

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal Decree No.4877/2004/TA/Barmer :

1. Vade Khan
2. Ese Khan

Sons of Murid Khan, by caste Musalman, residents of Village Khardi,
Tehsil Panbhadra, District Barmer.

... Appellants.

Versus

State of Rajasthan.

... Respondent.

D.B.

**Shri Mukesh Kumar Sharma, Chairman
Shri Rajinder Kumar, Member**

Argued by :

Shri Virendra Singh Rathore : counsel for the appellants.

Smt. Poonam Mathur : Add. Govt. Advocate for the respondent.

J U D G M E N T

Dated : 03.04.2019

Per Shri Rajinder Kumar, Member :

1. This second appeal under Section 224 of the Rajasthan Tenancy Act, 1955 (hereinafter to be referred as 'the Act of 1955') is preferred against the judgment and decree dated 07.7.2004 passed by the learned Revenue Appellate Authority, Barmer in first appeal No. 39/2004.
2. Facts of the case in nutshell are that the plaintiffs/ appellants filed a suit in the trial court of Assistant Collector, Balotra for declaration and permanent injunction against the defendant/ respondent in respect of the lands bearing khasra no. 347 and 318 situated in Village Khardi,

Tehsil Panbhadra, District Barmer. It was alleged in the plaint that the plaintiffs/appellants are in actual cultivatory possession of the disputed lands since prior to the commencement of the Act of 1955 and they have acquired khatedari rights over the disputed lands but the defendant/ respondent is illegally bent upon to dispossess them from the suit lands. Therefore, a prayer was made to pass a decree declaring the plaintiffs/ appellants khatedar tenants of the disputed lands and to restrain the defendant/respondent from interfering into the possession of the plaintiffs/ appellants over the suit land. The defendant did not submit written statement to the plaint and therefore the learned trial court after recording evidence of the plaintiffs dismissed the suit vide judgment and decree dated 28.02.2004. Feeling aggrieved, the plaintiff preferred first appeal in the court of learned Revenue Appellate Authority, Barmer which was also dismissed vide judgment and decree dated 07.7.2004. Hence this second appeal.

3. We have heard the learned counsels for the parties.
4. On behalf of the plaintiffs/ appellants, it was submitted that the plaintiffs/ appellants are in possession of the disputed lands since before the commencement of the Act of 1955. They have constructed a Dhani and Water Hut over this land. Therefore, the plaintiffs/ appellants have acquired khatedari rights over the suit lands and the rights of the defendant/ respondent have extinguished but the learned courts below did not appreciate the material placed by the plaintiffs/ appellants and illegally dismissed their suit and appeal. The suit was never contested by the State Government, therefore, there was no option with the courts below but to accept the version of the plaintiffs/ appellants. The plaintiffs/ appellants ought to have been declared as khatedar tenants of the suit lands in the absence of any rebuttal. Therefore, a prayer has been made to accept the appeal, set aside the judgments and decrees of the courts below and to decree the suit of the plaintiffs/ appellants.

5. The learned Additional Government Advocate vehemently opposed the above submissions. She argued that the courts below have rightly dismissed the suit and appeal of the plaintiffs/ appellants. The plaintiff/ appellants have never been in peaceful and settled possession over the suit lands and at the most, their possession is that of a rank trespasser. In such circumstances, no khatedari rights can be granted to them. Therefore, a prayer was made to dismiss this appeal.
6. We have given our thoughtful consideration to the above submissions and perused the record carefully.
7. The courts below have concurred on facts that the plaintiffs/ appellants had never remained in peaceful, continuous and cultivatory possession of the suit lands. On the contrary, they had been rank trespassers. Though, the State Government had not contested the suit by filing any written statement, yet the plaintiffs/ appellants had to stand on their own legs. The ex-parte evidence produced by the plaintiffs/ appellants was not sufficient in the opinion of the courts below to reach at the conclusion that the plaintiffs/ appellants had been in possession over the disputed lands as tenants since prior to the commencement of the Act of 1955. Therefore, the courts below refused to grant khatedari rights to the plaintiff/ appellants. The said findings of the courts below are based on correct appreciation of the material placed on record.
8. It is trite law that no khatedari rights can be claimed by a person on the basis of adverse possession. In this regard, reliance can be placed upon following judgments of the Revenue Board :
 - (1) 2011 RRD 508 'Jagdish and ors. Vs. Sitaram and ors.'
 - (2) 2018 RRD 718 'LRs of Surja Ram Vs. Amrit Lal'

9. In view of above, we do not find any illegality and perversity in the judgments and decrees passed by the courts below. No question of law is involved in this appeal; therefore, the same is liable to be dismissed.
10. Hence, the appeal in hand is dismissed.

Pronounced.

(Rajinder Kumar)
Member

(Mukesh Kumar Sharma)
Chairman

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