ respondents but learned first appellate court without appreciating the legal and factual aspects involved herein accepted the appeals by the impugned judgments which are patently illegal, perverse and suffer from

material infirmities. Therefore, a prayer was made to accept the appeals and set aside the judgments and decrees of the first appellate court.

7. Per contra, learned counsel for the plaintiffs/ respondents vehemently opposed the aforesaid submissions. He submitted that the learned trial court passed its judgments and decrees on the basis conjectures and surmises and failed to appreciate the evidence in consonance with the legal propositions. The learned trial court failed to appreciate the fact that on the basis of the oral evidence and the documents submitted in the form of revenue record were sufficient to prove that the plaintiffs/ respondents are continuing to occupy the disputed lands and they are cultivating the same since the time of their predecessors and before the coming into force of the Rajasthan Tenancy Act, 1955. The learned first appellate court after correctly re-appreciating the evidence decreed the suits by giving a specific finding that both the sets of plaintiffs/ respondents are in possession of the disputed lands since before the commencement of the said Act in a rightful manner. The mere fact that notice under section 91 of the Rajasthan Land Revenue Act, 1956 was issued against the plaintiffs/ respondents would not prove that they or their predecessors are the trespassers. Therefore, a prayer was made to dismiss the appeals. In support of the aforesaid arguments, the learned counsel relied upon the following citations:-

(i) 1996 RRD 324 'Sheochandra Vs. Murlidhar'- In that case it was held by the Board of Revenue that if the possession of the plaintiff over the disputed land since before the commencement of the said Act is proved, he will be entitled to get khatedari rights.

(ii) 1996 RRD 532 'Latif and ors. Vs. State of Rajasthan' – In this case the Revenue Board failed to properly appreciated the evidence and therefore its judgment was set aside by the Hon'ble Rajasthan High Court.

(iii) 1996 RRD 538 'Hari Ram and anr Vs. State of Rajasthan' – In this case the plaintiff was found to be in possession of the land since many years and therefore, the judgment passed by the trial court decreeing the suit of the plaintiff was affirmed by the Hon'ble Rajasthan High Court.

(iv) AIR 1994 SC 1128 'Brij Lal Vs. Board of Revenue' – In this case it was held by the Hon'ble Supreme Court that an allottee of the land cannot be dispossessed if he is cultivating the land for over a period of two decades.

(v) 2000 RRD 85 'State Vs. Mohan Singh and ors'- In this case also the plaintiffs were in cultivatory possession of the disputed land for more than three decades. They had also developed and nourished the land during these years. Therefore, it was held by the Hon'ble Rajasthan High Court that it would be a travesty of justice if the order of Revenue Board conferring khatedari rights on the plaintiffs is interfered with.

(vi) 2002 RRT 924 'Amring Vs., State of Rajasthan'- In this case the petitioner was in possession of the suit land since the year 1958. During the pendency of the proceedings under section 91 of the Rajasthan Land Revenue Act, 1956, the suit land was allotted to police department and a construction was also raised thereupon. Therefore, the State Government was directed to make allotment of equivalent land to the petitioner in same village or at the nearest available point after due procedure according to law.

(vii) 2009(1) RRT 275 'State of Rajasthan Vs. Girdhari Ram'- In this case the plaintiff was declared as khatedar of the suit lands. The Revenue Board dismissed the reference of the State Government. The matter was taken by the State Government by filing writ petition before Hon'ble Rajasthan High Court, whereupon the Hon'ble High Court dismissed the writ petition and confirmed the order of the Revenue Board.

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

9. The only difference between the factual matrix of both the cases is that in suit No. 22/2002, the State Government did not file any written statement whereas in the other suit, the contest was made by filing a written statement to the plaint. It is trite that mere non-filing of written statement by a defendant does not mean that he has admitted the plaint averments. Notwithstanding the non-filing of written statement, the plaintiff has to succeed on the strength of his own evidence and he cannot take the benefit of weakness of defendants.

10. Coming to the merits of the controversy, it is noticeable that the plaintiffs/ respondents had sought the reliefs of declaration, correction of revenue record and permanent injunction in respect of the suit lands. The Rajasthan's land scenario is mainly governed by following three Acts:-

- (1) The Rajasthan Land Reforms and Resumption of Jagir Act, 1952.
- (2) The Rajasthan Tenancy Act, 1955
- (3) The Rajasthan Zamindari and Biswedari Abolition Act, 1959.

After the enforcement of the aforesaid Acts, the intermediaries have been abolished. Now all the agricultural lands vest in the State Government.

