

IN THE BOARD OF REVENUE FOR RAJASTHAN AJMER**Appeal Decree/TA/1849/1988/Alwar.**

- 1- Chhitar son of Narain Lal (deceased) through LRs:-
 - 1/1- Ramswaroop s/o Chhitar (deceased) through LRs:-
 - 1/1/1 Prakash Chand son of Ramswaroop Gupta resident of Gali No. 10, Tanaji Nagar, Bhajan Ganj, Ajmer
 - 1/1/2 Banwari Lal son of Ramswaroop Gupta resident of 6 New Govind Nagar, Ramganj Ajmer.
 - 1/1/3 Girdhari Lal son of Ramswaroop caste Khandelwal resident of Juliyon Ke Pass Wali Gali, Near Shyam Baba Mandir, Shivaji Park Alwar.
 - 1/1/4 Tikam Chand son of Ramswaroop caste Khandelwal resident of Nai Sarak, Deeg Distt. Bharatpur.
 - 1/1/5 Ramesh Chand Khandelwal son of Ramswaroop resident of Dashrathpuri, Near Dwarika New Delhi.
 - 1/1/6 Prem Chand Khandelwal son of Ramswaroop resident of Nai Sarak, Deeg Distt. Bharatpur.
 - 1/1/7 Gulab Devi wife of Ramswaroop (Name deleted)
 - 1/1/8 Smt. Urmila Khandelwal daughter of Ramswaroop wife of Ashok Khandelwal resident of Bhikam Syed, Alwar.
- 2- Bhagwati Devi daughter of Chhitar
- 3- Ramrakhi daughter of Chhitar
- 4- Ramwati daughter of Chhitar
- 5- Premwati grand daughter of Chhitar
- 6- Yashoda grand daughter of Chhitar.

...Appellants.**Versus**

- 1- Raswaroop son of Sohanpal caste Brahmin resident of village Kherli Tehsil Laxmangarh Distt. Alwar.
- 2- Rewati son of Sohanpal (deceased) through LRs:-
 - 2/1- Ramesh son of Rewati (deceased) through LRs:-
 - 2/1/1 Premwati widow of Ramesh
 - 2/1/2 Vijendra son of Ramesh
 - 2/1/3 Laxman son of Ramesh
 - 2/1/4 Madhu daughter of Ramesh
 - 2/1/5 Mithlesh daughter of Ramesh
 - 2/2- Prabhu s/o Rewati (deceased) Through LRs:-
 - 2/2/1 Mohan s/o Prabhu
 - 2/2/2 Mahendra s/o Prabhu
 - 2/2/3 Giriraj s/o Prabhu
 - 2/2/4 Maya d/o Prabhu

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- 2/3- Omi daughter of Rewati
- 2/4- Banwari son of Rewati
- 2/5- Manohari son of Rewati
- 2/6- Babu son of Rewati (deceased) through LRs:-
 - 2/6/1 Anil son of Babu Lal
 - 2/6/2 Vivek son of Babu Lal
 - 2/6/3 Deepa daughter of Babu Lal
 - 2/6/4 Kiran widow of Babu Lal
 - 2/6/5 Amit s/o Babu Lal
- 2/7- Mahesh son of Rewati
- 2/8- Shakuntala daughter of Rewati
- 3- Ramesh son of Rewati (deceased).
- 4- Shambhu son of Jagannath
- 5- Rameshwardayal son of not known (name deleted)
- 6- Dhudi son of Harchand (deceased) through LRs:-
 - 6/1- Mst. Sedo widow of Dhudi (name deleted)
 - 6/2- Somoti daughter of Dhudi
 - 6/3- Parwati daughter of Dhudu
 - 6/4- Kala daughter of Dhudi
- 7- Gangadhar son of Deepa Mali (deceased) through LRs:-
 - 7/1- Prabhati son of Gangadhar
 - 7/2- Jamna Lal son of Gangadhar
 - 7/3- Suraj Mal son of Gangadhar
 - 7/4- Badami widow of Gangadhar (name deleted)
- 8- Kanhaiya Lal son of Chhota (deceased) through LRs:-
 - 8/1- Kanhaiya Lal son of Chhitar
 - 8/2- Budha son of Kanhaiya Lal
 - 8/3- Mansua son of Kanhaiya Lal
- 9- Girraj son of Bholu Mali resident of Sokhar Tehsil Laxmangarh Distt. Alwar.
- 10- Sohan Lal son of not known (deceased) through LRs:-
 - 10/1- Chiranji widow of Sohan Lal (name deleted)
 - 10/2- Rewati son of Sohan Lal
 - 10/3- Ramswaroop son of Sohan Lal
- 11- Kishni widow of Narain (deceased) through LRs:-
 - 11/1- Roop Singh son of Narain
 - 11/2- Vijendra son of Narain
 - 11/3- Bhagwat son of Narain
 - 11/4- Barfi daughter of NarainAll by caste Mali resident of Mojpur Tehsil Laxmangarh Distt. Alwar.
- 12- Kiran widow of Babu Lal
- 13- State of Rajasthan through Tehsildar Alwar.

