

FORM NO - III

फर्द अहकाम

(नियम 26)

न्यायालय सहायक कलक्टर एवं एवं कार्यपालक मजिस्ट्रेट (मुख्यालय), कोटा

सुरेन्द्र कुमार

बनाम

छीतरलाल वगैरहा

किस्म मुकदमा : 88, 89 आरटीए

प्रकरण संख्या178/14.....

तारीख हुकम	हुकम या कार्यवाही मय इनिशियल्स जज	नम्बर व तारीख अहमाक जो इस हुकम की तागील में जारी हुये हो।
26.12.2018	<p>1- File was put up for consideration. An application under Order 7 Rule 11 of CPC was filed by defendant/ applicant for the dismissal of the suit. Arguments on the application was heard on 30-11-2018.</p> <p>2- Brief details of the case are as follows:-</p> <p>a. Disputed lands in the present suit are khasra. No 567, area 1.80 hectare and khasra number 579, area 1.21 hectare, total area 3.01 hectare in village Ghaghatana, Tehsil Ladpura. Previous khasra number of the said disputed land was 204 and 350 respectively which was initially in possession of defendant numbered 1 to 3, father, Prabhulal s/o Girdharilal, meena by caste which is a scheduled tribe. Following catchment, new khasra number 755, area 1.69 and 917, area 1.14 hectare were formed, which is the present khasra number of the disputed land.</p> <p>b. A suit has been filed by the plaintiff in this court arguing that on 15.06.1973 for Rs. 5250 the disputed property was sold via a registered sale deed by Shri. Prabhu lal father of defendant 1 to 3 to plaintiff and the possession was handed over to the plaintiff.</p> <p>c. Plaintiff further contend that defendant are members of schedule tribe and the plaintiff to whom land was sold is Brahmin and hence not a member of schedule tribe, hence under Section 42 and Section 46 of Rajasthan Tenancy Act (referred to as the Act, hereafter) if a member of schedule tribe sells his land to non schedule tribe member, since the sale is barred, he will be treated as an tress passer and the sale deed being void since beginning, in the present case the plaintiff (person who bought the land from ST member) is a tress passer since 15.06.1973. They further contend that the settlement commission being satisfied by long adverse possession gave plaintiff khatedari rights of the said disputed land but defendant via an appeal got it cancelled on the plea that settlement does not have powers to change khatedari rights. Defendant then filed a suit in this court under Section 183 of Rajasthan Tenancy Act for ejection of plaintiff and the court passed an order for ejection of plaintiff on 31.01.2005. This order of the court was appealed in RAA, Kota which in its order dated 10.01.2007 held that under Section 63(1)(iv) of the Act, the present defendant have lost khatedari rights and the suit for ejection is barred by limitation. This order of RAA, Kota was not appealed in Board of Revenue. Plaintiff further argue that since more than 30 years have passed since 15.06.1973, the state is barred by limitation to act under section 175 of Rajasthan Tenancy Act. They further contend that despite RAA, Kota order, corrections were not made in Record of Right. Subsequently the relief asked in the plaint, is declaration of khatedari rights to plaintiff and correction of entries in record of rights and permanent injunction against defendant.</p>	



सहायक कलक्टर एवं
कार्यपालक मजिस्ट्रेट
कोटा (राज.)

