

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

I. Appeal Decree No.4481/2004/TA/Chittorgarh :

1. Narayani W/o Gheesa (Deceased), through :
 - 1/1. Narayan S/o Kanwla
 - 1/2. Puran S/o Kanwla, minor through mother Kanku Bai
2. Kanku Bai widow of Kanwla
All Raigar by caste, residents of Village Kannauj, Tehsil Bhadesar,
District Chittorgarh.

... Appellants.

Versus

1. Tulsi Ram
 2. Narayan
 3. Sukha
- } sons of Moti

All Raigar by caste, residents of Village Kannauj, Tehsil Bhadesar,
District Chittorgarh.

... Respondents.

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II. Appeal Decree No.4482/2004/TA/Chittorgarh :

- Narayani W/o Gheesa (Deceased), through :
1. Narayan S/o Kanwla
 2. Puran S/o Kanwla, minor through mother Kanku Bai
Both Raigar by caste, residents of Village Kannauj, Tehsil
Bhadesar, District Chittorgarh.

... Appellants.

Versus

1. Tulsi Ram
 2. Narayan
 3. Sukha
- } sons of Moti

All Raigar by caste, residents of Village Kannauj, Tehsil Bhadesar,
District Chittorgarh.

4. State of Rajasthan, through Tehsildar Bhadesar, District
Chittorgarh.

... Respondents.

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D.B.

Shri Mohan Lal Nehra, Member
Shri Rajinder Kumar, Member

Argued by :

Shri Purna Shanker Dashora : counsel for the appellants.

Shri Khadag Singh : counsel for the private respondents.

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J U D G M E N T

Dated : 19.11.2018

Per Shri Rajinder Kumar, Member :

1. These second appeals have been preferred under Section 224 of the Rajasthan Tenancy Act, 1955 against the common judgment of the learned Revenue Appellate Authority, Chittorgarh passed in two separate appeals No. 213/02 and 214/02, whereby both the appeals of the present appellants were dismissed and the judgments and decrees of the Sub Divisional Officer, Nimbahera passed in suit no. 55/99 and 20/99 respectively were confirmed.
2. The suit no. 20/99 was filed by the appellants Narayani Devi (since deceased) and Kanku Bai, whereas suit no. 55/99 was filed by respondents no. 1 to 3. During pendency of the suits, an application was filed on behalf of the appellants Narayani and Kanku Bai under Section 10 Code of Civil Procedure for staying the proceedings of suit no. 55/99. However, the learned trial court vide order dated 11.4.2000 consolidated both the suits and evidence was recorded in suit no. 20/99.
3. In suit no. 20/99, it was alleged by the appellants that the disputed lands bearing khasra no. 725 measuring 19 biswa and khasra no. 726 measuring 1 bigha 16 biswa situated in Village Kannauj Tehsil Bhadesar are their khatedari lands. The respondents Tulsi Ram, Narayan and Sukha had no right, title or interest over the said lands and they are illegally bent upon to dispossess them therefrom

casting cloud over their khatedari rights. Therefore, a prayer was made to declare the disputed lands as their khatedari lands and to restrain the respondents from interfering into their peaceful possession. It was also prayed that due to any reason, the possession of the respondents is proved over the disputed lands, a decree for eviction may be passed against them and possession of the lands be delivered to the appellants. The suit was contested by the respondents Tulsi Ram and ors. by filing written statement to the effect that they are in possession of the disputed land since last 34 years. It was denied that appellant no. 2 Kanku Bai is the daughter-in-law of the appellant Narayani Devi. It was also alleged that the disputed land is not in possession of the plaintiffs. It was also alleged that the disputed land was purchased by the respondents from the husband of the appellant Narayani Devi for a sale consideration of Rs.550/- in Shravan Sudi Poonam Samvat 2023 and since then the respondents are cultivating the suit land in a peaceful manner. After the death of the husband of appellant, the disputed land was mutated in the name of Nanda, who was the adopted son of Gheesa. On 30.5.1981, Nanda also executed a document validating the sale made by Gheesa in favour of the respondents and Nanda also received a sum of Rs.1825/- pursuant thereto from the respondents. But before executing sale deed, Nanda also expired. In this way, the disputed land was mutated in favour of Smt. Narayani Devi in a wrongful manner. The respondents have also become owners of the disputed land by way of adverse possession and the period of limitation for filing the suit by the appellants has also since expired. Therefore, a prayer was made to dismiss the suit.

