

W.R.

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal Decree No.65 /2004/TA/Chittorgarh:

Jujar Singh s/o Devi Singh, Caste Rajput, r/o Kolvo Mandir, Tehsil Pratapgarh, Distt. Chittorgarh (Raj.)

... **Appellant.**

Versus

Manohar Lal s/o Shri Dhula ji Guru, r/o Kolvo Mandir, Tehsil Pratapgarh, Distt. Chittorgarh (Raj.)

... **Respondent.**

D.B.

Shri Suraj Bhan Jaiman, Member

Shri Rajinder Kumar, Member

Argued by :

Shri K.K. Purohit: Counsel for the Appellant.

Shri Ashok Nath: counsel for the Respondent.

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J U D G M E N T

Dated : 15-04-2019

Per Shri Rajinder Kumar, Member

1. This second appeal under Section 224 of the Rajasthan Tenancy Act, 1955 has been preferred against the judgment and decree dated 25.11.2003 of the learned Revenue Appellate Authority, Chittorgarh passed in appeal no.160/02, whereby the judgment and decree dated 10.06.2002 of the trial court of the SDO, Pratapgarh dismissing the suit filed by the plaintiff/appellant was confirmed.
2. Facts of the case, in nutshell, are that the plaintiff/appellant filed a suit in the trial court seeking the relief of declaration of khatedari rights in respect of the land bearing khasra no. 26 (5 bigha 13 biswa) situated in

Village Pillu, Tehsil Pratapgarh. The main basis of the suit of the plaintiff/appellant was the agreement to sell allegedly executed by the defendant/respondent, who is the recorded khatedar tenant of the suit land. As per plaint averment, the possession of the suit land was also handed over by the defendant/respondent in pursuance to the alleged sale agreement. The defendant/respondent did not appear in the trial court after service of summons upon him. The learned trial court after recording evidence of the plaintiff /appellant dismissed his suit. Feeling aggrieved, the plaintiff/appellant filed appeal in the court of learned RAA, Chittorgarh, which too was dismissed vide the impugned judgment and decree. Hence, this second appeal.

3. We have heard the learned counsels.
4. On behalf of the plaintiff/appellant, it was submitted that the suit was wrongly dismissed by the learned trial court because the defendant/respondent has not rebutted the evidence produced by the plaintiff/appellant. The possession of the plaintiff/appellant over the suit land is proved on record. The learned first appellate court also did not appreciate the fact that the main basis of the suit of the plaintiff/appellant is an agreement to sale, which was duly proved by him. Therefore, the plaintiff/appellant is entitled to the relief claimed by him. A prayer was made to accept the appeal and set aside the judgments and decrees of the courts below and to decree the suit of the plaintiff/appellant.
5. Learned counsel for the defendant/respondent vehemently opposed the above submissions. It was argued by him that khatedari rights cannot be claimed on the basis of unregistered and unstamped agreement to sale. Therefore, a prayer was made to dismiss the appeal.
6. We have given our thoughtful consideration to the above submissions and perused the record carefully.

7. It is trite that a decree of declaration of khatedari rights under the provisions of the Rajasthan Tenancy Act, 1955 cannot be obtained on the basis of an unregistered and unstamped agreement to sale. In this regard reference can be made to a judgment of the Revenue Board passed in 2003 (1) RRT 22 'Gokulchand Vs Ramsahai and ors.' In fact, when an agreement to sale is executed between the parties and one of them refuses to abide by any of its terms and conditions, the remedy lies in the civil court for getting decree of Specific Performance of contract. The party aggrieved cannot directly claim khatedari rights by filing revenue suit.
8. Applying the aforesaid principles to the facts of this case, we are of the considered opinion that the courts below rightly dismissed the suit/appeal of the plaintiff/appellant. No question of law is involved in this appeal. Therefore, this appeal is liable to be dismissed.
9. Resultantly, the appeal in hand is dismissed.

(Rajinder Kumar)
Member

(Suraj Bhan Jaiman)
Member