तारीख हुक्म	हुक्म या कार्यवाही मय इनिशियल्स जज	नम्बर व तारीख अहमाक जो इस हुक्म की तामील में जारी हुये हो।
	<p>d. In response, defendant / applicant filed an application under Order 7 Rule 11 CPC arguing that the land was sold by member of schedule tribe which is against public policy and the plaintiff based on averments made in the plaint is not entitled to any khatedari rights and as he is not entitled to any khatedari rights, he is also not entitled to any permanent injunction.</p> <p>e. In response plaintiff/non-applicant submitted that applicant has not submitted in their application as to under which provision in Order 7 Rule 11 they want the suit be dismissed. The plaintiff has filed the suit for khatedari rights declaration which is maintainable under section 63(1)(iv) of the Act.</p> <p>3- Learned Counsel for both the parties were heard.</p> <p>4- Learned counsel of the plaintiff/non applicant contented that while deciding on Order 7 Rule 11 only the plaint should be scrutinized. The suit discloses a cause of action, is properly stamped, the suit is not barred by law, filed in duplicate. The RAA, Kota in its order dated 10.01.2007 has held that khatedari rights of defendant being barred by law has already extinguished and the prayer in plaint is therefore for removal of his name and entering the name of plaintiff in record of rights. He further contented that under Section 209 of Rajasthan Tenancy the court may grant, any relief which the court is competent to grant and to which it may find the plaintiff entitled, notwithstanding that such relief may not have been asked for in the plaint or application. In support of his contention, the learned counsel presented following rulings of the higher court:-</p> <p>a. Hon'ble Rajasthan High Court cited in 2013(2) RRT 891 in Chomu Sahakari Kray Vikray Samiti Ltd. Vs. Jagdish Prasad Meena & Ors decided in Jan 2013 made following observations:-</p> <p>i "From bare perusal of the said provisions it transpires that there is general bar on sale, gift and bequest by khatedari tenants of his interest in part or whole of his holdings in favour of a person who is not a member of schedule caste or schedule tribe. Though there cannot be any disagreement to the proposition of law laid down by the Apex Court that the society or company incorporated under the relevant statutes would be juristic person and could not be said to be member of no bar under Section 42(b) of the Tenancy Act against filing of the suit. It may be a different thing that ultimately the appellant-plaintiff may not succeed in the suit on merits, in view of the said bar contained in Section 42, nonetheless in absence of any specific provision contained in the Tenancy Act barring the filing of the suit, the plaint of the appellant-plaintiff cannot be rejected under Order VII Rule 11 (d) of C.P.C. As rightly submitted by the learned counsel for the appellant, whether the land in question is an agriculture land or not and whether the respondents are khatedari tenants or not, and whether the suit is barred by limitation or not, would be the questions which could be decided considering the evidence in the suit only. The Learned counsel for the respondents has failed to point out as to how the suit filled by the plaintiff could be termed as misuse of process of law or vexatious. In that view of the-matter, the impugned order passed by the Trail Court deserves to be set-aside and the Trail Court is required to be directed to decide the suit in accordance with law and expeditiously."</p> <p>b. A similar view to the one held in above cited case was held by Hon'ble Rajasthan High Court cited in 2017(1) DNJ 351 in Ramniwas Meena vs/ Bhairav.</p>	





सहायक कलेक्टर एवं कार्यपालक मजिस्ट्रेट कोटा


तारीख हुक्म	हुक्म या कार्यवाही मय इनिशियल्स जज	नम्बर व तारीख अह्माक जो इस हुक्म की तामील में जारी हुये हो।
	<p>c. Hon'ble Supreme Court cited in 2006(1) RRT 383 in Nathu Ram & Ors. Vs. State of Rajasthan Ors, decided in Feb 2003 made following observations:-</p> <p>i that in suit for ejectment and possession of land, when disputed land relates to member of Schedule Caste and transfer of land has been done in favour of persons of higher caste, period of limitation for ejectment and possession shall apply and such application can be barred by limitation. Supreme Court did not agree with the contention of learned counsel that since the transfer is void and therefore period of limitation is not applicable.</p> <p>d. Hon'ble Supreme Court cited in 2014(2) RRT 1379 Ram Karan (D) Vs State of Rajasthan, decided in June, 2014 made following observations:-</p> <p>i Under Section 42 and Section 175 of the Act, in a case of transfer of land of SC/ST wherein sale deed was executed on 12/01/1962 and mutation attested on 10/09/1963, Tehsildar filed an application for ejectment after 31 years of sale. As vendee were in possession of land prior to 12/01/1962 and cultivation the land, Court held since suit for restoration was filed by Tehsildar, Viratnagar was barred by limitation and is therefore not maintainable.</p> <p>e. Hon'ble Revenue Board cited in 1994 RRD 528 Girdhari Vs. Anadi Lal decided in Sept 1993 made following observations:-</p> <p>i It was held that under Section 63(1)(iv) limitation for filing suit u/s 183 of the Act for ejectment of trespasser is 12 years and on failure of khatedar to file suit before expiry of limitation, trespassers acquire khatedari rights. A member of Schedule caste is not entitled to any special benefits against the mandatory provisions of the law.</p> <p>f. Hon'ble Revenue Board cited in 2017(2) RRT 1369 Prem prakash V/s Associated Stone industries Kota Ltd decided in August 2017 made following observations:-</p> <p>i while deciding on an application under Order 7 Rule 11 where there was a contention that the land was sold by a person of scheduled caste and sale deed was void and suit was barred by law, the caste of seller was disputed as it was recorded as "Laskari and not Bairwa and this question can be decided during trail of the suit and not under an application of Order 7 Rule 11.</p> <p>g. Hon'ble Rajasthan High Court cited in 2017(1) RRT 35 Jankilal v/s Revenue Board of Rajasthan decided in May 2016 made following observations:-</p> <p>i Under Section 42(b) of the Act. that at the time of sale land seller was member of scheduled caste. Hence the sale is hit by section 42 of the act, it is violation of mandatory provision of the act and the sale is void and land would revert back to the Government.</p>	




