

1/9/11

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal Decree/TA/10752/2000/Barmer

Shri Harjee (deceased) son of Shri Shama by caste Jat r/o Sanawada Tehsil & District Barmer through his following legal representatives :-

1. Shri Bhanwra
2. Shri Rama Ram
3. Shri Phoosa Ram
4. Shri Kana Ram sons of Shri Harjee
5. Smt. Khemi wife of Shri Harjee

...Appellants

Versus

1. Shri Bhera Ram (deceased) son of Shri Tejaram through his legal representatives :

- Reportable*
h2.
- 1/1 Shri Lalaram son of Shri Bhera Ram
 - 1/2 Smt. Soni wife of Shri Durga
 - 1/3 Shri Prabhu son of Shri Durga
 - 1/4 Shri Khumbha son of Shri Durga
-residents of Jakharon Ki Dhani village Sanawara
 - 1/5 Shri Rekha d/o Shri Durga minor
 - 1/6 Shri Gena son of Shri Durga minor
-through their natural guardian mother respondent No.1/2 Smt. Soni resident of village Sanawara Tehsil & District Barmer.
 - 1/7 Smt. Teeja wife of Shri Pema Ram -residents of Jakharon Ki Dhani village Sanawara
 - 1/8 Mst. Kamli d/o Shri Deva Jat
 - 1/9 Mst. Tulchi wife of Shri Tilla Jat
- -residents of Jakharon Ki Dhani village Sanawara, Barmer

2. Shri Deva (deceased) son of Shri Soma through his legal representatives:
Mst. Kamla daughter of Deva -minor through Advocate Shri R.K.Gupta appointed as court guardian with the consent of standing counsels.

3. Smt. Tulsi widow of Shri Tila Jat r/o Sanawada Tehsil & Distt. Barmer

...Respondents

D.B.

Shri Bajrang Lal Sharma, Member
Shri B.L.Nayal, Member

Present:-

Shri Virendra Singh, Counsel for the appellants,
Shri Bhawani Singh, Counsel for respondent No.1
Ex parte for Respondent No.2 & 3.

h2. *h2.*

JUDGMENT


Dated 11-10-2011

This appeal is being reheard by this court in compliance of the High Court judgment dated 2.7.1998 passed in S.B.Civil Writ Petition No.3176/90.

2. The brief facts of this case are that Shri Bheru Ram filed a suit under section 88 and 188 of the Rajasthan Tenancy Act (in short the 'Act') against Shri Harjee, Deva and Smt. Tulsi in the court of Assistant Collector, Barmer. The land in dispute is khasra no.379 measuring 108 Bigha 3 biswa in village Sanawara. In his plaint Shri Bhera averred that 1/2 share of the disputed land is being cultivated by him since his birth but the settlement department entered the entire land in name of the defendants - Shri Harjee et. al. The trial court decreed the suit on 7.5.1981. The appellants/defendants filed the first appeal in the court of Revenue Appellate Authority, Jodhpur who dismissed the appeal on 5.6.1982 and concurred with the trial court. The appellants filed the second appeal in this court which was accepted on 27.12.1988 and the judgments & decree of the lower courts were quashed. The respondents also filed a review petition in this court, which was also dismissed by this court on 16.6.1990 the respondents filed a writ petition in the Rajasthan High Court against the judgment of this court which was accepted on 02.07.1998 and the judgment of this court was quashed. The High Court remanded the matter to this court for hearing the case again on merits including the point of limitation.

3. Heard the learned counsels of the rival parties.

4. The counsel for the appellant argued that the judgments and decrees passed by the trial court & the appellate court are in contravention of the basic principles of justice. He contended that this appeal was filed in this court on 12.9.1983 against the judgment of the Appellate court dated 5.6.1982. He submitted that the appellate court did not prepare the decree in compliance of its judgment. On the application of the appellants the decree was prepared on 23.6.1983 and



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the copy of the judgment and decree were taken and the appeal was filed on 12.9.1983 which is under the prescribed limitation. He also emphasized that issuance of the decree was the job of the appellate court therefore this appeal may be considered within the limitation period. He further contended that there is no family tree given by the respondent/plaintiff, which can prove his blood relation with the appellants and this land is not at all a jagir land as averred by the respondents. He argued that the land in question has been entered in name of the appellants/defendants in revenue record since 2010 and they have been solitarily in peaceful possession of the land. There is no documentary evidence of their possession. He further argued that on the basis of vague oral evidence our long standing khatedari rights cannot be brought to an end. In the last, he urged the court to accept the appeal on merits.

5. The learned counsel for the respondent contended that the appeal is hopelessly time barred and there is no application for condonation of delay. He argued that the appellants did not apply even for taking the certified copy of the judgment & decree well in time therefore, they cannot take support at this fact that the decree was not prepared by the court in time. They could have taken the copy of judgment and filed the appeal even without the decree. He also submitted that the land in question is a jagir land and the parties belong to one extended family. He also contended that in the second appeal only the legal infirmity, if any can be examined. This court can't examine this case on facts & evidence. The learned counsel also submitted that the trial court has given its explicit finding on each issue based on the evidence available on file. The appellate court has also conformed with the trial court in its findings. He urged the court that there is hardly any legal issue raised by the appellant in this appeal, therefore the appeal be dismissed and the concurrent findings of the courts below may be upheld.

