

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

1. Appeal Decree/4103/2005/Jaipur

Panchu son of Harkaran by caste Kumhar resident of Gram Saali,
presently residing at Dev Doongri, Nr. Housing Board, Madanganj,
Kishangarh District Ajmer.

...Appellant

Versus

1. Maangi lal son of Ramkaran son of Sanwta Jat
2. Norat son of Ramkaran son of Sanwta Jat
3. Heera daughter of Ramkaran son of Sanwta Jat

4. Baktawar son of Ramkaran son of Sanwta Jat)
5. Meera daughter of Ramkaran son of Sanwta Jat)
6. Ramkanya daughter of Ramkaran son of Sanwta Jat)
- minors through their natural guardian mother Mst. Sarju wife of
Ramkaran
7. Mst. Sarju wife of Ramkaran
- all are by caste Jat resident of Gram Saali Tehsil Dudu District Jaipur.
8. State of Rajasthan through Tehsildar Dudu
9. The Director, Rajasthan Bhoodan Yagya Board, Kishor Niwas Tripolia Bazar,
Jaipur.

...Respondents

2. Appeal/TA/2005/4101/Jaipur

Panchu son of Harkaran by caste Kumhar resident of Gram Saali,
presently residing at Dev Doongri, Nr. Housing Board, Madanganj,
Kishangarh District Ajmer.

...Appellant

Versus

1. Maangi lal son of Ramkaran son of Sanwta Jat
2. Norat son of Ramkaran son of Sanwta Jat
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- all are by caste Jat resident of Gram Saali Tehsil Dudu District Jaipur.
8. State of Rajasthan through Tehsildar Dudu
9. The Director, Rajasthan Bhoodan Yagya Board, Kishor Niwas Tripolia Bazar,
Jaipur.
10. Gopal son of Mangilal Kumhar presently residing at Dev Doongri, Madanganj,
Kishangarh, Ajmer.

...Respondents

3. Appeal/TA/2005/6315/Jaipur

State of Rajasthan through Tehsildar Dudu

...Appellant

Versus

1. Maangi lal son of Ramkaran son of Sanwta Jat
2. Norat son of Ramkaran son of Sanwta Jat
3. Heera daughter of Ramkaran son of Sanwta Jat
4. Baktawar son of Ramkaran son of Sanwta Jat)
5. Meera daughter of Ramkaran son of Sanwta Jat)
6. Ramkanya daughter of Ramkaran son of Sanwta Jat)
- minors through their natural guardian mother Mst. Sarju wife of Ramkaran
7. Mst. Sarju wife of Ramkaran
- all are by caste Jat resident of Gram Saali Tehsil Dudu District Jaipur.
8. Panchu son of Harkaran by caste Kumhar resident of Gram Saali, presently residing at Dev Doongri, Nr. Housing Board, Madanganj, Kishangarh District Ajmer.
9. The Director, Rajasthan Bhoodan Yagya Board, Kishor Niwas Tripolia Bazar, Jaipur.

...Respondents

4. Appeal/TA/2005/6316/Jaipur

State of Rajasthan through Tehsildar Dudu

...Appellant

Versus

1. Maangi lal son of Ramkaran son of Sanwta Jat
2. Norat son of Ramkaran son of Sanwta Jat
3. Heera daughter of Ramkaran son of Sanwta Jat
4. Baktawar son of Ramkaran son of Sanwta Jat)
5. Meera daughter of Ramkaran son of Sanwta Jat)
6. Ramkanya daughter of Ramkaran son of Sanwta Jat)
- minors through their natural guardian mother Mst. Sarju wife of Ramkaran
7. Mst. Sarju wife of Ramkaran
- all are by caste Jat resident of Gram Saali Tehsil Dudu District Jaipur.
8. Gopal son of Mangilal Kumhar presently residing at Dev Doongri, Madanganj, Kishangarh, Ajmer.
9. Panchu son of Harkaran by caste Kumhar resident of Gram Saali, presently residing at Dev Doongri, Nr. Housing Board, Madanganj, Kishangarh District Ajmer.
10. The Director, Rajasthan Bhoodan Yagya Board, Kishor Niwas Tripolia Bazar, Jaipur.