सहायक कलेक्टर एवं कार्यपालक दण्डनायक कोटा (राज.)

तारीख हुक्म	हुक्म या कार्यवाही मय इनिशियल्स जज	नम्बर व तारीख अहमाक जो इस हुक्म की तामील में जारी हुये हो।
	<p>5- Learned counsel for the defendant argued that the relief asked in plaint is barred by law which is a ground for dismissal of suit under Order 7 Rule 11 of CPC. He further contented that application under Order 7 Rule 11 can be moved at any stage and even when court suo motto comes to the conclusion, that the suit is barred by law it can be dismissed. He further contented that the suit is for declaration of khatedari rights based on adverse possession. The plaintiff has already agreed that seller is a member of schedule tribe and under Section 42(b) such sale is void and no one can get title based on the said sale. He further contends that the plaintiff has contended that he is a tres passer on the disputed land since 15.06.1973. But it has been held by larger bench of Revenue board that no khatedari rights accrue to adverse possessor. He further argued that plaint should be read in a meaningful way and if found barred by law, it shall be dismissed. In the present case, the plaintiff himself agrees to the sale being void and he is seeking to get his name entered in record of rights based on a void document. The argument presented by plaintiff regarding Section 209 of the Act is also not sustainable as Section 209 of the Act cannot ignore Section 42(b) of Rajasthan Tenancy Act. In support of his contention, the learned counsel presented following rulings of the higher court:-</p> <p>a. Hon'ble Supreme Court cited in AIR 1977 in T. Arivandandan V/s T. V. satyapal and Ors made following observations that:-</p> <p>i while interpreting Order 7 Rule 11 in case of false or vexatious claims it is the duty of court to reject a plaint.</p> <p>b. Hon'ble Rajasthan High Court cited in 2012(2) DNJ 1137 in Banwari lal V/s Anand and Ors decided in May, 2012 made following observations:-</p> <p>i Under Order 7 Rule 11 and Section 42(b) of the Act in a case where petitioner who is a member of scheduled caste executed an agreement to sell in favor of non petitioner who is not a member of scheduled Caste. Respondent filed a suit specific performance of the agreement the petitioner filed an application to reject the plaint being barred by law the court held at sale of land of scheduled caste is void in the Section 42 and suit cannot be mentioned even for specific performance of the agreement. Hence the suit is barred by law and the plaint is liable to be rejected.</p> <p>c. Hon'ble Revenue Board Rajasthan cited in 2015(1) RRT 592 in Prahalad V/s Smt Rukmani decided in Feb, 2015 made following observations:-</p> <p>i In a case where a land was sold by member of scheduled Tribe to a member of non Scheduled Tribe held that the sale was void being in violation of Section 42(b) of the Act. as the Plaintiff and defendant will not accrue any title the possession of person to whom land was sold is illegal and the Rights, Title and Name of the member of Scheduled Tribe person who sold the land be deleted from the record and the land be recorded as Sevaichak.</p> <p>d. Hon'ble Rajasthan High Court cited in 2017(1) RRT in Jankilal V/s Revenue Board Rajasthan Ajmer, decided on May, 2016 made following observations:-</p> <p>i Under 42(b) of the Act, that at the time of sale of land seller was member of scheduled caste. Hence the sale is hit by section 42 of the Act, it is violation of mandatory provision of the act the sale is void and land would revert back to the Government.</p>	<p style="text-align: right;">Handwritten signature</p> <p style="text-align: right;">सहायक कलक्टर एवं कार्यपालक दण्डनायक कोटा (राज.)</p>

