

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal/TA/ 1531/2013/Sirohi

Mowa s/o Hakma caste Girasia r/o village Babli, Patwar Circle
Nitaura, Tehsil Pindwara, Dist. Sirohi

--- Appellant

Versus

State of Rajasthan through Tehsildar Pindwara, Dist. Sirohi

--- Respondent

Division Bench

Shri Moolchand Meena, Member

Shri Kan Singh Rathore, Member

Present:-

Shri Mukesh Jain, Advocate for appellant.

Shri Hagami Lal, Deputy Government Advocate.

Judgment

Dated 16-01-2014

1- This 2nd appeal, under section 224 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as 'the Act of 1955') has been preferred by the appellant against the judgment decree dated 28-08-2012 passed by the Revenue Appellate Authority, Pali camp Sirohi (the First Appellate Court) in appeal No.11/2011 whereby, the decision and decree dated 10-02-2011 passed by the Assistant Collector, Pindwara has been upheld.

2- Brief facts of the case leading to this 2nd appeal are that appellant /plaintiff filed a suit under section 88 and 188 of the Act of 1955, in the Court of Assistant Collector, Pindwara (Trial Court), against the respondent/defendant State Government. It was averred in the suit that disputed land bearing khasra number 447 admeasuring to 5 Bigha; and recorded in revenue record as Gair Mumkin Charagah, has been under his cultivatory possession for the last 35 years. The Settlement Department has wrongly recorded this land as Charagah, whereas it is not being used as Charagah. The respondent State Government is intending to dispossess the appellant /plaintiff from the land in question, therefore the suit has been filed and it has been requested that appellant/plaintiff

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be declared as khatedar tenant of the land in question and the respondent/defendant State Government be restrained by permanent injunction not to dispossess the plaintiff from the disputed land.

3- The Trial Court, after framing issues and hearing both the parties, dismissed the appellant/plaintiff's suit vide decision and decree dated 10-02-2011. The appellant preferred first appeal under section 223 of the Act of 1955 before the First Appellate Court, which was also rejected vide impugned decision and decree dated 28-08-2012. Aggrieved by First Appellate Court's decision dated 28-08-2012, the present 2nd appeal has been filed by the appellant/plaintiff.

4- Learned counsels for both the parties were heard on admission of the appeal.

5- The learned counsel for the appellant, while repeating facts and grounds mentioned in the appeal memo, has submitted that the disputed land had been as culturable Siwaichak land in revenue record prior to the settlement, but the Settlement authorities have recorded it as Charagah, without any competent order, for which they were not authorized. The appellant/plaintiff is in continuous cultivatory possession of the land in question for 35 years and he is entitled to get his khatedari rights declared in the disputed land on the basis of his long possession. But both the lower courts have erred in rejecting the plaintiff's suit only for the reason that the land is Charagah and khatedari rights cannot be conferred in Charagah land. This conclusion of both the lower court has been drawn without going into depth of the matter. When the land was culturable Siwaichak in revenue records before settlement, and when the Settlement authorities were having no power to record the land as Charagah, the Trial Court and the First Appellate Court should have appreciated this fact and the plaintiff's suit should have been decreed. Thus decisions of both the courts are against fact and law. It has been requested by the learned counsel that appeal be accepted and suit of the plaintiff/appellant be decreed.

6- The learned Deputy Government Advocate protesting against the appeal has vehemently submitted that land in question is recorded as Charagah and accrual of khatedari rights in Charagah land is barred by section 16 of the

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Tenancy Act of 1955. Both the lower courts have concurrently dismissed the plaintiff's suit, and the appellant is not able to show that what irregularity has been done by the courts below. The only issue involved in this case is whether khatedari rights can be given to anyone in Charagah land, and the position of law is clear in this regard that no khatedari can be given in Charagah land. So the present appeal is forceless and deserves to be dismissed at admission level itself.

8- We have given a thoughtful consideration to the rival contentions made by learned counsels for both the parties and have also gone through the impugned judgments available in the file. Both the lower courts have rejected the plaintiff's suit and first appeal respectively on the ground that disputed land is Charagah land and khatedari cannot be accorded to anyone in the Charagah land.

9- Undisputedly, the land in question is Charagah land. Section 16 of the Rajasthan Tenancy Act, 1955 provides that notwithstanding anything in the Act of 1955 or in any other law or enactment for the time being in force in any part of the State, khatedari rights shall not accrue in the pasture land. We deem it proper to reproduce hereunder, relevant part of the said section 16 as under:-

“16. Land on which Khatedari rights shall not accrue.-

Notwithstanding anything in this Act or [in any other law or enactment for the time being in force in any part of the State, Khatedari rights shall not accrue in-

- (i) pasture land;*
- (ii) xxxxxx “*

This section 16 of the Act, being prefixed with the obstante clause of expression “notwithstanding”, has an over-riding affect on all other provisons of the Act of 1955 or on any other law or enactment for the time being in force. On account of this position of legal provisions, even a suit for declaration of khatedari in Charagah land is barred by law. The notwithstanding clause, in a statute, makes the provisions independent of other provisions contained in the law, even if the other provisions provide to the contrary. The hon'ble Supreme Court of India in Brij Raj versus S.K. Shah (AIR 1951 SC 115) has held that the expression “notwithstanding any thing contained in any other law” prevents reliance on any other law to the contrary. Therefore, we are of the considered view that

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accrual of khatedari rights in Charagah land is prohibited by the law and decisions of both the lower courts are absolutely in accordance with law. The impugned decision dated 28-08-2012 does not suffer from any error. The present second appeal is devoid of any substance and deserves to be rejected on admission level itself.

9- Resultantly, as provided under section 226 of the Act of 1955, the second appeal in hand is dismissed at admission level without calling for the record of the lower courts.

Pronounced in the open Court.

(Kan Singh Rathore)
Member

(Moolchand Meena)
Member