

तारीख हुक्म	हुक्म या कार्यवाही मय इनिशियल्स जज Reference No. 746/2004/TA/Jaisalmer State Vs. Gopal	नम्बर व तारीख अहकाम जो इस हुक्म की तामील में जारी हुए
18.3.2020	<p style="text-align: center;"><u>Single Bench</u></p> <p style="text-align: center;">Mahendra Kumar Parakh, Member</p> <p><u>Present:</u></p> <p>Smt. Poonam Mathur : Addl.Govt.Advoate for the State. Shri Dinesh Kumar : Brief-holder Advocate for the non-petitioners.</p> <p style="text-align: center;">- - -</p> <p>This reference has been made to the Board of Revenue by District Collector & Commissioner (Colonisation), Bikaner by his order dated 04.11.2003.</p> <p>Brief facts of the case are as follows :-</p> <p>Shri Jodha Ram, Shri Amra Ram sons of Shri Rudha Ram, by caste Vishnoi, residents of Village Madasar, Tehsil Pokaran, District Jaisalmer filed a suit against Shri Reshma Ram S/o Shri Rudha Ram Vishnoi under sections 53 & 88 of the Rajasthan Tenancy Act, 1955 for declaration of khatedari land, correction of record and division of holding in the court of Deputy Commissioner (Colonisation), Nachna. By his order dated 12.5.1992, disputed land of 88 bigha was declared equally in the names of Jodha Ram, Amra Ram and Reshma Ram sons of Rudha Ram Vishnoi and all the three brothers were recorded as gair khatedar in the record. Collector & Commissioner (Colonisation), Bikaner has moved a reference against the decision of Dy. Commissioner (Colonisation) stating that decision dated 12.5.1992 is against law and revenue record. The decision has benefited the non-petitioners Jodha Ram and Amra Ram sons of Rudha Ram Vishnoi whose names were not there in revenue record despite the fact that holding has been divided against law. Section 53 of the Tenancy Act imposes the State Government to be necessary party in the case, but in this case State Govt. was not made party to the suit. The land in question should have been transferred through registered sale deed, while in not doing so, Dy. Commissioner (Colonisation) has caused loss of stamp duty to the State</p>	

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	<p>Government; as such, decision of the Dy. Commissioner (Colonisation) dated 12.5.1992 and the resultant decree may be set aside.</p> <p>The non-petitioners have argued that the reference proceedings have been initiated after a lapse of 8 years and therefore is time barred. State should have made an appeal against the decision of Dy. Commissioner (Colonisation). Arguments of Addl.Govt.Advocate were heard. Advocate of the non-petitioners did not come for the arguments. Later appeared in the court and asked for submission of written arguments. Advocate on behalf of the non-petitioners moved an application under Order 22 Rule 10A stating that non-petitioner no.2 Amra Ram S/o Rudha Ram Vishnoi died on 18.4.2006 and a list of five successors was presented. As such, prayed for accepting the application and the case may be released to take on record successors of non-petitioner no.2.</p> <p>File perused and it is found that successors of non-petitioner no.2 were summoned and the receipt of information is enclosed in the file and the same has been recorded in ordersheet dated 29.9.2010. After that, registered notices were issued on 21.5.2012 which were received by Omprakash on 28.6.2012.</p> <p>Addl.Govt.Advocate for the petitioner argued that the land in dispute measuring 88 bigha was in record in the name of Reshma Ram S/o Rudha Ram Vishnoi since settlement as gair khatedar. By way of a decision in declaratory suit, the said land has been recorded in the name of all the three sons of Rudha Ram Vishnoi R/o Madasar. In this way, there is a loss of stamp duty to the State Government. Reference may be accepted and the order of the Dy. Commissioner (Colonisation) be set aside.</p>	

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	<p>Considered the arguments and perused the record of the trial court. The evidence taken in the case suggests that the land in dispute is ancestral and it belonged to Shri Rudharam Vishnoi. During settlement, the land was recorded in the name of the eldest son of Shri Rudharam i.e. Shri Reshmaram. The evidence of Ranaram and Jetharam points out that all the three sons of Rudharam continuously cultivated on their respective 1/3 shares in the disputed land.</p> <p>The decision of the trial court has been done u/s 88 of the Rajasthan Tenancy Act and there is no decision made regarding division of holding u/s 53 of the said Act. As such, State is not a necessary party.</p> <p>There is no evidence taken to reflect that there was any transaction of land between the real brothers resulting in loss of stamp duty. As a matter of fact, the land in dispute is not self acquired property of Shri Reshmaram, for which record prior to settlement should have been seen before moving the reference Also there is no decision regarding the division of holding in the judgment of the trial court. As such, the averment taken in reference for making the State a necessary party seems to be baseless.</p> <p>At this stage, two brothers out of the three sons of Rudharam have died and their successors are on record. As all the three brothers : Jodharam, Amraram and Reshmaram sons of Shri Rudharam have been declared as gair khatedar tenants of equal share in the disputed land and there being no evidence to the contrary to suggest that there is any evasion of stamp duty, I find no irregularity or illegality in the order u/s 88 of the Rajasthan Tenancy Act of the trial court.</p>	

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	<p>Hence, the reference moved by the Collector and Commissioner (Colonisation), Bikaner dated 04.11.2003 is dismissed.</p> <p>Pronounced.</p> <p>(Mahendra Kumar Parakh) Member</p>	