4. In suit no. 55/99, the respondents Tulsi Ram and ors. made almost similar allegations which were made by them in written statement to the suit filed by the appellants Narayani Devi and anr. A prayer was made by the respondents for declaration of their khatedari

rights over the suit land. A further prayer for permanent injunction restraining the appellants Narayani Devi and anr. from interfering into their peaceful possession was also sought. It was also prayed that if during pendency of the suit, the respondents are dispossessed by the appellants in an illegal manner, then the possession of the suit land be also restored to them.

5. In that suit, Kanku Bai was not impleaded as party defendant. Smt. Narayani Devi filed written statement in which almost similar allegations were levelled which were submitted by her in suit no. 20/99 and a prayer was made to dismiss the suit.
6. On the basis of the pleadings of the parties, the learned trial court framed as many as six issues on 31.10.2000. After recording evidence of the parties, the learned trial court dismissed suit no. 20/99 filed by the appellants and decreed suit no. 55/99 filed by the respondents Tulsi Ram & ors. Resultantly, the disputed land was declared to be khatedari land of the respondents Tulsi Ram, Narayan and Sukha. Feeling aggrieved the appellants Smt. Narayani Devi & anr. filed two separate appeals No. 213/02 and 214/02 in the court of Revenue Appellate Authority. Both the said appeals were dismissed vide impugned judgment dated 13.8.2004. Hence, these second appeals.
7. The questions of law which arise for determination of these appeals are :-
 - (1) Whether the courts below erred in decreeing the suit of the respondents on the basis of adverse possession?
 - (2) Whether the courts below erred in admitting the unregistered agreements to sell into evidence only because penalty (tawaan) in respect of the said documents was deposited by the respondents in the trial court?
 - (3) Whether the courts below erred in decreeing the suit of the respondents on the basis of unregistered agreements to sell?

(4) Whether the courts below erred in dismissing the suit of the appellants as time barred?

(5) Whether the courts below have drawn wrong inferences from proved facts by applying the law erroneously?

8. We have heard learned counsels for the parties.

9. On behalf of the appellants, it was vehemently argued that the learned trial court misinterpreted the evidence produced by the parties and gave illegal finding in respect of the alleged adopted son of Gheesa, whereas the trial court was not required to give any findings regarding adoption of Nanda by deceased Gheesa. It was proved from evidence on record that the appellants are in continuous possession of the disputed land as khatedars but the learned trial court has illegally dismissed their suit and gave wrong finding regarding the possession of the respondents no. 1 to 3 for more than 12 years in an illegal manner. The suit of the appellants was within limitation. A suit cannot be decreed on the basis of adverse possession of any party. The learned first appellate court also ignored the factual and legal aspects of the case and illegally dismissed the appeals of the appellants. On the one hand, the respondents raised the plea of adverse possession and on the other hand, they raised a plea to permissive possession on the basis of unregistered agreement to sale. Such a suit filed at the instance of the respondents was not maintainable. It was also submitted that the learned trial court wrongly relied upon the agreements to sell merely because the respondents had deposited 'tawaan'. A document which is unstamped and unregistered could not have been made the basis for decreeing the suit. Therefore, a prayer was made to accept the appeals and to decree the suit filed by the appellants and dismiss the suit of the respondents. In support of aforesaid submissions, the learned counsel has relied upon following citations :-

- (i) 2012 RBJ 69 (Supreme Court) Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana'
- (ii) 1984 RRD 227 (Revenue Board) 'Shantilal Vs. Muknaram'

In the above cases, it was held that no right, title or interest in immovable property is transferred by unregistered document.