...Respondents.

**Division Bench
Shree Pramil Kumar Mathur, Member
Shree Moolchand Meena, Member**

Present:-

1. Shri Bhawani Singh, Advocate for Appellants,
2. Shri S. P. Singh, Advocate for respondents.

Judgment

Dated:- 22-05-2012

1- This 2nd appeal, under section 224 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as 'the Act') has been preferred by the appellants against the judgment and decree dated 17-11-1988 passed by Revenue Appellate Authority, Alwar. This appeal was earlier decided by Division Bench of the Board on 24-06-1996. A writ petition was preferred against the decision dated 24-06-1996 before the Hon'ble High Court and the case has been remanded by the Hon'ble High Court by its order dated 10-11-2003 to the Board with certain directions to decide the appeal afresh.

2- Brief and relevant facts of the case are that the plaintiffs / Appellants Chhitar s/o Narain and Ramswaroop s/o Ramswaroop filed a suit regarding disputed land bearing khasra number 431 area 16 Biswa situated in village Sonkhar Tehsil Laxmangarh in Alwar District. It was alleged that disputed land is Gair Maumkin grove land with 19 trees of Neem on it and originally it belonged to khatedari of Mst. Jamuna and Mst. Kaushalya. Mst. Jamuna and Mst. Kaushalya mortgaged this land with the plaintiff No.1 Chhitar on 05-06-1959 for Rs.400/- and thereafter, on 28-08-1959 a registered sale deed was executed by Mst. Jamuna and Mst. Kaushalya, for a consideration of Rs.700/-, in favour of plaintiffs /Appellants Chhitar s/o Narain and Ramswaroop s/o Chhitar. The land was in continuous possession of the plaintiffs/ Appellants. In the year

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Svt. 2015 and 2016, the original defendants Nos. 7 to 10 / respondent Nos. 6 to 9, in a collusion with the Patwari got the land wrongly entered in their names and defendants Nos. 1 to 4 have forcibly encroached over the disputed land. Therefore, a suit for ejectment was filed.

3- Three separate written Statements were filed by the defendants- first by the defendants No.7 to 10, second by the defendants No. 5 & 6, and third by the defendants No.1 to 4. All the defendants denied the suit claim of the plaintiffs /Appellants and it was agitated that defendant 7 to 10 were sub-tenant of the khatedar of disputed land in Svt.2016 and they acquired khatedari rights by operation of law. Thereafter they sold 2/3rd part of the suit land to defendant No.1 to 4 by a sale deed dated 26-10-1959 for Rs.95/-. Likewise, the other 1/3rd part of the land was purchased from Deepchand who was adopted son of Kana, the original khatedar of the disputed land.

4- The Trial Court after framing 12 issues and hearing both the parties rejected the suit vide its judgment dated 07-07-1966, against which an appeal was preferred before the Revenue Appellate Authority, Alwar. The Revenue Appellate Authority also rejected the first appeal vide its judgment dated 17.11.1988, against which second appeal was filed by the plaintiffs/ appellants before the Board.

5- The Board, vide its previous judgment dated 24-06-1996, allowed the appeal & judgments of both the lower Courts were set aside and suit of the plaintiffs/ appellants was decreed. Main grounds of the Board's judgment dated 24-06-1996 may be summarized as follows:-

- That the disputed land belonged to kahtedar Kana, who died without any male heir.
- That Deepchand was not proved to be adopted son of Kana.
- That Mst. Jamuna and Mst. Kaushalya were khatedar tenants of the disputed land and defendants Nos. 7 to

10/respondent Nos. 6 to 9 Dhudi, Gangadhar, Kanhiya and Giriraj were sub-tenant on the land in question.

- That Mst. Jamuna and Mst. Kaushalya, both being widow women, were authorised to sub-let their holding under section 46 of the Rajasthan Tenancy Act, 1955.
- That defendants Nos.7 to 10/respondents Nos. 6 to 9 Dhudi, Gangadhar, Kanhiya and Giriraj were sub-tenant on the land belonging to widow women were not entitled to get khatedari rights thereon.
- That sale deed executed by khatedars Mst. Jamuna and Kaushalya in favour of plaintiffs /appellants was legal.
- That deepcahnd was not authorised to sale the land or any part thereof.

