

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER**(1) Appeal/TA/ 1638/2009/Jaipur**

Chhotu s/o Sukhdeo, Caste Meena r/o Village Biharipura, Tehsil Dudu, Dist. Jaipur.

..... Appellant/plaintiff

Versus

1. Chhitar s/o Bhura
2. Mst. Sravani w/o Lala
3. Kajod s/o Lala
4. Mukesh s/o Lala

No. 3 and 4 minor through guardian and mother Mst. Sravani.
All caste Meena, r/o of village Sawaimadhosinghpura, Tehsil Dudu, Dist. Jaipur.

5. Ghisi w/o Ramdeo d/o Bhura, caste Meena, r/o village Sitarampura, Tehsil Malpura, Dist. Tonk.
6. Nathi w/o Ramratan d/o Bhura, caste Meena r/o village Dangartal, Tehsil Newai, Dist. Tonk.
7. State Government through Tehsildar, Mozamabad, Dist. Jaipur.

..... Respondents/defendants

(2) Appeal/TA/ 1613/2009/Jaipur

1. Gopal s/o Chhotu
2. Goga s/o Chhotu
3. Ghisa s/o Chhotu
4. Chhotu s/o Sukhdeo

No. 1 to 4 Caste Meena, r/o village Biharipura, Tehsil Dudu.

5. Mangu s/o Nanda Meena, r/o village Bharatpura, Tehsil Dudu.
6. Jagga s/o Bhura

7. Chhitar s/o Balya

No. 6 and 7 Caste Meena r/o village Biharipura, Tehsil Dudu, Dist. Jaipur.

..... Appellants/defendants

Versus

1. Mst. Sravani w/o Lala
2. Kajod s/o Lala
3. Mukesh s/o Lala
4. Mst. Mamta d/o Lala
5. Mst. Gulab d/o Lala

No. 2 to 5 minors through guardian and mother Mst. Sravani w/o Lala

Appeal /TA/1638/2009/Jaipur <>Chhotu Vs. Chhitar & ors
Appeal/TA/1613/2009 <>Gopal & ors Vs. Mst. Sravani & ors

6. Mst. Shulkya d/o Lala
7. Chhitar s/o Bhura
All above Caste Meena, r/o village Sawaimadhosinghpura,
Tehsil Dudu, District Jaipur.
8. Mst. Ghisi w/o Ramdeo d/o Bhura caste Meena r/o
Sitarampura, Tehsil Malpura, District Tonk.
9. Mst. Nathi w/o Ramratan d/o Bhura caste Meena r/o
Dangartal, Tehsil Newai, District Tonk.

..... Respondents/plaintiffs

Division Bench
Shri Moolchand Meena, Member
Shri Priyavrat Pandya, Member

Present:-

Mr. J. P. Mathur, Counsel for the appellants.

Mr. Bhawani Singh, Counsel for the respondents.

Decision

Dated:- 12-11-2013

1- Appeal No.1638/2009 under section 224 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as 'the Act of 1955') has been filed by the appellants against the judgment dated 09-02-2009 passed by Revenue Appellate Authority, Ajmer (the 'First Appellate Court') in appeal No.15/08. Another appeal No.1613 under section 225 of the Act, 1955 has been filed by the appellants against the judgment dated 09-02-2009 passed by the First Appellate Court in appeal No. 14/08.

2- Two suits were filed in the Court of Assistant Collector and Sub-Divisional Officer, Dudu (Trial Court) for the same disputed land. Facts in brief are that plaintiff Chhotu filed a suit No. 161/2007 (364/91) in the Trial Court under the Act of 1955 for declaration of khatedari rights and permanent injunction against defendant Jhoontha, who was predecessor in title of the present respondents. It was averred in the plaint that the disputed land bearing khasra number 419 area 12 bigha 18 biswa and khasra number 420 area 10 bigha 19 biswa in village Sawaimadhosinghpura, Tehsil Dudu was khatedari land of

defendant Jhoontha. Khatedar Jhoontha/defendant approached to the plaintiff Chhotu and told that he had purchased the land by registered sale deed, but now being unable to cultivate the land, he wants to sell it. The plaintiff expressed his willingness to purchase the disputed land and it was agreed upon by the defendant Jhoontha to sell the land for Rs.3500/- to the plaintiff. The plaintiff paid Rs.2800/- immediately to the defendant at the time of Siyalu crop of Samvat 2023 and the defendant handed over possession of the land to the plaintiff. The defendant had promised to get the sale deed registered on payment of remaining Rs.700/-. The plaintiff offered payment of Rs.700/- to the defendant but he refused to get sale deed registered and demanded Rs.1700/- in place of Rs.700/-. He demanded possession of the land back and also refused to return Rs.2800/- already paid on account that the plaintiff has already reaped the crop. The plaintiff, since then is in continuous cultivatory possession of the disputed land. The plaintiff is having adverse possession of the land in question and the defendant has extinguished his rights in view of provisions of Section 63 (4) of the Tenancy Act, 1955. Therefore the suit has been filed and it has been requested that permanent injunction be issued against the defendant not to interfere in cultivatory possession of the plaintiff.