तारीख हुक्म	हुक्म या कार्यवाही मय इनिशियल्स जज	नम्बर व तारीख अहमाक जो इस हुक्म की तामील में जारी हुये हो।
	<p>e. Hon'ble Revenue Board Rajasthan cited in 2017(1) RRT in 211 Jaimal and Ors V/s Ramesh and Ors decided in March, 2016 observed:-</p> <p>i that no khatedari can be conferred on the basis of adverse possession.</p> <p>f. Hon'ble Revenue Board Rajasthan cited in 2018 DNJ 217 Nanga Chamar and anr V/s Dulya Meena decided in September, 2018, observed:-</p> <p>i wherein land of person of scheduled caste was transferred a person of scheduled tribe and compromise was agreed between two parties and suit for declaration as khatedari and correction of entries was filed, the said compromise is hit by section 42 of the Act and void. Hon'ble Revenue Board directed Collector to take steps for resumption land in favour of state.</p> <p>g. Hon'ble Revenue Board Rajasthan cited in 2013 RRT 936 in Kori and anr V/s Ramchandra and Ors decided in April, 2013 observed:-</p> <p>i that in the case where land was purchased from a member of scheduled Tribe held that sale of land was barred under Section 42(b) of the Act and sale deed was void ab initio and sale was against public policy and principle of adverse possession is also not applicable</p> <p>h. Full Bench of Hon'ble Revenue Board Rajasthan cited in 2011 (2) RRT 721 Jagdish and Ors V/s Sitaram and anr decided in June 2011, observed:-</p> <p>i There is no provision to confer Tenancy Rights on the basis of adverse possession and Courts cannot confer the Tenancy Rights. Rajasthan Tenancy act does not have any provision to confer Tenancy Rights to the adverse possessor. Providing Tenancy Rights to the adverse possessor is a retreating steps with regard to land reform and such conferment of Tenancy rights is against the basic sprit of this special legislation. Extinguishment of Tenancy Rights creates no khatedari rights in the trespasser on the basis of adverse possession.</p> <p>6- On hearing the arguments and going through various citations we can analyze the present case as follows:-</p> <p>a. For better reference Order 7 Rule 11 of CPC, Section 42 (b), Section 63(1)(iv) Rajasthan tenancy Act are reproduced below.</p> <p>Order 7 Rule 11:-</p> <p>11. Rejection of plaint.— The plaint shall be rejected in the following cases:—</p> <p>(a) where it does not disclose a cause of action;</p> <p>(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;</p> <p>(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;</p> <p>(d) where the suit appears from the statement in the plaint to be barred by any law; 1</p> <p>[(e) where it is not filed in duplicate;] 2</p> <p>[(f) where the plaintiff fails to comply with the provisions of rule 9:]</p>	<p>सहायक कलेक्टर एवं कार्यपालक दफ्तरीयक कोटा (सच.)</p>

