

**IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER**

**1. APPEAL DECREE/TA/7438/2006/CHITTORGARH :**

Birla Jute and Industries Limited, R.N. Mukharji Road, Kolkatta (A unit of Birla Corporation, Cement Works), Chanderia, Chittorgarh.

... **Appellant.**

*Versus*

1. State of Rajasthan through Tehsildar, Chittorgarh.
2. Raju s/o Late Shri Laxminarayan, Caste Ahir, r/o Chittorgarh presently residing at Teej ka Chowk, Sabji Mandi, Udaipur.
3. Brijmohan s/o Late Shri Laxminarayan, Caste Ahir, r/o Chittorgarh presently residing at Chatai Mohalla, Ajmer
4. Bhaira (deceased) s/o Heera Regar through LRs:-
  - 4/1. Mangilal s/o Late Shri Bhaira Regar
  - 4/2. Dalchand s/o Late Shri Bhaira Regar
  - 4/3. Bhagwanlal s/o Late Shri Bhaira Regar
  - 4/4. Mst. Shanti d/o Late Shri Bhaira Regar
  - 4/5. Mst. Shamudi d/o Late Shri Bhaira Regar
  - 4/6. Mst. Kesar d/o Late Shri Bhaira Regar
  - 4/7. Mst. Hangami wd/o Late Shri Bhaira RegarAll rs/o Bhanwaliya Tehsil Nimbahera, Distt. Chittorgarh.

.....**Respondents.**

**2. APPEAL DECREE/TA/7439/2006/CHITTORGARH :**

Birla Jute and Industries Limited, R.N. Mukharji Road, Kolkatta (A unit of Birla Corporation, Cement Works), Chanderia, Chittorgarh.

... **Appellant.**

*Versus*

1. State of Rajasthan through Tehsildar, Chittorgarh.

2. Raju s/o Late Shri Laxminarayan, Caste Ahir, r/o Chittorgarh presently residing at Teej ka Chowk, Sabji Mandi, Udaipur.
3. Brijmohan s/o Late Shri Laxminarayan, Caste Ahir, r/o Chittorgarh presently residing at Chatai Mohalla, Ajmer
4. Laxminarayan (deceased) s/o Deva Regar through LRs:-
  - 4/1. Mukesh s/o Laxminarayan
  - 4/2. Dinesh s/o Laxminarayan
  - 4/3. Mst. Sunita d/o Laxminarayan
  - 4/4. Mst. Jasoda d/o Laxminarayan
  - 4/5. Rukmani wd/o Laxminarayan
 All rs/o Bhanwaliya Tehsil Nimbahera, Distt. Chittorgarh.
5. Uda s/o Deva Regar (deceased) through LRs:-
  - 5/1. Kalu s/o Uda Regar r/o Bhanwaliya Tehsil Nimbahera, Distt. Chittorgarh.
  - 5/2. Mst. Bali d/o Uda Regar r/o Manpura Tehsil and Distt. Chittorgarh.

.....Respondents.

**3. APPEAL DECREE/TA/7440/2006/CHITTORGARH :**

Birla Jute and Industries Limited, R.N. Mukharji Road, Kolkatta (A unit of Birla Corporation, Cement Works), Chanderia, Chittorgarh.

... Appellant.

*Versus*

1. State of Rajasthan through Tehsildar, Chittorgarh.
2. Raju s/o Late Shri Laxminarayan, Caste Ahir, r/o Chittorgarh presently residing at Teej ka Chowk, Sabji Mandi, Udaipur.
3. Brijmohan s/o Late Shri Laxminarayan, Caste Ahir, r/o Chittorgarh presently residing at Chatai Mohalla, Ajmer
4. Rambaksh s/o Rama Regar r/o Bhanwaliya Tehsil Nimbahera Distt. Chittorgarh
5. Gangaram(deceased) s/o Rama Regar through LRs:-
  - 5/1. Surajmal s/o Late Shri Gangaram Regar
  - 5/2. Mst. Geeta wd/o Late Shri Gangaram Regar

5/3. Mst. Ramkanya d/o Late Shri Gangaram Regar

5/4. Mst. Sona Ghanchi d/o Late Shri Gangaram Regar.

All rs/o Bhanwaliya Tehsil Nimbahera, Distt. Chittorgarh.

.....Respondents.

**4. APPEAL DECREE/TA/7441/2006/CHITTORGARH :**

Birla Jute and Industries Limited, R.N. Mukharji Road, Kolkatta (A unit of Birla Corporation, Cement Works), Chanderia, Chittorgarh.