- (iii) 2015 RBJ 486 (Rajasthan High Court) 'Tara Vs. State of Rajasthan'
- (iv) 2017 (2) RRT 1100 (Board of Revenue) 'Bhakar Ram Vs. Suja Ram'
- (v) 2018 RBJ 595 (Board of Revenue) 'Sarju Rao Vs. Amrit Lal'
- (vi) 2011 RBJ 387 (Board of Revenue) 'Jagdish Vs. Sitaram'
- (vii) 2017 (2) RRT 1139 (Board of Revenue) 'Mansur Vs. State of Rajasthan'
- (viii) 2018 (1) RRT 482 (Board of Revenue) 'Rughnath Singh Vs. Smt. Son Kanwar'
- (ix) 2014-15 (Supp.) RRD 664 (Board of Revenue) 'Mahesh & ors. Vs. Amar Lal & ors.'
- (x) 2018 RBJ 153 (Board of Revenue) 'Amar Singh Vs. Gajendra Singh'

In the above cases, it was held that khatedari rights cannot be granted on the basis of adverse possession.

(xi) 2004 RBJ 16 (Board of Revenue) 'Soniya Vs. Kishore Mal' : In this case, it was held that when a person is in possession of land on the basis of permissive possession and he does not vacate the land, then he will be deemed to be a trespasser as per the provisions contained in Section 183 of the Rajasthan Tenancy Act.

(xii) 2002 (1) RRT 129 'Alladin Vs. Board of Revenue' : In this case, it was held by the Hon'ble Rajasthan High Court that Section 209 of the Rajasthan Tenancy Act, 1955 is meant for grant of relief without there being any formal amendment

in the plaint and to prevent multiplicity of the proceedings. This provision applies for grant of relief, which was not asked for by the plaintiff. Therefore, framing of issue for the purpose of grant of relief under this provision is not mandatory.

(xiii) 1978 RRD 217 'Mohan Vs. Ambalal' : In this case, it was held by the Board of Revenue that the aforesaid Section 209 is a special provision and is meant to simplify the procedural aspect so as to avoid multiplicity of litigation.

10. On behalf of the respondents, it was vehemently argued that the suit filed by the appellants for declaration and injunction was not maintainable. In fact, the deceased Gheesa Raigar was the khatedar of the disputed lands, which he sold to the respondents no. 1 to 3 for a sale consideration of Rs.550/- in Samvat 2023. Before the sale deed could be executed, Gheesa expired and after his death, his adopted son Nanda took further consideration of Rs.1825/- from the respondents and executed another document in respect of the sale of the disputed lands in their favour. However, before the sale deed could be executed, the adopted son Nanda also expired. In this way, the respondents remained in continued possession of the disputed land since Samvat 2023 and therefore suit filed by Smt. Narayani and Kanku Bai had become time barred in the meantime. The learned trial court rightly dismissed the suit of the appellants Narayani and Kanku Bai holding that they had no right, title or interest over the disputed land and their possession was also not proved. The learned trial court also observed that the respondents No. 1 to 3 Tulsi Ram and others are in continuous possession over the disputed land since Samvat 2023. In this way, no illegality was committed by the trial court in decreeing the suit of the respondents. The learned R.A.A. also, after considering the entire material placed on record, found no illegality in the judgment and decree of the learned trial court. There are concurrent findings of

facts of the Courts below. Therefore, a prayer was made to dismiss these appeals. In support of his arguments, learned counsel has relied upon following citations of the Revenue Board :-

(i) 1998 (5) RBJ 610 'Modya Vs. Ramsahay' : In this case, it was held that a relief can be granted by the court under Section 209 of the Rajasthan Tenancy Act only when an application to that effect has been made by the applicant and the court has framed an issue on that point and provided opportunity to the other party.