...Respondents

D.B.
Shri V.Srinivas, Chairman
Shri Manoj Kumar Nag, Member

Present:

Shri Vikas Parashar, appeared as counsel for appellant in Appeal Decree No. 4103/2005 & 4101/2005 and as counsel for respondents No. 8 in 6315/2005, respondent No. 9 in 6316/2005.

Shri J.K.Pareek, appeared as counsel for respondents in 4103/2005 & 4101/2005 and as counsel for respondents no. 1, 3 and 7 in 6315/2005 and respondents no. 1 to 5 and 7 in 6316/2005.

Shri V.P.Singh, Govt. Advocate appeared for respondent Govt. in 4103/2005 & 4101/2005 and as appellant Govt. in 6315/2005 & 6316/2005.

Respondents No. 4 & 9 absent despite notices in 6315/2005 and respondent no. 6, 8 & 10 absent despite notices in 6316/2005.

JUDGMENT

Dated:.....

The appellant Paanchu son of Harakram has filed 2 2nd appeals No.: 2005/4101 and 2005/4103 in the Board of Revenue u/s 224 Rajasthan Tenancy Act aggrieved by the judgment and decree of the Revenue Appellate Authority, Jaipur in Appeal No. 38/2004 dated 3.8.2005. The State of Rajasthan has filed 2 appeals No: 2005/6315 and 2005/6316 on the suit land. All four cases were heard together.

The appellant pleads that khasra no. 2719/2 area 10 bighas in village Saali Tehsil Dudu was allotted to Harkaran father of Panchu the appellant in 1958 and Harkaran has enjoyed uninterrupted possession on the suit land. The appellant-plaintiff had filed a suit no. 208/95 in the Court of SDO, Dudu u/s 88, 188 Rajasthan Tenancy Act 1955 seeking khatedari rights. As the respondent-defendant had not appeared in Court, the learned SDO, Dudu had initiated ex-parte proceedings in the matter on 17.3.1997. The defendant-respondents approached the learned Board of Revenue in Revision and the learned Board of Revenue directed retrial. On 28.1.2004 the SDO, Dudu decreed the suit and dismissed the counter claim of the respondent-defendants. The respondent-defendants in their counter claim pleaded that the suit land was allotted in 1952 by Bhoodan Board to their grand father Late Savatha S/o Bhima Jat. The Trial Court framed 8 issues and following appreciation of oral evidence and revenue records decreed the suit on 28.1.2004. Aggrieved by the judgment and decree of the Trial Court, the respondent-defendants filed 2 appeals in the Court of Revenue Appellate Authority, Jaipur. In both cases, the learned Revenue Appellate Authority, Jaipur

on 3.8.2005 allowed the 1st appeal and set aside the orders of the Trial Court. Aggrieved by the orders of the learned Revenue Appellate Authority, Jaipur, the appellant-plaintiff approached the Board of Revenue for Rajasthan in 2nd appeal u/s 224 Rajasthan Tenancy Act 1955.

The appellant-plaintiff in his 2nd appeal pleads that the judgment and decree of the learned Revenue Appellate Authority, Jaipur is against the law and hence fit to be set aside. The appellant-plaintiff submits that the learned R.A.A., Jaipur has not examined the revenue record and reached a conclusion that the suit land of khasra no. 2719/2 of village Saali was allotted to the respondent-defendants by the Bhoodan Board in 1952. The learned R.A.A. erred in not taking into consideration the fact that the suit land was allotted to Harkaran the father of Paanchu on 20.5.1962 when the land was recorded as 'Siwai Chak' land. The appellant-plaintiff in support of his pleadings has submitted the allotment order as exhibit 8, Mutation dated 4.2.1968 as exhibit 9, copy of the Jamabandi as exhibit 10 in addition to revenue receipts and Khasra Girdawaris of the years Samvat 2011 to 2014 and 2015 to 2018. The appellant-plaintiff was found to be in possession of the suit land in a site report presented by the Tehsildar, Dudu on 26.7.2002. The learned Revenue Appellate Authority has erred in not taking into consideration the site report and the revenue records, and hence erred in reaching a judgment and decree against the appellant-plaintiff. The learned Trial Court in its findings on the 8 issues had decided in favour of the appellant-plaintiff, that the plaintiff was in possession of the suit land khasra no. 2719/2 of area 10 bighas which was allotted to Harkaran father of Panchu. The respondent-defendant did not produce the allotment order of Bhoodan Board. The appellant pleads that while it is possible that the Bhoodan Board has allotted land to the respondent, such allotment was not proved by an allotment order since cancelled and land recorded as 'Siwai Chak'. The appellant-plaintiff further pleads that the learned Revenue Appellate Authority had reached the view that the land is Bhoodan land based on a reply filed by the Bhoodan Board. The Bhoodan Board was not a party to the Court proceedings in the learned Trial Court, but was impleaded as a party in the 1st appeal by the respondent-defendants without due approval of the learned Revenue Appellate Authority. On a notice issued by the learned Revenue Appellate Authority, the Bhoodan Board replied that only the Chairman and Secretary of the Board are competent to take action and said that summons should be issued to Chairman or