... Appellant.

*Versus*

1. State of Rajasthan through Tehsildar, Chittorgarh.
2. Raju s/o Late Shri Laxminarayan, Caste Ahir, r/o Chittorgarh presently residing at Teej ka Chowk, Sabji Mandi, Udaipur.
3. Brijmohan s/o Late Shri Laxminarayan, Caste Ahir, r/o Chittorgarh presently residing at Chatai Mohalla, Ajmer
4. Shankar (deceased) through Deva Regar through LRs:-
  - 4/1. Chunni wd/o Shankar
  - 4/2. Bhairu s/o Shankar
 All rs/o Bhanwaliya, Tehsil Nimbahera, Distt. Chittorgarh.
5. Mohan s/o Deva Regar, r/o Bhanwaliya Tehsil Nimbahera, Distt. Chittorgarh.

.....Respondents.

**D.B.**

**Shri Mukesh Kumar Sharma, Chairman**

**Shri Rajinder Kumar, Member**

**Argued by :**

Shri P. S. Dashora , counsel for the Appellant.

Shri V.P Singh, Govt. Advocate for the Respondent no. 1.

Shri Prashant Soni, counsel for the Respondent no. 4 and 5.

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**J U D G M E N T****Dated: 28-03-2019**

*Per Shri Rajinder Kumar, Member*

1. This is a bunch of four appeals filed by one of the defendants against the judgment and decree dated 26-07-06 of the learned Revenue Appellate Authority, Chittorgarh.
2. Facts of the appeals in nutshell are that the respondent no.1 (hereinafter referred as 'the plaintiff') filed four applications under section 175 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as the Act of 1955) against the present appellant and the remaining respondents in the court of the learned Assistant Collector and Sub Divisional Officer, Chittorgarh in respect of the lands situated in village Nagri Tehsil and Distt. Chittorgarh. It was alleged in the applications that one Shri Laxmi Narayan Ahir was the khatedar tenant of the disputed lands and he had sold these lands vide registered sale deeds to the defendants, namely, Shankar, Mohan, Bhaira, Laxmi Narayan, Rambaksh, Uda and Gangaram [hereinafter referred to as the 'original vendees'] on 17-01-1972, who are the persons of the category of Schedule Caste. The possession of the lands was handed over to them in pursuance to the sale deeds. The mutations were also sanctioned in their names and they were recorded as khatedars of the lands in the Jamabandi of Svt. 2029-2032. However, the officers of the Settlement Department at the time of the settlement mistakenly recorded these lands in the name of the original khatedar Laxmi Narayan Ahir deleting the entries standing in the names of the original vendees. After the death of the deceased Laxmi Narayan Ahir, these lands wrongly came to be recorded in the name of his legal representatives, namely, the respondents Raju, Brij Mohan and Ganga Bai. Thereafter, the said legal representatives of the deceased Laxmi Narayan Ahir sold these lands through their Power of Attorney to the appellant vide registered sale deed dated 06-04-1989. In this way, the lands belonging to persons of the category of the schedule caste were sold to the appellant in contravention of the provisions of Section 42(b)

of 'the Act of 1955'. A prayer was, therefore, made in the applications to resume the disputed lands in the name of the State Government. The trial court converted the said applications into suits and issued notices to the defendants. The original vendees filed written statements wherein they basically supported the plaint averments. It was submitted by them that their lands were mistakenly entered in the name of the original khatedar Laxmi Narayan and after his death, in the name of his legal representatives. The alienations made by the said legal representatives in favor of the defendant/appellant is null and void. Therefore, a prayer was made to re-enter these lands in their names. The defendant/appellant filed written statement denying the plaint averments. It was submitted that the lands were never sold to the original vendees, namely, Shankar and others. It was also denied that original vendees Shankar and others were in possession of the suit lands. It was further alleged that the alienation of the lands in the favour of the appellant is not in contravention of the provisions contained in Section 42(b) of the Act, 1955 because at the relevant time, the lands were recorded in the names of the sellers, namely, Raju, Brij Mohan and Ganga Bai as khatedars and they were fully competent to alienate the disputed lands. A prayer was made to dismiss the suit.

2A. The learned trial court consolidated all the suits and after framing issues recorded evidence of the parties and vide judgments and decrees dated 28-07-2005 decreed the suits. Feeling aggrieved the defendant/appellant preferred four separate appeals in the court of learned Revenue Appellate Authority, Chittorgarh. The original vendees also preferred cross objections. The learned first appellate authority vide separate judgments and decrees dated 26-07-06 set aside the judgments and decrees of the trial court and accepted the cross objections of the original vendees and passed an order for entering the disputed lands in their khatedari. By preferring these appeals, the defendant/appellant has challenged the judgments and decrees of the court below passed on 26-07-2006.