(ii) 2000 (7) RBJ 505 'Champa Lal Vs. Mohan Lal' : In this case, it was held that when both the parties have led their evidence, then it is for the court to decide all the issues on merits and burden of proof loses its importance.

(iii) 1994 (1) RBJ 247 'Sampat Vs. Dulhe Ram' : In this case, it was held that limitation for filing suit for ejectment is 12 years.

(iv) 1997 (4) RBJ 55 'Smt. Badankanwar Vs. Shubhkaran': In this case, it was held that when the possession over the land was on the basis of unregistered sale deed, decree for ejectment cannot be passed.

(v) 1997 (4) RBJ 149 'Ranglal Vs. Mst. Basanti' : In this case, it was held that a suit for permanent injunction under Section 188 of the Tenancy Act is not maintainable if the plaintiff is not in possession of the suit land.

(vi) 1997 (4) RBJ 191 'Omprakash Vs. Chhitarlal' : In this case, it was held that a person who came in possession of the suit land through unregistered sale deed, he will not be called a trespasser and he cannot be ejected from the suit land.

11. We have given our thoughtful consideration to the above submissions and perused the record carefully.

Re.: Question No. (1) :

12. In suit No. 55/99, the respondents No. 1 to 3 have rested their claims stating, inter-alia, that they are in physical occupation of the suit land for last more than 34 years and thus, they are entitled to khatedari rights over the suit land by adverse possession. The learned trial court, after considering the evidence, at page 11 of the judgment has made an observation that the respondents are entitled to get the khatedari rights by way of adverse possession. In this regard, the learned trial court has relied upon a Larger Bench Judgment of the Board reported in 1991 RRD 1 'Bagga Vs. Surendra Singh'. The learned first appellate court in para 12 and 13 of the judgment has confirmed the findings of the trial court in this regard.

13. It is pertinent that the validity of the judgment passed by the Board in Bagga's case (supra) came to be examined by a Full Bench of this Board in 2011 RRD 508 'Jagdish and ors. Vs. Sitaram and another'. After examining the matter at length, which included the scope of the provisions of the Rajasthan Tenancy Act, 1955, Full Bench in Sitaram's case held as under :-

(1) The Larger Bench in its judgment in Bagga's case has not laid down a correct law because the Rajasthan Tenancy Act does not have any provision to confer tenancy rights to the adverse possessor.

(2) The judgment of the Larger Bench rendered in Bagga Vs. Surendra Singh reported in 1991 RRD 1 is not a good law and thus, the same is set-aside.

14. In 2018 RBJ 595 'Sarju Rao & ors. Vs. Amrit Lal', another Full Bench of this Board held that while deciding Bagga's case, the Larger

Bench ignored vital provisions of the Rajasthan Tenancy Act, 1955. The said Full Bench reiterated the view that a suit cannot be maintained on the basis of adverse possession. This view of the Revenue Board finds favour with a Larger Bench judgment of the Hon'ble Rajasthan High Court reported in 2015 (22) RBJ 487 'Tara Vs. State of Rajasthan', wherein it was held as under :-

"35. The Rajasthan Tenancy Act, 1955 provides the limitation for bringing an action for dispossession and thus, the principle of law relating to adverse possession and the action to be brought within the period specified in Section 27 of the Limitation Act will not apply to the khatedars under the Rajasthan Tenancy Act, 1955.

36. We, therefore, decide the question No. (iv) in favor of the State and hold that no person can acquire right by adverse possession in the lands which were resumed or are in the tenancy of the tenants as khatedars. The Limitation applicable under the Rajasthan Tenancy Act, 1955 for filing suit for possession against the trespasser will be applicable. The Rajasthan Tenancy Act, 1955 being a Special Act, will prevail and the provisions of Section 27 of the Limitation Act will not apply for claiming adverse possession on such lands."

In view of the above legal propositions, the courts below committed an illegality in decreeing the suit of the respondents on the basis of adverse possession over the suit land. This question of law is decided in favour of the appellants.