3- Another suit No. 8/2006 (162/94) was filed by the plaintiff Jhoontharam for permanent injunction against Chhotu and his sons (present appellants) for the same disputed land with averments that defendants Chhotu and his sons are trying to dispossess the plaintiff Jhoontharam from disputed land of his khatedari and possession. This suit of Jhoontharam was regarding Khasra Nos. 419, 420, 119, 120, 121 and 123, which includes both the khasra Nos. 419 and 420 of suit No. 161/2007 (364/91) also.

4- The Trial Court decided both the suits vide its decisions dated 13-02-2008. Suit No. 161/2007 (363/91) for declaration and permanent injunction filed by Chhotu was decreed and suit No. 08/2008 (162/94) for permanent injunction filed by Jhoontharam was dismissed. Two appeals were filed before the First Appellate Court by legal heirs of Jhoontharam

against both the decisions of the Trial Court. Appeal No. 15/2008 was against decree of declaration passed by the Trial Court in favour of Chhotu and another appeal No.14/2008 was against the decision vide which Jhoontha's suit for permanent injunction was dismissed.

5- The First Appellate Court decided both the appeals vide its decisions dated 09-02-2009. Appeal No.15/2008 was accepted and suit No. 161/2007 (363/91) for declaration filed by Chhotu was dismissed. Another appeal No.14/2008 was partially accepted and suit No.8/2008 (162/94) of Jhoontha/present respondents was remanded to the Trial Court with some observations, for deciding afresh.

6- Aggrieved by these decisions dated 09-02-2009, the appellants (Chhotu and his sons) have filed these two second appeals before the Board of Revenue.

7- Disputed land in both the appeals is same and litigants are also either the same, or they are litigating under the same title. So we have heard both the appeals together with the consent of learned counsels for both the parties, and therefore, we are deciding both these appeals by this common decision. Copies of this decision be placed on both the files.

8- The learned counsel for the appellants, while stressing upon the facts and grounds mentioned in both the appeal memos, has submitted:-

- (1) That Jhoontharam, who was predecessor in title of respondents, had agreed to sell the disputed land Chhotu/appellant in Samvat 2023 for a consideration of Rs.3500/-, of which Rs.2800/- were paid immediately and possession of the disputed land was handed over by Jhoontharam to the appellant. It was agreed that sale deed would be registered on payment of remaining Rs.700/-. The plaintiff had offered payment of Rs.700/- to Jhoontharam at the time of Savnu crop of the same year of Samvat 2023, but Jhoontharam demanded Rs.1700/- in place of Rs.700/-. He refused for registration of sale deed and demanded possession of the disputed land back. Since

then the appellants, Chhotu and his sons, are in continuous cultivatory possession of the suit land. On account of adverse possession from Samvat 2035 the Jhoontha and his heirs/ respondents have lost their title as per section 64(iv) of the Tenancy Act, 1955 and section 27 of the Limitation Act, 1963; and the plaintiff has acquired khatedari rights in the disputed land. The Trial Court had rightly decreed the suit for declaration on the basis of documentary and oral evidence adduced by the plaintiff. Since Jhoontharam was unable to prove his possession on the disputed land and no permanent injunction can be granted in favour of a person not found in possession, so the Trial Court had rightly dismissed his suit of permanent injunction.

- (2) That the First Appellate Court has not considered an important fact that the judicial court, vide its decision dated 01-09-2000 had acquitted the plaintiff and his sons from charges of trespassing over the disputed land, which was enough documentary proof of possession and title of the plaintiff. The First Appellate Court has also ignored the fact that possession of the land was handed over to the plaintiff on cash security by the court's order and this order was upheld from the Board also in revision.
- (3) That issue No.4 in the Trial Court in Chhotu's suit, was based on adverse possession and it was to be proved by the plaintiff. On the basis of concrete evidence produced by the plaintiff, the Trial Court had decided this issue in plaintiff's favour, but the First Appellate Court has erred to conclude in favour of defendant on the point of possession. The defendant was not able to prove his possession, but the First Appellate Court ignored this fact and concluded erroneously. The Trial Court had rightly dismissed the suit of Jhoontha for permanent injunction, as he was not found in possession of the disputed land.
- (4) That the Trial Court, after discussing facts and evidence meticulously, had given issue-wise decision whereas the First Appellate Court, in contravention of mandatory provisions of Order 41 Rule 31 of Civil Procedure Code, 1908, has not discussed the issues. The First Appellate Court has accepted the first appeal in a cursory manner

and such a decision, being against the law deserves to be quashed.

- (5) That decisions of learned First Appellate Court in both the appeals are contradictory to each other. The First Appellate Court has finally decided the appeal of Chhotu and has dismissed his suit for declaration, whereas appeal of the present respondents has been partially accepted and the suit for permanent injunction has been remanded to the Trial Court for afresh decision. Once the First Appellate Court has given its final observations regarding title and possession of the disputed land in favour of the present appellant, the Trial Court cannot go out of First Appellate Court's findings and as such, the First Appellate Court has indirectly decided the fate of the suit of respondent for permanent injunction. Thus the First Appellate Court has committed gross irregularity in remanding the suit for permanent injunction. It has also been argued that the decision of First Appellate Court in remanding the case to the Trial Court, is against order 41 rule 24 of the Civil Procedure Code, 1908. When sufficient evidence was there on the file, the First Appellate Court should have finally decided the appeal at its own level.