3. We have heard the learned counsels.
4. On behalf of the defendant/appellant, it was submitted that the learned first appellate court rightly set aside the findings of the learned trial court that a violation of the provisions of Section 42(b) of the Act, 1955 is made out. But the learned first appellate court, thereafter, wrongly passed an order for entering the disputed lands in favour of the original vendees. No counter claim to the suit was filed by the original vendees and no issue was framed by the learned trial court in that regard. Therefore, the said defendants/respondents had no right to file cross appeals in the first appellate court. In this way, the learned first appellate court was not right in passing the impugned judgments and decrees in favour of the original vendees. The learned first appellate court also ignored this factual and legal aspect of the case that the appellant is a juristic person and the alienation of lands in its favour does not contravene the provisions of Section 42 (b) of 'the Act of 1955.' The learned first appellate court also ignored this fact that the original vendees had submitted affidavits before the Settlement Authorities wherein it was admitted that they are not in possession of the lands forming the subject matter of the suits. On the basis of the said affidavits, the suit lands were entered in the revenue record in the name of the deceased Laxmi Naraya. Therefore, on this ground also, the learned first appellate court wrongly passed an order for entering these lands in the names of the original vendees. The learned first appellate court also ignored this fact that earlier to the filing of the present suit by the State Government, eviction proceedings under 183B of 'the Act of 1955' were initiated by the legal representatives of the deceased Laxmi Narayan and others through the Tehsildar, Chittorgarh against the appellant. The said proceedings were ultimately dropped vide order dated 15-01-1994. It also proves the fact that the defendant/appellant is in possession of the suit lands since the time of purchase. Therefore, a prayer was made to accept the appeals, set aside the impugned judgments and decrees of the court below in so far as the suit lands have been ordered to be recorded in the names of the original vendees.

4A. In support of his arguments, the learned counsel relied upon the following citations:-

- (1) 2016 RBJ 633 "Ugam Singh Vs Pratap":- In that case, it was held by the Revenue Board that if no court fee is paid on counter claim, then it will be treated only as a simple written statement .
- (2) 2009 RBJ 323 "Nagar Palika, Jalore Vs Barda " :- In that case, it was held by the Revenue Board that if counter claim is not filed, relief cannot be granted to the defendant.
- (3) 2003 DNJ(SC) 193 " Banarsi Vs Ram Phal" :- In that case, it was held by the Hon'ble Supreme court that in the absence of cross-appeal or cross-objection, the appellate court cannot grant relief to the respondent while dismissing appeal of the appellant.
- (4) 2007(1) RRT 185 " Roopa & ors Vs Dhapu & ors." :- In that case, the Revenue Board did not interfere into the orders passed by the court below. However, the direction of the learned first appellate court to the extent of directing the Tehsilar to hand over possession of land to khatedar was set aside.

5. Learned Government Advocate argued that the judgments and decrees of the trial court are based on incorrect appreciation of the factual and legal aspects involved in the case. The judgment and decree of the learned first appellate court is not lawful because, on the one hand, the appeal of the appellant was accepted and on the other hand, the cross appeal of the original vendees was accepted and in this way two contradictory decrees have been passed. Thus, the impugned judgments and decrees of the court below are unacceptable. A prayer was, thus, made to restore the judgments and decrees of the trial court. He also argued that in exercise of the powers vested in the Board by Section 221 of the Rajasthan Tenancy Act, 1955 such a course may be adopted by the Revenue Board.

6. Learned counsel for the original vendees vehemently opposed the above submissions. He argued that the learned Revenue Appellate Authority,