With these conclusions, the Division bench of the Board, vide judgment dated 24-06-1996 as modified by order dated 04-07-1996, allowed the appeal and decreed the suit filed by the plaintiffs/appellants.

6- The respondent Ramswaroop s/o Sohan Lal, who was originally defendant No. 1 in the suit, filed a writ petition before the Hon'ble High Court against the Board's judgment dated 24-06-1996. This petition registered as SBCWP No.4304/1996 has been decided by the Hon'ble High Court on 10-11-2003. Relevant portion of the Hon'ble High Court's order dated 10-11-2003 is as under:-

"Having heard rival submissions of the respective parties and after careful examination of the judgment passed by the Board of Revenue dated 24-6-96 and the Trial Court's order as well as the pleadings of the case and relevant provisions of the Rajasthan Tenancy Act, in the interest of justice I deem it proper to remand the matter to the Board of Revenue to adjudicate afresh by discussing the provisions of Section 19 and shall pass a fresh detailed reasoned order in accordance with the provisions of law.

Both the parties are at liberty to place all judgments and provisions of law before the Board of Revenue. It is directed that the Board of Revenue shall adjudicate afresh only limited to the application of Section 19 of Rajasthan Tenancy Act."

7- We have heard the learned counsels for both the contending parties.

8- The learned counsel for the appellants/plaintiffs has contended that the disputed land originally belonged to Mst. Jamuna and Mst. Kaushalya, who were widows; and a sub-tenant of the khatedari land of a widow is not entitled to get khatedari rights as per section 19 readwith the section 46 of the Act. It has also been argued that for getting khatedari rights by operation of law under Section 19 of the Act, the reference date is 15-10-1955; on which the Act of 1955 was commenced. The respondents have not submitted any document to show their sub-tenancy of the land in question on 15-10-1955 or in Svt.2012. The only document relied upon by the respondents is khasra girdawari of Svt.2016. It has been submitted that khasra girdawari is not the annual register for the purpose of Section 19 of the Act.

9- The learned counsel for the respondents has argued that the defendants Nos. 1 to 4/respondents have purchased the land in question on 26-10-1959 through a sale deed for Rs.95/-, from defendants Nos.7 to 10 who were recorded sub-tenant of the land and consequently were khatedar tenants by operation of law. Since defendants Nos.7 to 10 have become khatedar tenants of the land, Mst. Jamuna and Kaushalya had no legal right to execute sale deed in favour of plaintiffs/ appellants. Defendants Nos. 7 to 10, Dhudi and others were recorded sub-tenants of the land in Svt.2016 for the last 9 years, i.e. since Svt.2006, who sold the land to defendants Nos.1 to 4. Learned counsel for the respondent has placed reliance on the following judgments reported in :-

- (i) 2003 RBJ page 205
- (ii) 1988 RRD page 133
- (iii) 2007 RRD page 587

10- In view of the directions given by the Hon'ble High Court, we have to adjudicate the matter afresh only limited to the application of section 19 of the Rajasthan Tenancy Act.

11- For the sake of convenience, section 19 (1) of the Rajasthan Tenancy Act, 1955 runs as under:-

19. Conferment of rights on certain tenants of Khudkasht and sub-tenants-

(1) Every person who, at the commencement of this Act-

(a) was entered in the annual registers then current as a tenant of Khudkasht or sub-tenant of land other than grove land, or

(b) was not so entered but was a tenant of Khudkasht or sub-tenant of land, other than grove land,

Shall as from the date of commencement of the Rajasthan Tenancy (Amendment) Act, 1959, hereinafter in this Chapter referred to as the appointed date, become, subject to the other provisions contained in this Chapter, the Khudkasht tenant of such part of the land held by him as does not exceed the minimum area prescribed by the State Government for the purpose of clause (a) of sub-section (1) of section 180 or exceeds the maximum area from which such person is liable to ejection under clause (d) of the said sub-section of the said section and rights in improvements in such part of the said land shall also accrue to such person:

Provided that *khatedari rights or rights in improvements shall not so accrue-*

(i) if such part of the said land is held from any of the persons enumerated in Section 46, or

(ii) if such rights therein may not accrue under the proviso to sub-section (1) of section 15 or under section 15A or under section 15B or under section 16, or

(iii) if such person has, after the commencement of this Act, and before the appointed date, ceased to be such tenant of Khudkasht or sub-tenant by virtue of lawful surrender or abandonment in accordance with the provisions of this Act or because of his having been ejected in accordance with the provisions by and under the decree or order of a competent Court.

