

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

AppealDecree/TA/1318/2005/Baran

Suraj Singh S/o. Ummed Singh, Caste Rao Rajput, Resident of Nandganvri, Tehsil Mangrol, Distt. Baran, since deceased through LRs:

1. Sampat Kanwar Wd/o. Suraj Singh
2. Prakash Kanwar D/o. Suraj Singh
3. Rajesh Kanwar D/o. Suraj Singh
4. Raghuraj Kanwar D/o. Suraj Singh
5. Virendra Singh S/o. Suraj Singh
6. Seema Kanwar D/o. Suraj Singh
7. Rupendra Singh S/o. Suraj Singh

By Caste Rao Rajput, Residents of Nandganvri, Tehsil Mangrol, Distt. Baran.

.....Appellants.

VERSUS

1. State of Rajasthan through Tehsildar Mangrol.
2. Lalchand S/o. Jagannath Caste Mehar, Resident of Isharpura, Tehsil Mangrol, Distt. Baran.

..... Respondents.

D.B.

**Shri V. Srinivas, Chairman
Shri Rajinder Kumar, Member**

Present:-

Shri Khadag Singh, counsel for the Appellants.

Smt. Jyoti Pareek, counsel for the Respondent no. 2.

JUDGMENT

Date: 26-06-2018

1. This second appeal is preferred by the plaintiffs against the order dated 09-03-2005 of the learned Revenue Appellate Authority, Kota passed in Appeal no. 321/04, whereby the said appeal was dismissed and the order of S.D.O, Kota dated 29-09-2004 accepting

the application under section 144 C.P.C filed by the defendant Lalchand was confirmed.

2. The facts necessary for disposal of appeal are that the original plaintiff Suraj Singh (since deceased) filed suit for correction of revenue record and possession of suit land against the defendants/respondents in the court of S.D.O. Kota. The defendants having failed to appear to contest the suit, they were proceeded *ex parte* and consequently *ex parte* judgment and decree was passed against them on 28-02-1994. In terms of the above decree, correction in revenue record was made and possession of the land was also delivered to the plaintiffs. Thereafter, the defendant Lalchand filed application under Order IX Rule 13 C.P.C for setting aside *ex parte* judgment and decree. The said application was allowed by learned S.D.O vide order dated 12-01-1999. The said order was assailed upto the Board of Revenue but to no avail. Thereafter, the defendant Lalchand moved another application under section 144 C.P.C for restitution, which came to be accepted by the learned trial court vide order dated 29-09-2004 and the first appeal filed by the appellants before learned R.A.A. was also dismissed on 09-03-2005. Hence this second appeal.
3. We have heard the parties through their respective counsels.
4. It has been vehemently submitted by learned counsel for the appellants that defendant Lalchand was only "Shikami Khatedar" of the land whereas by taking resort to the provisions of section 144 C.P.C, his name has been illegality entered as recorded khatedar of the disputed land. The possession of the land has also been illegality delivered to him. Therefore, the orders impugned are against the facts and law and are liable to be set aside.

5. Learned counsel for the respondent no. 2 has vehemently opposed the above submissions. She has argued that defendant no. 2 Lalchand has been rightly given possession of the land, as he is its khatedar. The plaintiff obtained the *ex parte* judgment and decree in an illegal manner, therefore, the same was set aside. In this manner, the order of restitution is perfectly justified. In support of her submissions, she has relied upon:-

(1) 1989 RRD 564 [Ram chandra Vs Kishan]:- In this case, it was held that there is no reason to disbelieve validity of mutation entries.

(2) 1989 RRD 756 [HemRai Vs Devilal] and 1987 RRD 375 [Sheopal Vs Kalu Lal]:- In these cases it was held that a person correctly recorded as "Zaili" must be deemed to be a sub-tenant.

6. We have given our thoughtful consideration to above submissions and perused the record carefully. We have also studied the law laid down in the above citations.

7. In the suit, it was stated by the plaintiffs that he is the khatedar of the disputed land and the settlement authorities, in collusion with the defendant Lalchand made illegal entry of this land as his khatedari land. By taking unjust benefit of the wrong entry, he also obtained possession of the land as well. Therefore, it was requested to make correction in the revenue record and to enter the said land as plaintiffs' khatedari land by deleting the name of defendant Lalchand from revenue record. It is pertinent that in execution proceedings after passing of *ex parte* decree, the land was got entered in plaintiffs' name by deleting the name of defendant Lalchand and its possession was also delivered to him. In this manner, it becomes crystal clear that immediately before the institution of suit, the disputed land was recorded as khatedari land of the defendant Lalchand and he was in its possession. There

are concurrent findings of facts of both the courts below in this regard and the same are based on the material available on record.

8. Extending the scope and applicability of the Section 144 C.P.C, the Hon'ble Allahabad High Court in Jogendra Nath Singh Vs Hira Sahu (ATR 1948 All 252), held that a case for restitution would fall within the purview of above provision, even when the decree is set aside in a separate suit or where the court itself sets-aside its own *exparte* decree.
9. In view of above legal position, both the courts were right in ordering restitution of the position which prevailed immediately prior to the institution of the revenue suit.
10. It was argued by learned counsel for the appellants that defendant Lalchand is only "Shikami Khatedar" and thus, he cannot be recorded as "Khatedar" of the land. This argument of the learned counsel is not tenable because this point was not raised by plaintiff in the trial court or the first appellate court. Even in the plaint, there is no mention of the fact that the defendant Lalchand is "Shikami Khatedar", as alleged by learned counsel for appellants.
11. In view of what has been stated above, we do not find any illegality in the impugned orders.
12. Therefore, the second appeal is dismissed. The record of the trial court be transmitted forthwith. The learned trial court is directed to decide the suit expeditiously.

Pronounced.

(Rajinder Kumar)
Member

(V. Srinivas)
Chairman