

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal Decree/TA/5547/2005/Sawaimadhopur

1. Raja Ram son of Sri Lal
2. Sita Ram son of Sri Lal
3. Jagdish son of Sri Lal
4. Mst. Phool Bai widow of Sri Lal
5. Ghandiya son of Mewa
6. Jai Kishan son of Bhura

All by caste Meena residents of Gram Basokala Tehsil Khandar
Distt. Sawaimadhopur.

...Appellants.

Versus

1. Shyonarayan son of Chatru
2. Khanhiya son of Chatru
3. Mst. Kesar widow of Chatru
4. Mst. Kesar widow of Ramphool(Deceased)(Name Deleted)
5. Bharat Lal son of Ramphool
6. Khanhiya son of Ramphool

All by caste Meena residents of Gram Basokala Tehsil Khandar
Distt. Sawaimadhopur.

7. State of Rajasthan

...Respondents.

D.B.

**Shri Rajeshwar Singh, Chairman
Shri C.R. Meena, Member**

Present:-

Shri Virendra Singh Rathore, counsel for the applicants.
Shri Ramsukh Chaudhary, counsel for the respondents.

Date : 16.11.2022

J U D G M E N T

This second appeal is filed under section 224 of the Rajasthan Tenancy Act, 1955 against the judgment and decree of learned Revenue Appellate Authority, Sawaimadhopur dated 13.10.2005 passed in appeal No. 53/04 titled as 'Raja Ram Vs. State.'.

2. The brief facts of the case are such that Sri Lal, Gendiya and Jai Kishan residents of Basokala Tehsil Khandar Distt. Sawaimadhopur filed a suit for declaration and permanent injunction against State of Rajasthan and ors. before Asst. Collector, Sawaimadhopur stating that the land in question bearing Khasra No. 170 area 14 biswa, Khasra No. 229 area 15 biswa, Khasra No. 480 area 13 biswa, Khasra No. 495 area 13

biswa,Khasra No.562 area 1 bigha 17 biswa,Khasra No. 797 area 1 bigha 13 biswa, Khasra No. 855 area 10 biswa,Khasra No. 866 area 7 biswa, Khasra No. 871 area 2 biswa,Khasra No.872 area 17 biswa, Khasra No. 878 area 15 biswa,Khasra No. 879 area 2 biswa,Khasra No. 887 area 1 bigha 1 biswa,Khasra No. 889 area 13 biswa in total 10 bigha 12 biswa was in the sole khatedari of Jaganiya and in Khasra No. 94 area 3 bigha 6 biswa, in which Jaganiya has half share, defendant No. 2 to 5 have one forth share and defendant No. 6 has 9.25 share in Khasra No. 94. In Khasra No. 103 area 1 bigha 11 biswa and in Khasra No. 573 area 2 bigha 11 biswa in total 4 bigha 2 biswa Jaganiya had half share and the remaining half share was of defendant No. 2 to 5. Jaganiya had died 24 years ago at the time of filing of this suit dated 10.04.1996. But before filing of the suit, State filed an application before the District Judge bearing No. 92/83 for declaring the assets of Jaganiya son of Shyobakhsh resident of Basokala Tehsil Khandar Distt. Sawaimadhopur as escheat property because Jaganiya had died intestate vide its judgment dated 01.02.1995. The learned trial court vide its judgment dated 30.03.2002 dismissed the suit filed by the plaintiffs on the basis of the judgment dated 01.02.1995 passed by learned District Judge, Sawaimadhopur. Aggrieved by the judgment dated 30.03.2002 plaintiffs/ appellants filed first appeal before the Revenue Appellate Authority, Sawaimadhopur who vide its judgment dated 19.09.2002 remanded the matter to learned trial court to decide it afresh. After remand order, learned trial court of Asstt. Collector, Khandar decided the matter again and dismissed the suit filed vide its judgment dated 01.08.2003. Aggrieved by this judgment, first appeal was filed before the learned Revenue Appellate Authority, Sawaimadhopur who vide its judgment dated 13.10.2005 rejected the appeal filed by the plaintiffs/appellants. Aggrieved by this the appellants have brought this second appeal before the court.