Secretary of the Bhoodan Board. The learned Revenue Appellate Authority did not issue any such amended summons notices in the 1st appeal. A reply was submitted to the learned Revenue Appellate Authority on 4.3.2004 based on which the 1st appellate Court allowed the 1st appeal.

The appellant-plaintiff pleads that the respondent-defendants in their appeal memo did not even mention the provisions of Section 18 of the Rajasthan Bhoodan Yagna Act 1954, yet the 1st Appellate Court has gone beyond pleadings in giving relief to the respondent-defendants. The appellant-plaintiff pleads that the provisions of Section 18 of the Rajasthan Bhoodan Yagna Act 1954 are not applicable in this case as the appellant-plaintiff is a bonafide land allottee and hence the 1st appeal should have been quashed.

The appellant-plaintiffs pleads that khasra number 2719 of village Savatha has area of 23 bighas and 15 biswas. The learned Revenue Appellate Authority in deciding the 1st appeal had decided issue No. 1 wrongly in favour of the respondent-defendant and held that the appellant-plaintiff could seek khatedari rights on the remaining 13 bighas 15 biswas of land which is non-Bhoodan land. The appellant-plaintiff submits that as all land allotment, mutation and Jamabandi documents were submitted, the 1st appellate Court erred in reaching this conclusion. The appellant-plaintiff pleads that the Revenue Appellate Authority had summarily decided all issues 1 to 7 in favour of respondent-defendant and that the order is not consistent with the provisions of the Order 41 Rule 31 Civil Procedure Code. Hence based on the above narration the appellant-plaintiff pleads that the 2nd appeal may be allowed and the judgment and decree of Revenue Appellate Authority Jaipur dated 3.8.2005 be set aside.

We heard arguments of the learned counsels for appellant-plaintiff and the respondent-defendants. In his pleadings, the learned counsel for appellant-plaintiff said that the learned SDO, Dudu had held that land was allotted on 20.5.1962 to the father of the appellant Harkaran and the appellant Panchu and his father have held continuous possession on the suit land since that day. The possession of the appellant-plaintiff is established by the revenue records and by the evidence that has been produced in the Court. The learned counsel for appellant pleaded that the Trial Court had decided issues 1 to 3 in favour of the appellant-plaintiff that

Panchu is in continuous possession of the suit land. As issues 1 to 3 regarding title and possession have been decided in favour of the appellant-plaintiff. The Trial Court dismissed the counter claim of the respondent-defendants that the land was allotted to them by Bhoodan Board in the absence of any documents. The Trial Court also reached the conclusion that the respondent-defendants are not in possession of the suit land as no evidence was produced before the Trial Court. The Trial Court has mentioned clearly that the land was not Bhoodan land but Siwai Chak land. The learned counsel for appellant pleaded that based on the above narration, the appellant Panchu S/o Harkaran is the sole khatedar tenant of khasra number 2719/2 of area 10 bighas of village Savatha, Tehsil Dudu.

The learned counsel for defendant-respondents pleads that the counter claim of the defendant was under Section 188 of the Rajasthan Tenancy Act. The appellant-plaintiff had filed a suit u/s 88 Rajasthan Tenancy Act seeking khatedari rights while the defendant-respondent had filed a suit for permanent injunction. The learned counsel for respondent pleaded that the respondent had no rights on the suit land and was seeking khatedari rights on grounds of possession. The Trial Court had erroneously decreed the suit in favour of the appellant, and decided issues 1 to 3 in his favour. The learned Revenue Appellate Authority had correctly set aside the judgment and decree of the learned SDO, Dudu. The learned R.A.A. had held that the respondent-defendants were recorded khatedar tenants in the Jamabandi for the Samvat 2049-2052, the land is recorded as Bhoodan and the respondent-defendants are paying land revenue on the suit land. The learned R.A.A. has further held that adverse possession is not established in the case and decided all the issues in favour of the respondent-defendant.