The learned counsel for the appellants, with his above enumerated arguments, has stated in the last that the First Appellate Court's impugned decisions, in both the appeals suffer from gross jurisdictional error. So the appeal be accepted and impugned decisions of the First Appellate Court, be set aside.

9- The learned counsel for the respondents, arguing against both the appeals, has submitted:-

- (1) That the plaintiff/appellant Chhotu could not prove his suit for declaration in the Trial Court. No reliable and satisfactory evidence was there on record. But the Trial Court, without any basis, has decreed the suit. Such a decree being against the facts and law, deserves to be set aside and the First Appellate Court has rightly set aside it.
- (2) That issues in both the suits were not decided by the Trial Court in the form as they were framed. Issue No.1 in Chhotu's suit for declaration, was regarding purchase of

the disputed land and payment of Rs.3500/- by the plaintiff. There was no documentary evidence to prove such purchase or payment of Rs.3500/- by the plaintiff to the defendant Jhoontha. But the Trial Court erroneously decided this issue in favour of the plaintiff. Likewise Issue No.1 in Jhoontha's suit for permanent injunction was regarding khatedari of Jhoontha which was evidently proved only from the Zamabandi, but the Trial Court discussed and decided this issue on the basis of adverse possession and such a discussion and decision was beyond the scope of the issue.

- (3) That there is no provision in section 64 (iv) of the Tenancy Act, 1955 regarding accrual of khatedari rights. But the Trial Court has decided both the suits on the pretext that appellant Chhotu has acquired khatedari rights by adverse possession as per provisions of section 64(iv) of the Tenancy Act, 1955 and section 27 of the Limitation Act, 1963. It has been urged that there is no provision in the Tenancy Act of 1955 for accrual of khatedari rights by adverse possession. The learned counsel has relied on the decision dated 03-06-2011 by the 5 member larger bench of the Board of Revenue reported at 2011 (2) RRT 721 in the case of Jagdish & ors.
- (4) That appellant / plaintiff Chhotu was not able to prove his possession on the land. The defendant/respondents are in possession, but the Trial Court has erred in decreeing the suit of Chhotu for declaration and in dismissing the suit of Jhoontha for permanent injunction.
- (5) That plaintiff Chhotu in his suit alleges to purchase the land in Samvat 2023. He has filed the suit in 1988 with the ground that cause of action arised in 1978. Thus the suit is based on inconsistent facts.
- (6) That there had been a criminal case between the parties in which a compromise had arrived on 07-01-1981. The plaintiff had accepted in that compromise that he had no concern/ interest for the disputed land. This fact was brought to the notice of the Trial Court, which was ignored and the suit was decreed against the facts and law. On the other side, the Trial Court has relied upon a decision dated 01-09-2000 passed by the judicial magistrate in a criminal

case to conclude about possession of appellants. The orders of criminal courts cannot be relied upon for adjudicating right-title in civil/revenue courts. But the Trial Court has adopted dual standards to decide both the suits.

At the last, the learned counsel for the respondents contends that the First Appellate Court has passed the impugned decision dated 09-02-2009 after meticulous analysis of the facts, law and evidence and there is no jurisdictional, legal or material error in the impugned decision. So no interference is warranted in the First Appellate Court's decisions at the level of second appeal. The appeals deserve to be dismissed.

10- On the point of adverse possession, the learned counsel for the appellant has rebutted that Hon'ble High Court in SBC writ petition No. 9245/11, has stayed the decision dated 03-06-2011 of the Board's larger bench. Therefore, argument of the learned counsel for respondents is not correct that khatedari rights cannot be accrued by adverse possession.

11- We have gone through the record of both the cases and decisions of both the lower courts, available in the files. We have also given a thoughtful consideration to the rival submissions made by learned counsels for both the parties.

12- First of all we take appeal No.1638/2009, which originates from suit No. 161/2007 (364/91) for declaration filed by Chhotu in the Trial Court. This suit filed by the plaintiff/appellant Chhotu, is based on the theory of adverse possession, wherein it has been averred that defendant Jhoontharam had sold disputed land to the plaintiff in Samvat 2023 for a consideration of Rs.3500/-, of which Rs.2800/- were paid at the time of such sale and it was agreed by the defendant that sale deed will be registered on payment of remaining consideration of Rs.700/-. It has also been alleged that the plaintiff offered payment of Rs.700/- at the time of Savanu crop of same year of Samvat 2023, but the defendant refused to get the sale deed registered and demanded Rs.1700/- in place of Rs.700/- as agreed. It is alleged that possession of the disputed land was

transferred to the plaintiff at the time of part payment of Rs.2800/- and since then he is in continuous possession of the land. The defendant has lost his khatedari in accordance with provisions of section 63 (iv) of the Tenancy Act and the plaintiff has acquired khatedari rights by adverse possession. The Trial Court has decreed the suit concluding that the plaintiff has acquired khatedari by adverse possession, whereas the First Appellate Court has set aside the Trial Court's decision holding that there is no documentary evidence on file regarding alleged purchase of the land by the plaintiff in Samvat 2023. It has also been held that plaintiff's adverse possession over the land is also not proved and the Trial Court has decreed the suit only on oral evidence. In view of this matter of facts, **we in the second appeal, have to examine whether there was sufficient and satisfactory evidence for decreeing the plaintiff Chhotu's suit for declaration by the Trial Court?**