According to sub-section (1) of section 19 as reproduced hereinabove, one who claims khatedari rights in land in question under this section has to fulfill the following conditions, namely;-

(a) He, in terms of Section 19 (1) (a), must be entered as tenant of khudasht or sub-tenant in the current annual

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register at the commencement of the Act, i.e. on 15-10-1955 or Samvat 2012.

OR

If he is not so entered in the current annual register at the commencement of the Act, in terms of Section 19 (1) (b), he must be tenant of Khudkasht or sub-tenant of land, at the commencement of this Act i.e. 15-10-1955.

- (b) The land in question must be other than grove land.
- (c) The land in question must not be held by a person enumerated in Section 46 of the Act.

12- It is also clear that conferment of khatedari rights under clause (a) of the section 19 (1) is by operation of law, i.e. automatically whereas, one who claims the khatedari rights under clause (b) of section 19 (1), shall have to get declaration as provided under sub-section (2) of the section, which reads as under:-

“(2) Every tenant of Khudkasht or sub-tenant referred to in clause (b) of sub-section (1) claiming that the rights mentioned in that sub-section accrued to him on the appointed date in the whole or any part of his holding shall within two years of that date and on payment of a Court-fee of twenty five naye paise, apply to the Assistant Collector having jurisdiction, praying for a declaration that such rights accrued to him as aforesaid, and the provisions of sub-section (5) of section 15 shall apply to such application and such tenant of Khudkasht or sub-tenant shall not be regarded to have become the khatedar tenant of his holding or part, as the case may be, until he has obtained the declaration so prayed for.”

13- In the present case, the claim of defendants/respondents is under clause (a) of section 19(1). Proviso (i) to Section 19 (1) provides that khatedari rights or rights in improvements shall not accrue if such part of the said land is held from any of the persons enumerated in Section 46 of the Act. Section 46(1) of the Act describes eight categories of persons, who are supposed to be suffering from disability and the category of ‘a woman who is unmarried or divorced or separated from her husband or is a widow’ finds place at clause (d) of sub-section (1) of this Section. **Thus ‘a widow’ is a person who is supposed to be**

suffering from disability to cultivate her holdings personally. She is a privileged & protected person under the State policy and also under the Scheme of the Act, whose lands are protected from accrual of khatedari rights, and it is a settled position of law that no person, irrespective of length of his cultivatory possession on the land held by such disable person, can acquire khatedari rights in such land.

14- The Division Bench of the Board has already adjudicated, vide judgment dated 24-06-1996, that the land in question in the present case was khatedari land of widow women and this finding has not been interefered with by the Hon'ble High Court in remand order dated 10-11-2003. Otherwise also, a copy of mutation No.938 datd 05-02-1959 (Ex-P-7) is there in the record of the Trial Court which shows that the land was originally in the khatedari of Kana s/o Ganesh; and on death of said Kana, the land was mutated in the name of his widow Mst. Jamuna. It is also evident from khasra girdawari of Svt.2016 (Ex-P-3) on which defendants/respondents are relying upon, that the disputed land is in khatedari of Mst. Jamuna widow of Kana. Defendants Nos. 7 to 10 are recorded as sub-tenants, but as discussed above, we are of the opinion that they are not entitled to acquire khatedari rights in the land on account of provisions of Section 46 (1) (d) read with proviso (i) of Section 19(1) of the Act. The land in question in the cases of 2003 RBJ 205 and 1988 RRD 133 cited by the learned counsel for the defendants/respondents does not belong to the khatedari of disabled category of persons as enumerated under Section 46(1) of the Act. Therefore these authorities are not applicable to the present case. On the other hand, there is a series of authorities in which it has been repeatedly held that **a tenant of Khudkasht or sub-tenant of land shall not acquire khataedari rights if such land belongs to a person enumerated in Section 46 of the Act.** The Division Bench of the Board, in the case of Kishan Vs. Mst. Moolkanwar-1988 RRD 581- has held that:-

“राजस्थान टीनेंसी एक्ट की धारा 19 (1) के परन्तुक अनुसार धारा 46 में वर्णित व्यक्तियों के शिकमी काश्तकार को खातेदारी अधिकार प्राप्त नहीं होते। धारा 46 (1) (डी) में 'विधवा' भी दर्ज है। अतः यदि कोई व्यक्ति