The learned Division Bench also heard arguments of the learned Government Advocate in 2 appeals filed by the State against the judgment and decree of the learned Revenue Appellate Authority, Jaipur dated 3.8.2005. The appeal numbers 2005/6315 and 2005/6316 were heard along with the appeals numbers 2005/4101 and 2005/4103. Appearing for the State, the learned Government Advocate pleaded that khasra no. 2719/2 of area 10 bighas of village Savatha Tehsil Dudu is Siwai Chak government land, which was never allotted by the Bhoodan Board to the respondent-defendant. The Trial Court had wrongly decreed the suit land in favour of the appellant-plaintiff that khatedari rights

accrued to him. The learned Government Advocate pleaded that the land be recorded as 'Siwai Chak' and returned to State. The learned Government Advocate pleaded that Harkaran's allotment was never reflected in the revenue records and he was never a gair khatedar tenant.

We have examined the judgments and decrees of the subordinate Courts. We have also examined the revenue records of the suit land since 1952. The name of Savatha figures in the revenue records as khatedar tenant, from 5.11.1959 to 1.1.1986. On 1.1.1986 Savatha son of Bhima was recorded as khatedar tenant and Bhoodan holder by Mutation No: 936 on the orders of the State government. The land was transferred to Savatha's legal descendants by succession on 16.5.1995 vide mutation No:1309. The name of Panchu son of Harkaran does not appear in revenue records as khatedar tenant for the period 1959 to 1997, and only appears on 13.5.1997 as khatedar tenant when a mutation is sanctioned in compliance of a judgment and decree of Trial Court. Vide mutation No:753 dated 7.8.2015, the entry Bhoodan holder was deleted and Panchu son of Harkaran was recorded as khatedar tenant.

The Rajasthan Bhoodan Yagna Board in its 'Praman Patra' dated 19.12.2000 has stated that land was allotted to Savatha son of Bhima Jat on 30.5.1958.

We decode each of the 7 issues in the case as follows :

(i) Issue No.1 : Is appellant-plaintiff, appellant-plaintiff, Panchu S/o Harkaran the khatedar tenant on the suit land khasra No.2719/2 of area 10 bigha. From the evidence on record it is evident that Savatha son of Bhima is the recorded khatedar tenant on the suit land. We concur with the findings of the learned R.A.A. Jaipur.

(ii) Issue No.2: Is the appellant-plaintiff in possession of the suit land and was the suit land allotted to Harkaran father of appellant-plaintiff.

From an examination of revenue records, it is clear that the suit land was allotted to Savtha son of Bhima who was khatedar tenant from 1955 to 1997. The learned R.A.A. has correctly decided the issue in favour of the defendant-respondent.

(iii) Issue No.3: Is the suit land in possession of Appellant-Plainiff.

The suit land is recorded in name of respondent-defendant and revenue records indicate uninterrupted possession of respondent-defendant. The learned R.A.A. has correctly decided the issue in favor of the defendant-respondent.

(iv) Issue No.4: Is the appellant-plaintiff having any rights for permanent injunction on the suit land.

From an examination of the revenue records, the respondent-defendant has khatedari rights and the appellant-plaintiff has no rights on the suit land. The learned R.A.A.,Jaipur has correctly decided the issue.

(v) Issue 5 to 7 are also decided in favour of respondent-defendant, who is khatedar tenant duly allotted land by the Bhoodan Board. The learned RAA, Jaipur has correctly decided the issues.

Based on the above narration all 4 appeals are dismissed. The judgment & decree of the learned R.A.A. is upheld. The Tehsildar shall record the suit land of khasra no:2719/2 of village Saali in the name of respondent-defendant Mangilal son of Ramkaran & others.

Pronounced in open court.

(Manoj Kumar Nag)
Member

(V.Srinivas)
Chairma