3. Heard the learned counsels.

4. The learned counsel on behalf of the appellant has contended that the judgment of both the lower courts is against the settled principle of law and against the documents and revenue record produced before the lower court,

therefore, the judgment of both the lower courts deserves to be set aside and quashed. While continuing his argument he contended that after the death of Jaganiya, mutation No. 199 was attested in favour of plaintiff and defendant. The land was wrongly entered in the name of State of Rajasthan, therefore, plaintiffs were entitled to file a suit for declaration. Previously, an application under Order 7 Rule 11 C.P.C. was filed by the State of Rajasthan before ACM which was accepted on 30.03.2002 and the suit was dismissed as not maintainable. An appeal before learned Revenue Appellate Authority, Sawaimadhapur was filed which was accepted on 19-09-2002 and it was held that the suit was maintainable and ACM should decide the case on merits. After the remand of the case, ACM should have decided the case on merits, but ACM had wrongly dismissed the suit holding that the plaintiff should have challenged the judgment of District Judge, Sawaimadhapur. He further contended that the plaintiffs and defendants were near relatives to the deceased Jaganiya who had died unmarried and therefore mutation No. 199 rightly attested in favour of the plaintiffs/ appellants and defendants which was wrongly entered in the name of the State of Rajasthan. He further contended that the disputed land was entered in revenue record in the joint tenancy of Jaganiya and other defendants as co-tenants, therefore, after the death of Jaganiya the disputed land could not be entered in the name of the State of Rajasthan. While continuing his argument, the learned counsel in support of his argument cited 2003 RRD 54 'Harpal and anr Vs. State or Raj. and Ors.' which states that in agriculture holdings the ownership of the land lies with the State Government which never dies. Hence, the provision of Escheat Act are not applicable in agricultural holding. In the Agriculture land the khatadari rights can be extinguished u/s 63 of the RT Act. Therefore, the disputed land was wrongly entered in the name of the State Government. Hence, he contended that the appeal may be accepted and the judgment and decree of the learned ACM, Khandar dated 01.08.2003 and the judgment and decree of learned Revenue Appellate Authority, Sawaimadhapur dated 13.10.2005 be set aside and quashed.

5. The learned counsel on behalf of the respondents while assailing the arguments made by the counsel of the appellants, has argued that even the present appellants did appear before the learned District Judge but onward they chose not to appear before the District Judge and ex-parte proceedings had

been carried out and the disputed land has been entered as an escheat property. On the basis of the judgment passed by the civil court, learned trial court rejected the suit. In all, five issues were framed and after due deliberation all the issues were decided against the plaintiffs/ appellants. Learned first appellate court has also concurred with the findings given by the trial court. He further argued that in the second appeal, there is limited scope to interfere with the concurrent judgments passed by both the learned lower courts. As such, the second appeal in hand deserves to be rejected on this count alone.

6. We have given our thoughtful consideration to the rival contentions, perused the material available on record and have respectfully gone through the citations submitted by the learned counsel for the appellants. After perusal of the material available on record, it appears that the disputed land in question is declared as Government land by the order dated 01.02.1995 of the learned District Judge, Sawaimadhopur. The judgment passed by the learned Distt. Judge was not challenged before any court. As such, the judgment passed by the civil court attained finality. The decisions made by both the lower courts are mainly based on the findings and order dated 01.02.1995 of the learned District Judge, Sawaimadhopur. In this way, there seems to be no illegality or material irregularity in the concurrent findings of both the learned lower courts. Although, the learned counsel for the appellant has argued by citing the ruling mentioned above that on agricultural holdings the Rajasthan Tenancy Act applies but Escheats Regulation Act, 1956 does not apply because Rajasthan Tenancy Act is a special law dealing with agricultural tenancies and special provision will control general provisions. But, it is also held in the same citation that according to Rajasthan Tenancy Act provisions, the khatedari rights in agricultural holdings are only tenancy rights and no proprietary rights, the interests of tenant in his holdings are extinguished when he dies leaving no heir entitled to inherit in accordance with the provisions of the Tenancy Act and the interest in the holding vest in the State as bona vacantia. Under section 64 of the Rajasthan Tenancy Act when the interest of a tenant is extinguished he shall vacate his holding. In agricultural holdings the ownership of the land lies with the State Government, which never dies.

7. On the basis of above discussion, if we decide this matter according to provisions of Tenancy Act, the result will be the same. The disputed land will vest in Government under section 64 of the Rajasthan Tenancy Act. As there is

no need to interfere in the judgments & decrees passed by the learned lower courts, therefore the same are hereby upheld and this second appeal deserves to be dismissed, hence dismissed. Records of the lower courts be sent forthwith.

Pronounced in the open court.

(C. R. Meena)
Member

(Rajeshwar Singh)
Chairman