Chittorgarh has correctly appreciated the material placed on record and thus, there is no legal infirmity in the impugned judgments and decrees. Learned counsel vehemently argued that after the sale of land by the seller in pursuance to registered sale deeds, the title of the original vendees became perfect, even if their names did not reflect in the revenue record. Therefore, the sons of the vendors were not entitled to resell the disputed lands to the defendant/appellant. In this regard, reliance has been placed upon 1989 RRC 397 'Nathu Ram & ors. Vs Chagan Ram', 1979 RRD 1(RB) Keriya Vs Sanwalia,' 1994(1) RBJ 157 'Mst. Chand Vs Kumersen', 2002 (9) RBJ 563 ' Rama Vs Laxmi Narayan', 2006 (1) RLW RJ 265 'Magni Ram Vs Kanku Bai &ors'. Learned counsel also argued that the Settlement authorities were not entitled to enter the disputed lands in the name of the original khatedar without any order of a competent court. He argued that the Settlement authorities are required to repeat existing entries. They had no jurisdiction to make alteration in the revenue record. In this regard reliance is placed on 2002(9) RB 332 'Girraj Vs Bhagwant Prasad' and 1997 (4) RBJ 167 'Ram Sahai Vs Ram Swaroop'. Learned counsel also argued that the SDO has no jurisdiction to act on an application submitted after the closure of survey and record operations. The proper remedy for the person aggrieved is to file regular suit. In this regard, reliance is placed upon 1977 RRD 276 ' Ajay Kumar Vs State' and 1993 RRD 411 ' Jagdish Vs Moti Ram', 1994 RRD 505 'Jetharam & ors. Vs Tehsildar, Sojat ', and 1994 RRD 761 ' Head Master Govt. School Vs Sarjeet & ors.' Therefore, a prayer was made to dismiss these appeals.

7. In rebuttal, the learned counsel for the defendant/appellant submitted that the power of the Revenue Board under Section 221 of the Rajasthan Tenancy Act, 1955 is administrative in nature and the same cannot be exercised to interfere in judicial functions. He further argued that the power under Section 221 is not akin to the power of the High Court as provided under Article 227 of the Constitution. Such power cannot be exercised where alternative remedy of appeal or revision is available. To buttress these arguments, he relied upon the following citations:-

- (i). 1981 RRD 543 'Narayan Vs State of Rajasthan'
- (ii). 2010 RRD 688 'State of Rajasthan Vs Narayan'
- (iii). 2009 (2) RRT 1094 'Surendra Singh Vs Kisturi & ors'
- (iv). 1994 (1) SCC 215 'Devi Singh Vs Board of Revenue'
- (v). 1998 (5) RBJ 142 'Durga Shankar Vs Sita Ram'
- (vi). 2012 (2) RLW 1331 'State Vs Pathane Khan & ors'
- (vii). 1993 RRD 683 'UIT Vs Thana Ram'

8. We have given our thoughtful consideration to the above submissions and perused the records carefully.
9. The courts below have concurred on facts that the deceased Laxmi Narayan was the original khatedar tenant of the disputed lands. He sold these lands through registered sale deeds to the original vendees Shankar and others, who belonged to the category of the Scheduled Caste. A mutation of the said lands in their names was also sanctioned in pursuance to the said sale deeds.
10. It also transpires from the record that on the basis of the affidavits of the original vendees, the said lands were again recorded by the settlement officers in the name of the vendor Laxmi Narayan in contravention of the settled legal position that the Settlement Authorities have no power to change the revenue entries without any order from the competent authority. After the death of the deceased Laxmi Narayan, the mutations were illegally sanctioned in the name of his legal representatives namely, Raju, Brij Mohan and Ganga Bai. Thereafter, the disputed lands were sold by them through their Power of Attorney in favour of the present appellant. The said power of Attorney, namely, Shri Shanti Lal Dad was the then Sarpanch of the Gram Panchayat Nagri.
11. At the cost of repetition, it is mentioned that the so-called affidavits of the original vendees were attested by Shri Shanti Lal Dad and he sold these lands to the present appellant as Power of attorney holder of the legal representatives of the deceased Laxmi Narayan Ahir. Therefore, the

learned trial court on the basis of the said material rightly came to the conclusion that the disputed lands of the persons of the Scheduled Caste category were sold to the present appellant by hatching a conspiracy.

12. In AIR 2013 581 'State Vs Aanjaney Organic Herbal Pvt. Ltd.', it was held by the Hon'ble Supreme Court that :-

“14. The expressions ‘Scheduled Castes’ and ‘Scheduled Tribes’, we find in Section 42(b) of the Act have to be read along with the constitutional provisions and, if so read, the expression ‘who is not a member of the Scheduled Caste or Scheduled Tribe’ would mean a person other than those who has been included in the public notification as per Articles 341 and 342 of the Constitution. The expression ‘person’ used in Section 42(b) of the Act therefore can only be a natural person and not a juristic person, otherwise, the entire purpose of that section will be defeated. If the contention of the company is accepted, it can purchase land from Scheduled Caste / Scheduled Tribe and then sell it to a non-Scheduled Caste and Schedule Tribe, a situation the legislature wanted to avoid. A thing which cannot be done directly can be not done indirectly over-reaching the statutory restriction.