13- The Trial Court had framed 9 issues including relief issue in suit No. 161/2007 (364/91) of Chhotu. For the disposal of this second appeal, issue Nos. 1, 3, 4 and 6 are important to be discussed. Issue No. 1 was whether disputed land in both the khasra numbers was purchased by the plaintiff and Rs.3500/- were paid. The Trial Court has not discussed a single iota of evidence regarding alleged purchase and payment of Rs.3500/-. It should have been discussed that on which date such sale took place and who were witnesses thereof. Was there any unregistered document of such purchase or was it an oral purchase? If it was an oral purchase then who were witnesses thereof? Nothing has been discussed by the Trial Court and on the basis of Ex-P-1 and Ex-P-2 and oral evidence it has been concluded that the plaintiff has successfully proved issue No.1 in his favour. We have gone through the document Ex-P-1 which is a copy of decision dated 01-09-2000 by Judicial Magistrate in criminal case No.394/91 under section 147, 447, 379 and 149 of Indian Penal Code. The accused persons in the case were acquitted from the charges and the case was closed on the ground that most of the witnesses have become hostile and charges were not proved against Chhotu and other accused persons. It is a well settled principle that any decision in a criminal case cannot be relied upon in adjudication of a civil suit in which rights and title

of the parties in property are decided. Plaintiff has to prove his suit for declaration of title by adducing satisfactory documentary evidence supported by reliable oral evidence. The Trial Court in the present case has relied upon a decision in a criminal case and concluded that issue No.1 is proved in favour of the plaintiff, whereas there was no evidence on record to prove the purchase of the land and payment of Rs.3500/- by the plaintiff to defendant. Another document relied upon by the Trial Court is Ex-P-2, which is a copy of decision dated 10-09-1996 passed by the Assistant Collector, Dudu in an application under section 212 of the Act of 1955, vide which appointment of receiver on the disputed land was ordered and alternatively an offer was given to non-applicant Chhotu to get the possession of land in lieu of cash security of Rs.300/- per Bigha per annum. Any order passed in proceedings under section 212 of the Act of 1955, and especially an order to give possession of the land for cash security can never be a conclusive evidence for deciding rights and title of the litigants. Orders under section 212 of the Act are generally based only on prima facie evidence and not on conclusive and concrete evidence. Therefore, in our opinion the Trial Court has wrongly decided issue No.1 in favour of plaintiff Chhotu. This issue was not proved conclusively in favour of the plaintiff. Furthermore, issue No.1 was regarding purchase of land and payment of Rs.3500/- and the Trial Court has given its finding regarding possession. Thus objection raised by the learned counsel for the respondents is justified that issue has not been decided as it was framed.

14- Another important issue in the plaintiff/appellant Chhotu's suit for declaration was issue No.3, which was regarding alleged agreement (ईकरार) by the defendant to get the sale deed registered in favour of plaintiff. The Trial Court has decided this issue in favour of plaintiff concluding that Rs.2800/- were paid by the plaintiff to defendant at the time of Savanu crop in Samvat 2023 and it was agreed that sale deed will be registered on payment of Rs.700/-, but the defendant Jhoontha refused and demanded Rs,1700/- in place of Rs700/-. The Trial Court has not referred any documentary or oral evidence in support of its conclusion and has decided this issue on the basis of issue No.1 only. We have already observed that decision of issue No.1 was

not correct. Since a factum of agreement was involved in issue No.3, the plaintiff should have adduced reliable evidence to prove this factum that there was an agreement between the plaintiff and defendant in this regard. Moreover, we also have an un-replied question in our mind that if there was any such agreement (ईकरार) and the defendant had denied fulfilling that agreement then why the plaintiff did not opt for a suit for performance? Entire case of the plaintiff is silent on this point. Conclusively, we hold that issue No.3 was not proved in favour of the plaintiff and the Trial Court has erred in deciding it.

15- Issue No.4 & 6 together, are regarding adverse possession of the plaintiff Chhotu over the disputed land, extinguishment of khatedari of the defendant and accrual of khatedari rights in favour of plaintiff. The Trial Court has decided both these issues in favour of plaintiff and has concluded that he had acquired khatedari rights of the disputed land. It is purely a legal question that, whether one can get khatedari rights in revenue land on the basis of adverse possession. Arguments of the learned counsel for appellant Chhotu in this regard are based on section 63 (1) (iv) of the Tenancy Act, 1955 and Section 27 of the Limitation Act, 1963. Both these sections are reproduced hereunder:-

Section 63 (1) (iv) of Rajasthan Tenancy Act, 1955

“63. Tenancy when extinguished.- (1) The interest of tenant in his holding or a part thereof, as the case may be, shall be extinguished-

(iv) When he has been deprived of possession and his right to recover possession is barred by limitation;”

Section 27 in The Limitation Act, 1963

“27. Extinguishment of right to property. At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.”