किसी 'विधवा' का शिकमी काश्तकार है तो उसको खातेदारी अधिकार प्राप्त नहीं होते हैं।" (पेरा 6)

In the case of Mst. Sono & ors Vs. Gursharan Singh & ors reported as 1991 RRD 429, the Board has held that:-

"It was argued on behalf of respondents that in the plaint itself it is mentioned that the mother of Buddha and Mangu gave this land for cultivation to Bishan Singh who used to get 1/4 of the produce as his share. On this basis it is argued that Bishan Singh was sub-tenant. This argument cannot be accepted because under section 46 of the Rajasthan Tenancy Act the sub-tenant of a widow or a minor does not acquire khatedari rights." (para 13)

15- It is also worth consideration in the present case that the disputed land is grove land. The term 'Grove land' has been defined in Section 5 clause (15) of the Act of 1955 as under:-

"Grove land" shall mean any specific piece of land in any part of the State having trees planted thereon in such numbers that they preclude, or where full grown, will preclude, such land or any considerable portion thereof from being used primarily for any other agricultural purpose and trees so planted shall constitute a grove."

The respondents are relying upon khasra girdawari of Svt.2016 (Ex-P-3) and the land in question in that khasra girdawari also is recorded as "गैर मुमकिन बगीची", which is a grove land. The plaintiffs/appellants also, in para 1 of their plaint, have clearly averred that, "खसरा नम्बर 431 रकबा 16 बिस्वा भूमि गैरमुमकिन बगीची है जिसमें नीम के 19 पेड़ लगे हुये हैं तथा उसमें कभी कोई काश्त नहीं होती।" This averment of the plaint has never been disputed by the defendants/respondents. Otherwise also, a piece of 16 Biswa of land, in which 19 trees of Neem are growing is nothing but an orchard or a grove. Thus we are of an opinion that the disputed land is grove land. **As provided under Section 19 (1) of the Act, a tenant of Khudkasht or sub-tenant of land shall not acquire khataedari rights if such land is grove land.**

16- The learned counsel for the respondents has also cited the authority of 2007 RRD 587 (case of Ganesh Vs. State

of Rajasthan & ors) wherein it has been held that the Assistant Collector and Revenue Appellate Authority both, after discussing in detail the documentary and oral evidence have concluded in favour of adoption and the concurrent findings of facts arrived at by the two lower courts below could not have been interfered with in second appeal by the Board. But in the case in our hand, the Board in its earlier decision dated 24-06-1996 has already held that the factum of adoption of Deepchand by Late Shri Kana is not proved. The Hon'ble High Court in their decision dated 10-11-2003 has not interfered in this finding of the Board and the case has been remanded for adjudicating the case afresh only on a limited issue of application of Section 19 of Rajasthan Tenancy Act. Therefore we are not supposed to re-examine the issue of adoption now.

17- Furthermore, the respondents are claiming khatedari rights in the disputed land relying upon khasra girdawari Svt.2016 (Ex-P-3) wherein the disputed land is recorded in khatedari of Mst. Jamuna and defendants Nos.7 to 10 are recorded as 'Shikmi'. It is worth mentioning here that Section 19 provides for khatedari rights to those who are entered as tenant of khudasht or sub-tenant in the current **annual register** at the commencement of the Act. It is settled law that khasra girdawari is not recognized as annual register or record of rights. Only jamabandi is the record of rights. It has been held in 1987 RRD 190 (case of Sarya Vs. Kapoorchand) that:-

"---- non-petitioner No.4 could not have claimed any khatedari rights under section 19(1)(a) as there was no entry in the annual register then current either as a tenant of Khudkasht or sub-tenant. For this purpose the Khasra Girdawari cannot be considered as the annual register. The annual register would be the Jamabandi of that period." (para 6)

18- In view of foregoing discussions at para 10 to 16 hereinabove, we are of the considered opinion that defendants Nos. 7 to 10/respondents No.6 to 9 were not entitled to acquire khatedri rights in the disputed land in terms of Section 19 of the Act, and as such they were not authorised to execute a sale deed

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in favour of defendants Nos. 1 to 4. Therefore, in view of what has been stated above, we are inclined to allow this appeal.

19- Consequently, the appeal in hand is allowed. The judgment and decree dated 17-11-1988 passed by the Revenue Appellate Authority, Alwar in appeal No.867/76 and the judgment and decree dated 07-07-1966 passed by the Assistant Collector, Laxmangarh in suit no.7/54 are quashed and set aside and the suit filed by the plaintiffs/Appellants is decreed.

Pronounced in the open Court.

(Moolchand Meena)
Member

(Pramil Kumar Mathur)
Member