Re.: Questions No. (2) and (3) :

15. Both these questions are related to each other, hence they are being taken up together. The respondents have also based their claim on two unregistered agreements allegedly executed in their favour by the original khatedar of the disputed land and after his

death, by his alleged adopted son, namely, Nanda. In this case, there is a dispute between the parties regarding adoption of Nanda by the original khatedar Gheesa. But the said question is not relevant to the subject under consideration. An agreement to sell the immovable property itself creates no right, title or interest over the land in dispute and does not amount to transfer, even if penalty (tawaan) is deposited on the said document. The Hon'ble Supreme Court in the case of Suraj Lamp and Industries Pvt. Ltd. (supra) has held as under :-

"Section 54 of TP Act makes it clear that a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property..... It is thus clear that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred."

In view of the above, mere fact that 'tawaan' was paid on the disputed agreements do not make the same admissible in evidence and thus, no right, title or interest stand transferred in pursuance to the same.

16. On the basis of agreement to sell, a vendee can file suit for specific performance in the civil court and he cannot seek declaration of khatedari rights from revenue court. The category of suits of which cognizance may be taken by the revenue courts are mentioned in Sections 207, 214, 215 and 217 of the Rajasthan Tenancy Act, 1955. They are further summarised in the Third Schedule of the Act. We are unable to find out any provision therein, from which an impression could be gathered that the revenue courts have power to entertain suits for granting khatedari rights on the basis of unregistered agreement to sell.

17. Therefore, both these questions No. (2) and (3) are answered in favour of the appellants and accordingly we hold that the courts below erred in admitting the unregistered agreements of sale into evidence only because penalty (tawaan) in respect of the said documents was deposited by the respondents in the trial court. In this way, the judgments and decrees passed in favour of the respondents by the courts below are *per se* illegal.

Re.: Question No. (4) :

18. There is no denying the fact that the appellant Narayani Devi (since deceased) was the widow of the original khatedar Gheesa. In the Jamabandi Ex.1, she is recorded as the khatedar of the suit land. The learned trial court has recorded a finding to this effect also at page no. 5 of the judgment. However, the suit of the appellants was dismissed on the ground that the respondents are in possession of the suit land for more than 34 years and the suit of the appellants has become time barred. In fact, in this case the respondents have based their claim not only on the agreements to sell but by way of adverse possession as well.

19. It will be apposite here to quote the provision contained in Section 183 of the Rajasthan Tenancy Act, 1955, which pertains to ejectment of certain trespassers :-

"183. Ejectment of certain trespasser :

(1) Notwithstanding anything to the contrary in any provision of this Act, a trespasser who has taken or retained possession of any land without lawful authority shall be liable to ejectment, subject to the provision contained in sub-section (2), on the suit of the person or persons entitled to eject him and shall be further liable to pay as penalty for each agricultural year, during the whole or any part whereof he has been in such

possession, a sum which may extend to fifteen times the annual rent.

(2) In case of land which is held directly from the State Government or to which the State Government, acting through the Tehsildar, is entitled to admit the trespasser as tenant, the Tehsildar shall proceed in accordance with the provisions of section 91 of the Rajasthan Land Revenue Act, 1956."

The above provision was interpreted by the Full Bench of this Board in Sarju Rao's case (supra) and it was held that 'though this section is not applicable in the cases of permissive possession, however, a person in permissive possession of any land would turn into a trespasser liable for ejection under this section, when he starts asserting his open, adverse and hostile title to the suit land to the knowledge of the khatedar tenant.' In the instant case, though the appellants had sought the relief of permanent injunction in their plaint yet they had also made a prayer that if they are not found to be in possession of the disputed lands, a decree for possession may be passed in their favour. There are concurrent findings of facts of the courts below that the respondents no. 1 to 3 are in possession of the disputed lands. Therefore, the appropriate relief in the facts and circumstances of the case to which the appellants are entitled is the relief of possession, in addition to the relief of declaration of khatedari rights. In this regard, there is an enabling provision in terms of Section 209 of the Rajasthan Tenancy Act, which provides that the court may grant any relief which the court is competent to grant and to which it may find the plaintiff entitled, notwithstanding such relief was not asked for in the plaint. Though this provision says that for this purpose an application is required to be filed by the plaintiff and issue is required to be struck by the court. But in Alladin's case (supra), a Division Bench of the Hon'ble Rajasthan High Court has held that framing of issue is not necessary for the applicability of this Section. In 1972 RRD 290 'Jawan Singh Vs.