Section 63 (1) (iv) of the 1955 Act provides for extinguishment of ‘interest of a tenant’, whereas section 27 of the limitation Act provides extinguishment of right to property. The basic difference between these two sections is that one deals with tenancy interests and the other deals with proprietary rights. Thus

both these sections are not akin to each other. Furthermore, expressions “when he has been deprived of possession” used in section 63(1) (iv) of the Tenancy Act of 1955 lays down an important condition. The term ‘deprived’ is worth importance, and **we are of the view that any act of ‘deprivation of possession’ implies forcefully and unlawfully ejectment of a person in possession by a person having no such authority or permission.** Meaning thereby, one who wishes to establish his case on the basis of section 63(1)(iv) of the Tenancy Act, 1955 must essentially prove that he had ejected the person in possession by force, and after such ejectment he has retained possession of the disputed land for more than 12 years. In the present case, the plaintiff has averred that the defendant Jhoontha had agreed to sell the land in question for Rs.3500/- and had handed over the possession to plaintiff. If, for the sake of argument, the plaintiff’s averment is taken at par, even then there is no element of forcefully ejectment of the defendant from his possession. So provisions of section 63(1)(iv) of the Tenancy Act, 1955 are not attracted in the present case.

Accrual of Khatedari/Tenancy Rights in Revenue Lands:

16- The Rajasthan Tenancy Act, 1955 is a special enactment regarding Tenancy or khatedari Rights of tenants in revenue/agricultural lands. Section 88 of the Act of 1955 provides for suits for declaration of tenancy rights. This section does not provide for granting or accrual of tenancy rights, but only a declaration can be made whether one has acquired tenancy rights under legal provisions of the Act. If one has not acquired such tenancy rights under lawful provisions of the Act, then no declaration can be made. Thus, if one claims to be a tenant and files a suit for such declaration that he is a tenant of the suit land, then he is bound to prove that under which provisions of the Act, he has acquired such rights. There are various modes of acquiring khatedari/tenancy rights, which may be summarized as under:-

(1) Section 12 (2) of the Act of 1955:

Where Khudkasht land is transferred against the provisions contained in section 10(2) and (11), the transferee becomes the Khatedar tenant under section 12(2) of the Act of 1955.

(2) Section 15 of the Act of 1955:

Under section 15, by operation of law.

(3) Section 13 of the Act of 1955:

Under section 13, on resumption or abolition of estate, the estate holder to become Khatedar or Malik as the case may be.

(4) Section 19 of the Act:

Under section 19, a tenant of Khudkasht or a sub-tenant in possession of the land as per terms enumerated therein, may acquire Khatedari rights.

(5) Section 189 (2) of the Act of 1955:

Under section 189 (2), where rent is assessed of a grantee at a favourable rate of rent at settlement rates, he becomes Khatedar tenant.

(6) Section 193 of the Act 1955:

If the Collector declares that services of a village servant are no longer required, under section 193 of the Act, such village servant shall become Khatedar tenant of the land under village servant grant.

(7) Section 194 (2) of the Act of 1955:

Where a grove land ceases to be a grove land, under section 194(2) of the Act, the grove holder becomes a Khatedar tenant.

(8) Section 101 of Land Revenue Act of 1956:

Under section 101 of the Rajasthan Land Revenue Act, 1956 read with Rule 18 of the Rajasthan Land Revenue (Allotment of Land for Agricultural Purposes) Rules, 1970, an allottee becomes Khatedar tenant after 10 years of allotment, subject to conditions mentioned therein.

Apart from the above statutory provisions, a tenant may transfer his rights or interests in his agricultural holding by a legal instrument of transfer of property as provided in Chapter IV (Sections 38 onwards) of the Tenancy Act, 1955. On such a transfer, the transferee acquires rights/interests in the transferred land. In additions to these enumerated provisions, there is no provision of acquiring khatedari/ tenancy rights in agricultural land. The theory of adverse possession is not consistent to the provisions of Tenancy Act of 1955.

Adverse possession and accrual of Khatedari Rights in Revenue Lands:

17- It has been a debatable issue since long whether khatedari rights/tenancy rights in agricultural holding can be

acquired or not by adverse possession. In 1991 RRD 1, the 3 member larger bench of the Board had held that by adverse possession, a trespasser acquires khatedari rights provided that the acquisition of khatedari is not specifically prohibited by law. But now, a 5 member larger bench of this Board, in the case Jadish & ors, reported at 2011 (2) RRT 721 has held that no khatedari rights can be conferred on the basis of adverse possession. It also been held that judgment of larger bench in Bagga vs. Surendra Singh as reported in 1991 RRD page 1 being not a good law, deserves to be set aside.