15. We are, therefore, of the view that the reasoning of the High Court that the respondent being a juristic person, the sale effected by a member of Scheduled Caste to a juristic person, which does not have a caste, is not hit by Section 42 of the Act, is untenable and gives a wrong interpretation to the above mentioned provision.

16. We are also of the view that the Revenue Authorities rightly refused the mutation as per circular dated 9.11.2005. Condition No. 7(2) of the circular was rightly invoked by the Revenue Authorities in denying mutation, which condition is extracted below for easy reference:

“7(2). If the khatedar of Scheduled Caste / Scheduled Tribe executes sale to such a person of Scheduled Caste / Scheduled Tribe who is office-bearer of any firm/society/company/legal institution, then the mutation on the basis of registration shall be made only in the name of that particular person/vendee who is a member of

Scheduled Caste/Scheduled Tribe and not in the name of that firm/society/company/legal institution wherein he is office-bearer or member.”

17. The above mentioned condition makes it amply clear that the mutation on the basis of registration shall be made only in the name of that particular person/vendee who is a member of Scheduled Caste/Scheduled Tribe and not in the name of any firm/society/company/legal institution wherein a person is office-bearer or member. When we apply the above principles to the transfer of land in question, we have no hesitation to hold that the sale deed effected on 26.9.2005 was void and therefore rightly denied mutation in Revenue records. Property, therefore purchased by the respondent from the members of Scheduled Caste vide sale deed dated 26.9.2005 and other sale deeds, therefore are void since hit by Section 42(b) of the Act and it is so declared. The State can, therefore, repossess the lands and return the lands to the original owners who are members of Scheduled Caste.”

Facts of the present case are squarely covered by the ratio laid down in the above case. Here also, the lands of the persons of the Scheduled Caste have been transferred to a juristic person, other than the Scheduled Caste and thus the same are void in view of the provision of Section 42(b) of the Act of 1955.

13. The learned trial court, therefore, rightly came to the conclusion that the alienation of the disputed lands made in favour of the appellant is null and void. The learned trial court was right in resuming the possession of the disputed lands in favour of the State Government because the original vendees were also instrumental in getting the disputed lands mutated in favour of the vendor Laxmi Narayan in an illegal manner. It is trite that the lands of a person belonging to the category of Scheduled Caste/Scheduled Tribe cannot be alienated even with the consent of that person.
14. The learned first appellate court had observed that the vendors Raju, Brij Mohan and Smt. Ganga Bai belonged to the category of the non-

scheduled caste and thus, the alienation made in favour of the appellant is not hit by section 42(b) of the Act. The said finding of the learned first appellate court has no legal force because when the disputed lands were previously purchased by the persons of the Scheduled Caste category, then the legal representatives of the original vendor could not have sold the same lands to any other person merely on the basis of illegal mutation entries standing in their names. Therefore, the learned first appellate court committed a material illegality in passing the order of recording the disputed lands in the khatedari of the original vendor.

15. Though the State Government has not preferred a separate appeal or cross appeal against the impugned judgments and decrees whereby the lands have been ordered to be entered in the names of the original vendees yet we are inclined to modify the judgments and decrees of the first appellate court in so far as it has held that no contravention of Section 42 (b) of the Act of 1955 is made out and that the disputed lands have been ordered to be entered in the names of the original vendees. The reasons for our modification of the impugned judgments and decrees are that the learned first appellate court has given self contradictory findings. On the one hand, the appeal of the defendant/appellant was accepted and simultaneously the cross objections of the original vendees were also accepted. In this way, two contradictory judgments and decrees have been passed by it. As the conclusions of the first appellate court are inconsistent, therefore, it has become necessary to modify the impugned judgments and decrees, by exercising power conferred by Order 41 Rule 33 CPC. In this regard reliance is placed on 1965 (3) SCR 550 'Nirmala Bala Ghose & anr Vs Balai Chand Ghose & ors' and 1975 (1) SCC 212 'Harihar Prasad Singh Vs Balmiki Prasad Singh & ors.'
16. Resultantly, the appeals are dismissed. The impugned judgments and decrees passed by the learned Revenue Appellate Authority, Chittorgarh are modified. The suits filed by the plaintiff/respondent stand decreed and the suit lands are resumed in favor of the State Government. The

concerned Tehsildar is directed to make entry of the disputed lands in favor of the State Government as 'Siwai Chak.'

Pronounced.

**(Rajinder Kumar)**  
Member

**(Mukesh Kumar Sharma)**  
Chairman

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