

W.R.

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal Decree No.5291/2004/TA/Alwar :

1. Birdu S/o Bhagwana
2. Ramswaroop S/o Surja
All Gujar by caste, residents of Village Kundalka, Tehsil Thanagaji,
District Alwar.

... Appellants.

Versus

1. State of Rajasthan, through Tehsildar Thanagaji, District Alwar.
2. State of Rajasthan, through Director, Tiger Project, Sariska,
Ashavitt Rashtra Udhyan Sariska Kshetra, Tehsil Thanagaji,
District Alwar.

... Respondents.

3. Jagdish
 4. Modiya
 5. Prabhu
 6. Kailash
- } sons of Surja
All Gujar by caste, residents of Village Kundalka, Tehsil Thanagaji,
District Alwar.

... Proforma-Respondents.

* * *

D.B.

Shri Mukesh Kumar Sharma, Chairman

Shri Rajinder Kumar, Member

Argued by :

Shri J.K. Pareek : counsel for the appellants.

Smt. Poonam Mathur : Addl.Govt.Advocate for respondent no.1.

Ex-parte against respondents no. 2 to 6.

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 17.9.2004 passed by the learned Revenue Appellate Authority, Alwar in first appeal No. 35/2003.

2. Facts of the case in nutshell are that the plaintiffs/ appellants filed a suit in the trial court of Assistant Collector, Alwar in respect of the land bearing khasra no. 108/1 situated in Village Kundalka, Tehsil Thanagaji, District Alwar. It was alleged in the plaint that the plaintiffs/ appellants and the respondents no. 2 to 6 are in actual cultivatory possession of the suit land for more than 20 years and hence they had become khatedars of the suit land. Therefore, a decree for declaration of khatedari rights and permanent injunction was sought by them. The contesting defendants/ respondents no. 1 and 2 filed written statement in which it was submitted that the suit land belongs to the Forest Department and no khatedari rights can be claimed on the disputed land. A prayer was made to dismiss the suit. The learned trial court after recording evidence dismissed the suit of the plaintiffs/ appellants. Feeling aggrieved, the plaintiffs/ appellants filed first appeal in the court of learned Revenue Appellate Authority, Alwar which was dismissed vide judgment and decree dated 17.9.2004. 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 learned trial court did not frame issues in the suit and, therefore, committed material illegality in dismissing the suit of the plaintiffs/ appellants. It is the duty of the court to frame issues in a matter which is contested by the defendants. Therefore, a prejudice has been caused to plaintiffs/appellants by non-framing of issues in the instant matter. To buttress his arguments, the learned counsel placed reliance on the following citations:-
 - I. 2011 (1) RRT 512 'Bhola Giri & ors. Vs Mangi Lal & ors.'
 - II. 2004 RRD 577 'Radha Vallabh Vs Kanhaiyalal.'
 - III. 2017 (24) 134 'Shivdayal Vs Prabhunath.'
- 4A. The learned counsel further argued that the plaintiffs/appellants are in cultivatory possession of the suit land for more than 20

years and therefore they had become khatedars of the same by way of adverse possession. The courts below failed to appreciate factual and legal position involved in this case. The evidence produced by the plaintiffs was not rebutted by the defendants and therefore there was no occasion for the trial court to dismiss the suit. 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.

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 suit land is the land of Forest Department and no khatedari rights can be claimed over it. 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. In the instant case the learned trial court has framed issues on 8.05.1991, which are based on the pleadings of the parties. The plaintiffs lead evidence in support of their pleadings by examining as many as five witnesses and also got exhibited eight documents. Therefore, the present one is not a case where the issues have not been settled by the learned trial court. In the memo of appeal and during arguments also, it could not be pointed out on behalf of the plaintiffs/appellants as to which issue was not framed by the trial court. It also could not be pointed out as to what prejudice was caused to the plaintiffs/appellants by non-framing of a particular issue. Therefore, the case law submitted on behalf of the plaintiffs/appellants does not support them.
8. The courts below have concurred on facts that the disputed land is the forest land and thus, the plaintiffs/ appellants cannot claim khatedari rights over the same. These findings of the courts below are neither perverse nor illegal, as the same are based on correct

appreciation of the material placed on record. Therefore, the plaintiffs/ appellants were not entitled to claim khatedari rights over the suit land.

9. It is also 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'

The courts below have thus rightly dismissed the suit/ appeal of the plaintiffs/ appellants. No question of law is involved in this appeal.

10. Hence, the appeal in hand is dismissed.

Pronounced.

(Rajinder Kumar)
Member

(Mukesh Kumar Sharma)
Chairman

* * *