18- The learned counsel for the appellant has submitted that Hon'ble High Court has stayed the operation of decision dated 03-06-2011 passed by the larger bench of the Board. The matter of fact is that the Hon'ble High Court has simply stayed the operation of decision in the case of Jagdish & ors, and the case is still pending final disposal. Till the law laid down by the larger bench in 2011 (2) RRT page 721 is not quashed finally by the Hon'ble High Court, the decision dated 03-06-2011 is a law to be followed by revenue courts. Therefore, we are of the view that there is no provision in Tenancy Act of 1955, or the Land Revenue Act of 1956 for accrual of khatedari/tenancy rights by adverse possession.

19- On the basis of above discussions, we hold that decision of the Trial Court, in relation to issue No. 4 and 6 in suit No.161/2007 (364/91) filed by the appellant Chhotu, is not in accordance with law.

20- The learned counsel for the appellant has argued that the First Appellate Court has failed to comply with the provisions of Order 41 Rule 31 of Civil Procedure Code, 1908, as it has neither discussed nor concluded issue-wise. It is true that the First Appellate Court has not recorded its conclusions on each issue separately. The First Appellate Court, in its decision impugned, has concluded that-

“पत्रावली के अवलोकन से स्पष्ट है कि वादी-रेसपो० ने अपने वाद का मुख्य आधार पैसे दे कर विवादित आराजियात का कब्जा प्राप्त करना बताया है, किन्तु इसकी कोई साक्ष्य पत्रावली पर उपलब्ध नहीं है। वादी-रेसपो० का यह कथन मनगढन्त प्रतीत होता है। विद्वान अधीनस्थ

न्यायालय द्वारा एडवर्स पजेशन के आधार पर वादी को जो खातेदारी अधिकार बिना विक्रय व कब्जे की साक्ष्य के प्रदान किये गये हैं वह उचित प्रतीत नहीं होता है। वादी-रेस्पो० ने किन्ही भी दस्तावेजी साक्ष्य से विवादित आराजियात पर अपना एडवर्स पजेशन साबित नहीं किया है किन्तु विद्वान अधीनस्थ न्यायालय ने मात्र वादी-रेस्पो० के कथनों के आधार पर वादी का वाद डिक्री किया है जो निरस्त योग्य पाया जाता है।”

Thus apparently, the First Appellate Court has not discussed and concluded on each issue separately, but mere perusal of above quoted observations reveals that the learned First Appellate Court has summarisedly concluded that Trial Court's decisions on issue No.1 regarding purchase of the land, issue No. 3 regarding agreement to get the sale deed registered and issue No.4 and 6 regarding accrual of khatedari rights by adverse possession are not correct. This view of the First Appellate Court has been found correct also in our discussions hereinabove. So now we do not deem it fit to interfere in the First Appellate Court's decision on a technical ground of not discussing the case on each issue separately.

21- In view of discussions in para 12 to 20 above, we are of considered view that decision dated 13-02-2008 passed by the Trial Court, is not in accordance with the law and the First Appellate Court has not committed any material or legal irregularity in quashing that decision. Therefore, second appeal No.1638/2009 in hand is forceless and deserves to be dismissed.

22- Now we come to appeal No.1613/2009 which has originated out of suit No.8/2008 (162/94) filed by plaintiff Jhoontharam against present appellants for permanent injunction. The Trial Court, vide its decision dated 13-02-2008, has dismissed the suit and the First Appellate Court has accepted the appeal partially and remanded the case to the Trial Court with observations, for deciding afresh.

23- The trial court had framed 6 issues in the suit No. 8/2008 (162/94), of which issue No.1 is as to whether plaintiff is the sole Khatedar tenant of disputed land bearing khasra number 419, 420, 119, 121, 123, 120 total area 30 Bigha 16 Biswa? This issue was to be decided on the basis of revenue record. The

plaintiff had submitted and exhibited in his statements Zamabandi of year samvat 2050-2053 (Ex-P-1), perusal of which evidently reveals that entire disputed land consisting of 6 khasra numbers admeasuring to 30 Bigha 16 Biswa is in recorded khatedari of Jhoontha s/o Bhura plaintiff. But the trial court did not discuss this important document. The trial court has concluded that disputed land of khasra number 419 and 420 was sold by the plaintiff to defendant for Rs.3500/-, of which Rs.2700/- (sic 2800/-) were paid at the time of that sale and it was agreed that sale deed would be registered when remaining Rs.700/- are paid by the defendant to plaintiff. Thus finding of the trial court, without referring any document or any evidence is the copy of the defendant's averments in written statement. The trial court has observed that the plaintiff Jhoontha in his statement has admitted that defendants are in possession of the disputed land. We have gone through the statement of plaintiff Jhoontha (PW-1) available in the file of the trial court. After examining that statement, we find that there is no such admission by the plaintiff as observed by the trial court. Relevant extracts of the plaintiff's statement dated 05-05-98 (PW-1) are as under:-

