

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal Decree/TA/5755/2005/Dungarpur

Kehore alias Keshav Lal son of Veer Ji Patel resident of Odabada Tehsil and Distt. Dungarpur.

...Appellant.

Versus

1. Mani Shankar son of Shankar Lal Pandya
 2. Raman Lal son of Panna Lal Pandya
 3. Chhabi Lal (deceased) through LRs:-
 - 3/1 Balkeshwar so of Chhabi Lal Pandya
 - 3/2 Shanti Lal son of Chhabi Lal Pandya
 - 3/3 Mahesh Chandra son of Chhabi Lal Pandya
- All residents of Odabada Tehsil and Distt. Dungarpur.

...Respondents.

D.B.

Shri C.R. Meena, Member

Shri Ravi Dangi, Member

Present:-

Shri Sameer Ahmed, counsel for the appellant.

Shri Yogendra Singh, counsel for the respondents.

Date: 22-11-2021

J U D G M E N T

This second appeal has been filed under section 224 of the Rajasthan Tenancy Act, 1955 against the judgment and decree dated 21.10.2005 passed by Settlement Officer-cum-Revenue Appellate Authority, Udaipur in appeal No. 139/2004.

2. Briefly stated the relevant facts of the second appeal are that the respondents filed a suit for ejectment and permanent injunction against the appellant/ defendant in the court of Sub-Divisional Officer, Dungarpur in respect of the land bearing khasra No. 2454 measuring 4 bigha 9 biswa situated at village Odabada, in which the appellant/ defendant had encroached on some part and started digging foundation. The learned trial court framed five issues in this suit and decided the suit in favour of the plaintiffs/ respondents vide its judgment and decree dated 01.01.2004. Aggrieved by the judgment and decree dated 1.1.2004 of the learned trial court, the present appellant filed first appeal under section 223 of the Rajasthan Tenancy Act before the learned Settlement Officer-cum-Revenue Appellate Authority, Udaipur, who vide its judgment and decree dated

21.10.2005 rejected the first appeal filed by the appellant. Aggrieved by the impugned judgment and decree dated 21.10.2005, instant second appeal is filed before the Board of Revenue.

3. Heard the learned counsels of the parties.

4. The counsel for the appellants argued vehemently that both the learned lower courts have passed the judgments and decrees against the record and the law. The appellant is the recorded khatedar of khasra No. 2453 and is in possession of it since his forefathers' time. There is 'pali' and 'baad' in between both the aarajis. The old house on khasra No. 2453 is built from before and as the walls have fallen, he is rebuilding it. The respondent No. 1 being an ex employee of the revenue department and due to his influence mauka report was called for again and the disputed aarajis were not measured from permanent point/ spot. He also argued that the first mauka report was just and proper. Thus, prayed that on these grounds his appeal be allowed and both the judgments and decrees of learned lower courts be set aside.

5. Per contra, the counsel for the respondents argued that both the learned courts below have passed the judgments issuewise. Both the judgments are as per the law and record and the mauka report. The appellant is a trespasser on respondents' land who needs to be ejected. Thus prayed that the concurrent judgments be upheld and the appeal deserves to be rejected.

6. Considered the arguments of both the learned counsels and perused the material available on record.

7. To begin with the plaintiffs/ respondents have filed a suit under section 92A and 183 of the Rajasthan Tenancy Act, 1955. The suit was decreed and the first appeal was rejected.

The learned trial court framed five issues on 19.3.2002. Thereafter PW-1 Manishankar, PW-2 Gautam Singh, DW-1 Kehore, DW-2 Kedar deposed on oath. In rebuttal, PW-3 Shanti Lal's evidence was recorded. After evidence, the learned trial court had passed the judgment issuewise, decreeing the suit of the plaintiff.

The learned first appellate court also has dealt the matter issuewise and dismissed the appeal.

The moot question to be decided in this appeal is whether the appellant/ defendant was going to raise construction in his own aaraji or on the aaraji of the plaintiffs/ respondents.

The pivotal document is the naksha mauka prepared by the Tehsildar on 14.11.2000 and is made as Ex-2, which bears the signatures of the parties. It reads as follows:-

“आज दिनांक 14-11-2000 को श्री मणीशंकर वगैरह बनाम केहोर उर्फ केशवलाल बनाम वीरजी पटेल नि. ओडन के विवादित आ.न. 2453 एवं 2454 की पाली पर दौनों के मध्य निर्माणाधीन मकान का मौका मय रिकार्ड एवं पटवारी हल्का तथा अन्य मोतबीर के एवं वादी प्रतिवादी के समक्ष मौका देखा गया। दोनों तरफ से स्थाई बिन्दुओं से मौका माप की गई जिसके अनुसार निर्माणाधीन मकान जिसकी नींव भरी हुई है का जो कि केहोर उर्फ केशवलाल पिता वीरजी द्वारा बनाया जा रहा है का अतिक्रमण/ निर्माण किया जा रहा है की माप स्थाई बिन्दु ख0न0 1985 एवं 1986 के उत्तरी कोने से नाप की जाकर विपरीत दिशा दक्षिण के आ0न0 2467 आ.चा. एवं 2487 बिन्दुओं से टक्कर दी जाकर आ0न0 2453 एवं 2454 के क्रमशः दक्षिण एवं उत्तरी कोना स्थिर किया गया तथा इसी तरह स्थाई बिन्दुओं से आ.न. 2453 का दक्षिणी पूर्वी कोना स्थिर किया। उक्त निर्माणाधीन मकान ख.न. 2454 में मणीशंकर वगैरा के खाते में है। त्रिभुजाकार निर्माण जिसका नजरी नक्शा निम्न है काबिज हो निर्माण हो रहा है।”

Apart from it, no document has been filed/ exhibited by the defendant to fortify his stand of reconstruction of the old house.

Thus from this mauka report it is explicitly clear that the construction is being done by the appellant on the aaraji of the respondents. In light of the concurrent judgments and the above discussion we are of the firm view that there is no infirmity in the judgments and decrees passed by the learned lower courts. Hence, the appeal is dismissed.

Pronounced in open court.

(Ravi Dangi)
Member

(C.R. Meena)
Member