Mohandas', it was held by the Revenue Board that where facts of the case are not dubious and the material on record is sufficient to establish the claim of the plaintiff, appropriate relief should be awarded to him instead of prolonging the litigation, notwithstanding that such relief was not asked for in the plaint. It was also held by this Board that an oral prayer made at the Bar by counsel for the plaintiff for a relief under Section 209 would be sufficient. In 1978 RRD 217 'Mohan Vs. Ambalal', it was held by the Division Bench of this Board that with a view to do complete justice to the plaintiff, the technical aspect of filing of separate application should not come in the way. In 1974 RRD 381 'Mst. Narayani Vs. Kallu', it was held by Division Bench of this Board that Section 209 of the Act provides for a speedy and adequate relief to the parties and to save the tenants from hardship of prolonged litigation. It was further held that the defendant either as trespasser or as a sub-tenant was liable to ejection in pursuance to the provisions contained in Section 209 of the Act. In that case, the plaintiff was a widow of 70 years and the Board held that it will not be just or equitable to drag her in a further litigation. The facts of the present case bear resemblance to the facts of the aforesaid decided cases. Rather the instant case is on a better footing because here the appellants have specifically pleaded in their plaint that if they are not found in possession of the suit land, a decree of eviction may be passed against the respondents. In view of the law laid down in the aforesaid cases, we hold that in addition to decree for declaration of khatedari rights, the appellants are entitled to a decree of eviction against the respondents as well. Therefore, the courts below erred in dismissing the suit of the appellants as time barred. This question of law is decided in favour of the appellants.

Re.: Question No. (5) :

20. From above discussion, it precedes that the courts below have drawn wrong inferences from proved facts by applying the law erroneously. The courts below have non-suited the appellants

holding that the respondents are in possession of the disputed lands on the basis of adverse possession and on the basis of agreements to sell. As already noticed, both these pleas are self-contradictory and self-destroying. A person in possession over the land on the basis of agreement to sell cannot hold the same by way of adverse possession and vice-versa. Therefore, the stand of the respondents was self-destroying. In this view of the matter, the possession of the respondents over the suit land cannot be said to be legal possession. A person in illegal possession of the suit land cannot be given any protection by the law. In this regard, reference can be made to a Division Bench judgment of this Board reported in 2018 (2) RRT 886 'Bhuri Devi Vs. Gopal & ors.' Therefore, the respondents were not entitled to a decree of declaration and permanent injunction.

21. To conclude, the courts below committed material illegalities in dismissing the suit filed by the appellants and decreeing the suit filed by the respondents. These appeals deserve to be accepted.

22. Resultantly, both the appeals are accepted and the impugned judgments and decrees passed by the trial court and the learned appellate court are set aside. The suit no. 55/99 filed by the respondents no. 1 to 3 stands dismissed. The suit no. 20/99 filed by the appellants stands decreed and they are declared as khatedars of the lands bearing khasra no. 725 measuring 19 biswa and khasra no. 726 measuring 1 bigha 16 biswa situated in Village Kannauj Tehsil Bhadesar. A decree of eviction against the respondents no. 1 to 3 in respect of the suit lands is also passed and the appellants are entitled to get possession of the said lands immediately.

Pronounced.

(Rajinder Kumar)
Member

(Mohan Lal Nehra)
Member