" 23 बीघा 7 बिस्वा जमीन मैंने खरीदी है जो मैंने गणेशी मालिन सवाईमाधोसिंहपुरा से 31-32 वर्ष पहिले खरीदी थी। जमीन खरीदी उस समय से आजतक कब्जा काशत मेरा ही चला आ रहा है। विवादग्रस्त जमीन की जमाबन्दी सम्वत 2050 से 2053 पेश की है जो एक्सपी-1 है। इस जमीन को मैं टेक्टर से काशत करता हूँ। प्रतिवादीगण लाठी के जोर पर विवादग्रस्त जमीन पर कब्जा करना चाहते हैं। मैं परिवार में अकेला हूँ इसलिये जमीन को हड़पना चाहते हैं। इस जमीन मे से कई बार फसल काट कर ले गये।"

Even in cross examination too, the plaintiff firmly denies the fact of defendant's possession over the land in question. He says:-

"5-7 वर्ष पहिले दावा किया था। दावा करने से पहिले ही प्रतिवादीगण फसल काट कर ले जाते थे। पहिले मैं थाने में रिपोर्ट दर्ज कराता था। इस जमीन को लेकर छोटू व मेरे बीच कोई गांव में राजीनामा नहीं हुआ। विवादित जमीन 23 बीघा 7 बिस्वा खरीदी थी। जमीन खरीदने के लिये छोटू से मैंने कोई रुपये नहीं लिये। विवादग्रस्त जमीन के दो खेत हैं। अभी चना की फसल मैंने ही बोई है। गत साल भी चना मैंने ही बोये थे। जमीन छोटू नहीं

बाता। 23 बीघा 7 बिस्वा में सावणू में मूंग बोये थे। और उन्हालू में 23 बीघा 7 बिस्वा में चना बोये थे। यह बात सही है कि इस वर्ष मेरा ही कब्जा था। यह कहना गलत है कि विवादित जमीन पर छोटू का कब्जा है। यह कहना गलत है कि 3500/- रुपये मे मैंने छोटू को देना स्वीकार किया हो, 2800/- रुपये नकद प्राप्त कर लिये हों और 700/- रुपये लेना रहे हों। 10-12 साल से लाठी के बल से काट ले जाते हैं। 10 वर्ष पहिले मैंने बाजरे की फसल बोई थी और फसल काट कर ले गये। फिर कहा उबी फसल को भेल दी।”

Thus, there is nothing in the statement of plaintiff Jhoontharam which can be construed as an admission regarding defendant's possession on the disputed land. The plaintiff repeatedly has stated that he is in possession of the disputed land. He is cultivating the land since he has purchased it from Ganeshi Malin. He has simply stated that “प्रतिवादीगण लाठी के जोर पर विवादग्रस्त जमीन पर कब्जा करना चाहते हैं। मैं परिवार में अकेला हूँ इसलिये जमीन को हड़पना चाहते हैं। इस जमीन मे से कई बार फसल काट कर ले गये।” This type of statement cannot be construed to be admission regarding defendant's possession. So we are of the opinion that trial court's view about the plaintiff's statement is based on wrong analysis. The trial court has also concluded that the defendant has established his adverse possession over the suit land. As already observed by this court in paras 17 to 19 above, while discussing issue No.4 and 6 of the another suit No.161/2007 (364/91), that khatedari in revenue/agricultural holding cannot be acquired on the basis of adverse possession. So we hold that finding of the trial court on issue No.1 is erroneous, against the revenue record and also against the law. The plaintiff is recorded Khatedar of the disputed land.

24- Issue No.2 in suit No. 8/2008 (162/94) is as to whether the plaintiff has purchased the land of khasra No. 419 and 420 from Ganeshi Mali? Since the defendants themselves, in their written statement in this suit and also in the plaint of suit No.161/2007 (364/91) filed by Chhotu, have stated that the disputed land bearing khasra number 419 area 12 bigha 18 biswa and khasra number 420 area 10 bigha 19 biswa in village Sawaimadhosinghpura was khatedari land of Jhoontha. Khatedar Jhoontha/defendant approached to the plaintiff Chhotu and told that he had purchased the land by registered sale deed, but now

being unable to cultivate the land wants to sell it. That- “सम्बत 2023 में सावलूं फसल के समय के करीब प्रतिवादी झूथा ने जो रिश्ते में वादी का भाई लगता है वादी को जाहिर किया कि उसने आराजी खसरा नम्बर 419 रकबा 12 बीघा 18 बिस्वा एवं आराजी खसरा नम्बर 420 रकबा 10 बीघा 19 बिस्वा वाके ग्राम सवाईमाधोसिंहपुरा जो खरीद रखी को स्वयं काश्त करने में असमर्थ है और दूसरे काश्त करने वाले निहाल नहीं करते हैं अतः वह इन दोनों आराजियात को फरोख्त करना चाहता है कोई ग्राहक हो तो बताना।” (para 1 of plaint in Chhotu’s suit No. 161/2007). Thus defendants themselves accept that Jhoontha had purchased this land. This issue is not rebutted otherwise also. But the trial court in its decision dated 13-02-2008, for the reasons not known, has discussed said sale agreement by plaintiff to defendant Chhotu for Rs.3500/-, and decided this issue also against the plaintiff. This decision of the trial court is also against the admitted facts. We hold that the disputed land of khasra number 419 and 420 was purchased by plaintiff Jhoontha from Ganeshi Mali.