तारीख हुक्म	हुक्म या कार्यवाही मय इनिशियल्स जज -	नम्बर व तारीख अहमाक जो इस हुक्म की तामील में जारी हुये हो।
	<p>Section 42 of Rajasthan Tenancy act:-</p> <p>42. General restrictions on sale, gift and bequest— The sale, gift or bequest by a Khatedar tenants of his interest in the whole or part of his holding shall be void, if — -</p> <ol style="list-style-type: none"> 1 (b) such sale, gift or bequest is by a member of Scheduled Caste in favour of a person who is not a member of the Scheduled Caste, or by a member of a Scheduled Tribe in favour of a person who is not a member of the Scheduled Tribe. 2 [(bb) such sale, gift or bequest, notwithstanding anything contained in clause (b), is by a member of Saharja Scheduled Tribe in favour of a person who is not a member of the said Saharia tribe.] <p>Section 63(1)(iv) of Rajasthan Tenancy Act</p> <p>63. Tenancy when extinguished—</p> <ol style="list-style-type: none"> 3 (iv) when he has been deprived of possession and his right to recover possession is barred by limitation. <p>b. Perusal of the RAA, Kota order dated 10.01.2007 cited by the plaintiff in the plaint we come to the conclusion that RAA, Kota had decreed that suit for ejection under Section 183 by present case defendant was barred by limitation and hence was dismissed. However, RAA, Kota has also categorically stated in its judgment on point number 10 that in this case on the basis of adverse possession a non ST member cannot be granted khatedari rights on a Schedule Tribe member land. It would also be pertinent to point out that plaintiff in their plaint have stated that despite RAA, Kota order dated 10.01.2007, Tehsildar did not remove names of defendant and entered names of plaintiff in record of rights. However on reading the said RAA, Kota order we nowhere found RAA, Kota giving any such order. If anything, as mentioned above, RAA, Kota has specifically said that based on adverse possession khatedari rights cannot be granted to member of non schedule tribe in the present case.</p> <p>c. Perusal of various rulings presented by counsel of applicant/defendant (listed above in point number 5) we come to the well established conclusion in law that sale of land by member of Schedule Tribe to non schedule tribe is void since beginning. The same also been agreed by plaintiff. Full Bench of Hon'ble Revenue Board of Rajasthan cited in 2011 (2) RRT 721 has also ruled that there is no provision in Tenancy Act to grant khatedari rights on basis of adverse possession and extinguishment of khatedari rights does not create such rights in tress passers.</p> <p>d. Rajasthan High Court cited in 2012(2) DNJ ruled that sale of land of schedule caste is void under Section 42 of the Act and suit cannot be maintained for specific performance of the agreement. Hence the suit is barred by law and plaint is liable to be rejected. The present case bears resemblance to the above mentioned cases. Land was sold by father of defendant who is a member of Schedule Tribe to member of non schedule tribe. The sale is void since beginning. To decide under Order 7 Rule 11 one should strictly read the plaint and the relief claimed is conferring of khatedari rights to the plaintiff. Firstly, the sale is void and there is no provision to grant khatedari rights on basis of adverse possession. The suit is hence barred by law and plaint is liable to be rejected.</p>	<p style="text-align: right;"><i>Devi</i></p>

तारीख हुक्म	हुक्म या कार्यवाही मय इनिशियल्स जज	नम्बर व तारीख अहमाक जो इस हुक्म की तामील में जारी हुये हो।
	<p>e. We perused the various ruling given by the non applicant/respondent (listed above in point number 4). Rulings listed in point number 4.c, 4.d, 4.g although insightful are not relevant to the application under consideration. Ruling listed at point 4(e) in Hon'ble Revenue Board cited in 1994 RRD 528 Girdhari v/s Anandi Lal is no longer the present view in law as khatedari rights can no longer be granted to tress passers as has been held by full bench of Hon'ble Revenue Board cited in 2011 (2) RRT 721 Jagdish and ors v/s Sitaram and anr. While perusing through rulings listed above in Point number 4.a, 4.b, 4.f we come to the conclusion that Hon'ble Higher Courts have held the suits shall not be dismissed at the stage of Order 7 Rule 11 application but a full trial shall take place and decided after taking evidence. However, it is important to note that in all the above mentioned cases, there was a mixed question of law and fact before the court and question of fact, the higher court opinioned shall be decided after taking evidence and not at the stage of Order 7 Rule 11 CPC application. For example, in the ruling cited above in Point 4.f i.e Prem Prakash v/s Associated Stone Industries Kota Ltd. it is the caste of seller which was disputed and this is a question of fact which shall be decided during trail and not at the stage of Order 7 Rule 11. Similarly, in ruling cited above at point 4.a, Hon'ble Rajasthan High Court held that questions like whether land in question is agricultural land or not and whether respondent are khatedari tenants or not etc would be questions which could be decided considering evidence in the suit only. However, the present case is not a mixed case of law and facts. All relevant questions of facts like caste of seller, caste of buyer, possession, recorded khatedar, sale deed have been conclusively decided in the RAA, Kota order dated 10.01.2007 and therefore there is no need to go back again into them. Present case is therefore not a mixed question of law and fact but purely a question of law and the relied claimed in the plaint is hit by Section 42 of Rajasthan Tenancy Act and hence barred by law.</p> <p>7- Application under Order 7 Rule 11 is accepted as the suit is barred by law. So file hereby stands decided & be included in records.</p>	<p><i>Deventi</i> सहायक कलेक्टर एवं कार्यपालक दण्डनायक कोटा (राज.)</p>