11. The khatedari rights can be claimed/ conferred as per the provisions of the Act of 1955. In this regard basically there are three provisions. The first provision is contained in section 13 of the said Act. According to this provision, on the resumption (abolition) of an estate under any law in force in the whole or any part of the State, the estate holder holding *khudkasht* shall become a khatedar tenant thereof and shall be entitled to all the rights conferred, and shall be subject to all the liabilities imposed, on a khatedar tenant by or under this Act. As already stated, after resumption of jagirdari, zamindari and biswedari, the lands now vest in the State Government, which is the land holder and this provision has now become more or less redundant. In the present matter, the plaintiffs have not claimed their khatedari rights over the disputed lands under this provision. The other provision for claiming khatedari rights is section 19 of the said Act. It provides for conferment of rights on certain tenants of khudkasht and sub-tenants. To attract the applicability of this provision, the person claiming khatedari rights must show that he was recorded as a sub-tenant in the Annual Register of samwat 2012. His mere possession on the suit land would not suffice the purpose. There is no gainsaying that the khasra girdawari is not an Annual Register. The only basis of the plaintiffs/ respondents for claiming khatedari over the disputed lands is the fact that their names are entered in the khasra girdawaris. Since at the commencement of Act of 1955, the plaintiffs/ respondents were not entered in the Annual Register as sub-tenant or tenants of khudkasht, therefore, they cannot claim khatedari

rights by virtue of section 19(1) and (2) of the Rajasthan Tenancy Act, 1955. Moreso, it is not the case of the plaintiffs/ respondents that they are the tenants of khudkasht or sub-tenants and therefore, their claim for khatedari rights was rightly rejected by the learned trial court after appreciation of the oral and documentary evidence on record. The other provision for claiming khatedari rights is section 15 of the said Act. According to this provision, a person can acquire khatedari rights, if he was a tenant of the land at the commencement of the Act of 1955 or was admitted as a tenant after the commencement of the Act of 1955, subject to the exceptions contained therein. It becomes clear, therefore, that it is possession as a tenant, which is necessary for the acquisition of khatedari rights under this provision. A trespasser in possession even at the commencement of the Act of 1955 could not be entitled to khatedari rights nor will he acquire such rights even he enters possession thereafter. In order to prove that the plaintiffs were the tenants, within the meaning of section 5 (43) of the said Act, they must have established that (i) rent was payable by them and (ii) there was a contract, express or implied to this effect. In other words, the tenancy should have been proved as a contractual relationship, which is always bilateral. The oral evidence produced by the plaintiffs supported by the khasara girdawaris entries do not by themselves prove that there was any contractual relationship between the plaintiffs and the land holder. The plaintiffs were legally bound to further prove that their possession was in the capacity as a tenant with the incidence of contractual relationship as aforesaid. Therefore, the learned trial court was right in dismissing the suits of the plaintiffs. The learned first appellate court, however, was obsessed with the idea that mere possession supported by khasara girdawaris is sufficient to grant khatedari rights. It is trite that the khasara girdawaris are not record of rights and no lawful possession of a person can be gathered from the mere fact that his name is recorded in the khasara girdawari. The first appellate court returned the findings in favour of the plaintiffs/ respondents without determining the crucial question whether the possession of the plaintiffs/ respondents was in their capacity as a tenant.

12. The facts of the cases cited on behalf of the plaintiffs/ respondents do not bear any resemblance with the facts of the instant cases. Therefore, the law laid down in the above citations is not applicable to the facts of the present cases.

13. In view of our aforesaid findings, we endorse the observations and the judgments passed by the learned trial court dismissing the suits of the plaintiffs. The learned first appellate court passed the judgments and decrees on the basis of surmises and conjectures without appreciating the legal provisions for conferment of khatedari rights mentioned in section 13, 15 and 19 of the Rajasthan Tenancy Act, 1955. The judgments and decrees passed by the learned first appellate court are perverse, illegal and suffer from material infirmities. The learned first appellate court failed to meet out the reasoning given by the learned trial court in both the judgments. The questions of law framed above are answered in favour of the defendant/ appellant and against the plaintiffs/ respondents. The appeals in hand deserve to be accepted.

14. Resultant, the appeals are accepted, the judgments and decrees passed by the learned first appellate court are set aside. The judgments and decrees passed by the learned trial court dismissing both the suits of the plaintiffs/ respondents are endorsed.

Pronounced.

(Rajinder Kumar)
Member

(Mukesh Kumar Sharma)
Chairman