25- Issue No.3 is as to whether defendants are trying to dispossess the plaintiff from the disputed land by might or muscles power? It has already been concluded that plaintiff is recorded Khatedar of the disputed land, which he had purchased by registered sale deed from Ganeshi Mali. The defendants are denying title of a recorded Khatedar without any satisfactory reason. They talk about the sale agreement by the plaintiff in favour of defendants in Samvat 2023, but neither any such agreement has been proved nor they came foreward for any suit for performance. Even, time and again, they keep destroying crops sown by the plaintiff. It has been firmly established by the plaintiff Jhoontharam in his statement PW-1. Apart from it, the witness PW-2, Nanda in his statement says that-

“ इस जमीन पर मेरे आने जाने का काम पड़ता है। क्योंकि रास्ते पर है। इस जमीन को वादी अकेले ने गणेशी मालिन से खरीदी थी। इस जमीन को बहुत साल हो गये। खरीदी के समय से वादी का ही कब्जा चला आ रहा है। प्रतिवादीगण का कभी कब्जा नहीं देखा।”

The witness PW-3 Ramu also says in his statement that-

“.... विवादग्रस्त जमीन को झूथा ही काश्त करता है। प्रतिवादीगण लाठी के जोर पर कब्जा करना चाहते हैं। ...”

Thus it is proved that the defendants are denying title of a recorded tenant without any legal basis, and it is evident proof that they are committed to dispossess the plaintiff by muscles power. Therefore, in our view, issue No.3 is proved in favour of plaintiff.

26- Issue No.4 is whether defendant Chhotu is in possession of the disputed land of khasra No.419 and 420, which he has purchased from Jhoontha for Rs.3500/-, of which Rs.2800/- were paid? It has already been decided by this Court, while deciding issue No. 1 and 3 of suit No.161/2007 (364/91) in para 13 and 14 hereinabove that any purchase of land by Chhotu from Jhoontha for Rs.3500/- or payment of Rs.2800/- is not proved. Apart from it, we would like to reproduce relevant extracts from statements of witnesses of defendants in suit No.8/2008 (162/94) here. The witness DW-1 Ghasi s/o Chhotu, who is one of the defendants, **says that the land was sold by Jhoontha to Ganeshi and it was purchased by his father Chhotu from Ganeshi.** That- “..... झूथा से गणेशी माली ने खरीदी थी और गणेशी से मेरे पिताजी ने खरीदी थी”

The witness DW-2 Balu also says that- “..... विवादित जमीन को छोड़ झूथा ने गणेशी मालिन से खरीदी थी।” Thus he says about purchase of land by Chhotu and Jhoontha jointly, which is also again inconsistent to the defendants pleadings. In cross examination, witness DW-2 says that - “ विवादित जमीन गणेशी मालिन की थी जिसको झूथा छोड़ ने मोल ली थी, रजिस्टरी किसके नाम हुई मुझे पता नहीं। कितने में मोल ली उसकी भी मुझे पता नहीं।.....” Thus the witness does not know about the transactions regarding disputed land. In view of this matter of facts, we hold that defendants could not prove issue No.4 in their favour.

27- Issue no.5 and 6 are not worth discussion for the decision of this second appeal.

28- On the basis of discussions held in para 22 to 27 above, it is our considered view that plaintiff Jhoontha's suit for permanent injunction was proved to be decreed on the basis of revenue record and evidence available in the file. The trial court was not correct to dismiss the suit. Though the First Appellate

Court has remanded the case to trial court for deciding afresh, but after making our issue-wise observations and conclusions as above, the fate of the suit No.8/2008 (162/94) has been determined and remanding the case to the First Appellate Court or trial court will not serve any purpose. The First Appellate Court and the trial court both will be bound by findings recorded by this court. So now it is not proper to leave the case for decision by the First Appellate Court or trial court. The suit for permanent injunction filed the plaintiff Jhoontha is proved to be decreed and deserves to be decreed at this level of second appeal.

29- On the basis of discussions from para 12 to 28 hereinabove, the second appeal No.1638/2009 in hand is hereby dismissed and impugned decision date 09-02-2009 passed by the First Appellate Court in appeal No.15/2008 is upheld. The second appeal No.1613/2009 filed by appellants Gopal & ors is also dismissed, but invoking powers under section 209 of the Tenancy Act, 1955, the decision dated 09-02-2009 passed by the First Appellate Court in appeal No.14/2008 is modified and suit No.8/2008 (162/94) filed by Jhoontha (predecessor of the respondents) for permanent injunction is hereby decreed and present appellants/defendants are restrained by permanent injunction, and ordered for not to interfere in cultivatory possession of plaintiffs/respondents in disputed land of khasra number 419 area 12 Bigha 18 Biswa and khasra number 420 area 10 Bigha 19 biswa situated in village Sawaimadhosinghpura Tehsil Dudu, District Jaipur.

Pronounced in the open court.

(Priyavrat Pandya)
Member

(Moolchand Meena)
Member