मूल वाद में डिक्री
(आदेश 20 के नियम 6 और 7)
न्यायालय सहायक कलक्टर एवं कार्यपालक मजिस्ट्रेट (मुख्यालय), कोटा
पीठासीन अधिकारी – देवेन्द्र कुमार, I.A.S. (P)

प्रकरण संख्या : 178/14

1. सुरेन्द्र कुमार आत्मज श्री मोहनलाल, जाति ब्राम्ण, निवासी तलवण्डी, कोटा
– वादी (अप्रार्थी)

बनाम

1. छीतरलाल
2. लक्ष्मीनारायण
3. रामेश्वर
पिसरान श्री प्रभूलाल, जाति मीणा, निवासी ग्राम घघटाना, तहसील लाडपुरा, जिला कोटा
4. स्टेट ऑफ राजस्थान
– प्रतिवादीगण (प्रार्थीगण)

दावा बाबत : 88, 89 RTA
निर्णय बाबत : Application O₇R₁₁ CPC
मुकदमा नम्बर : 53 / 17
निर्णय दिनांक : 26-12-2018

न्यायालय हाजा में वादी की ओर से अभिभाषक श्री जगदीश नन्दवाना एवं प्रतिवादीगण की ओर से अभिभाषक श्री गुलाब सिंह की उपस्थिति में प्रार्थना पत्र अन्तर्गत आदेश 7 नियम 11 सीपीसी की बहस अन्तिम सुनने एवं पत्रावली पर उपलब्ध समस्त दस्तावेजात का नियमों विनियमों के अन्तर्गत अवलोकन अध्ययन व मनन करने के उपरान्त आज तारीख 26-12-2018 को (डिक्रीदार) पीठासीन अधिकारी श्री देवेन्द्र कुमार, आई.ए.एस. (प्रशिक्षु) के समक्ष प्रार्थना पत्र के निस्तारण के लिये पेश होने पर प्रार्थना पत्र प्रार्थी बाबत O₇R₁₁ CPC barred by Law होने के कारण प्रार्थना पत्र स्वीकार कर वाद वादी खारिज किये जाने के आदेश प्रदान किये जाते हैं। पत्रावली फैसल शुमार हो।

खर्चा पक्षकारान अपना-अपना वहन करें।

यह डिक्री आज तारीख 26.12.2018 को मेरे हस्ताक्षर से और न्यायालय की मुद्रा लगाकर दी गई।



(देवेन्द्र कुमार)
सहायक कलक्टर एवं आई.ए.एस. (प्रशिक्षु)
कार्यपालक मजिस्ट्रेट एवं कार्यपालक मजिस्ट्रेट (मु.), कोटा

वाद के खर्चे

वादी		प्रतिवादी	
	रूपया		रूपया
1. वाद पत्र के लिये स्टाम्प		1. शक्ति पत्र के लिये स्टाम्प	
2. शक्ति पत्र के लिये स्टाम्प		2. अर्जी के लिये स्टाम्प	
3. अदर्शों के लिये स्टाम्प		3. प्लीडर के लिये फीस	
4. रूपये पर प्लीडर की फीस		4. साक्षियों के लिये निर्वाह-व्यय	
5. साक्षियों के लिये निर्वाह-व्यय		5. आदेशिका की तामिल	
6. कमिश्नर की फीस आदेशिका की तामिल		6. कमिश्नर की फीस	
जोड		जोड	