6. We gave serious consideration to the contentions raised by the learned counsels of the rival parties. We also perused the available record.





7. At the onset, the issue of limitation which has been raised by the respondents is to be examined. The appellate court decided this case on 5.6.1982. This fact is also available on file that the Appellate court did not prepare the decree till 23.6.1983 and the decree was prepared on the application filed by the appellants before the appellate court on 20.6.1983. After taking the certified copy of the decree the appeal was filed before this court on 12.9.1983. They have also explained this reason of delay in the appeal itself. Under these circumstances this court, in larger interest of justice, holds that the appeal is well within the limitation and it should be disposed of on merits.

8. During adjudication of this appeal an application was filed before this court by the appellant under Order 41 rule 27 of the C.P.C. for submitting certain copies of land records in this case. The revenue records are the documents which are in public domain and could have been filed by the appellants even in the trial court. The provision of order 41 rule 27 of the C.P.C. is as under :-

Order 41 Rule 27:

Production of additional evidence in Appellate Court.-

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if--

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

{(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or}

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

Dr. S.

Dr.

On the issues mentioned above the trial court gave its findings on each issue and decreed the suit. The appellate court has also concurred with the trial court. We have carefully scrutinized the record and judgments passed in this case. The findings of this court on the issues framed are as under :

Issue No.1: Whether the plaintiff is khatedar of 1/2 share in Khasra no. 371 ?

This is undisputed legal position that a tenant in possession can bring a suit for perpetual injunction. In this case the plaintiff did not produce any documentary evidence proving his possession or tenancy - on the land in question. Though the land record has been systematically maintained in Barmer district at least since Svt. 2010-12. But the plaintiff chose to produce only the oral evidence to prove his claim. There is also no reliable evidence which can connect the plaintiff with defendants in a family tree or blood relation. The plaintiff averred that the land in question is a jagir land but this too is not proved by any documentary evidence.

When the record of possession, title, payment of land revenue etc. is easily available in the concerned tehsil and the plaintiff chooses not to produce it. It requires more vigilance at the level of trial court. In these circumstances the oral evidence is not of great consequence in proving plaintiff's claim of khatedari. He did not prove that even before settlement he was somewhere recorded as tenant/sub-tenant of the land in question. We are not in agreement with the findings of the courts below. The findings of the courts below are ill founded and in contravention of law. Therefore, this court is of the opinion that the plaintiff could not prove issue no.1 by the evidence available on record.

Issue No.2 : Whether the plaintiff is entitled to get perpetual injunction against the defendants ?

In this case the plaintiff has to prove that he is a tenant in possession. There is no documentary evidence available ^{on} record





pertaining to the possession of the plaintiff. The copy of jamabandi filed by the plaintiff is a proof which gives the presumption that the land in question is in possession of the defendants. Since Svt. 2010-12 till the date of filing the suit, at least khasra girdawari of 25 years have been prepared by the patwari. The possession of the concerned cultivators used to be entered in khasra girdawaris till 1963. But the plaintiff did not produce any documentary evidence proving his possession. In land disputes where the land records are prepared by the independent public authorities in a transparent & systematic manner, this is the only and most reliable and decisive evidence and the plaintiff has failed in producing it in this case.

There is an explicit provision in Section 35 and 114 of the Evidence Act, 1872.

Section 35 of the Evidence Act provides that :

35. Relevancy of entry in public record, made in performance of duty.-

An entry in any public or other official book, register or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact.

Section 114 of the Evidence Act also provides:-

"Section 114. Court may presume existence of certain facts.-

The Court may presume the existence of any fact which it thinks it likely to have happened regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

The above provisions of the Evidence Act manifest that the land records are sacrosanct.

The revenue courts have no option but to consider the land records maintained by the state instrumentality. One of the purposes of maintenance of such records in a chronological manner is to settle disputes between/amongst cultivators. In our opinion the courts below while according their finding have erred on this issue. We find that the plaintiff has failed to prove this issue by reliable evidence and the oral evidence produced by the

plaintiff is vague and stereotype which does not seem adequate and justified to delete 50 year long khatedari entry in favour of the defendants. Generally, the presumption of possession is taken on the basis of entries in jamabandi and the entries are in favour of the defendants.

Issue No.3:- Whether the defendants are entitled to get order of perpetual injunction against the plaintiffs, in case his suit fails ?

In this issue; the defendants had to prove their possession on the land in dispute. They also failed to produce the documentary evidence related to their possession in the trial court. Though they have produced the certified copies of the revenue record in this court and have filed an application under Order 47 rule 27 of the Code. We have already rejected this application. Therefore, the documents produced by them cannot be considered now while deciding this issue. This court finds that this issue has not been proved by the defendants as well.

Issue No.4: Whether defendants are entitled to get special costs ?

We have carefully examined the record available. There has not been any effort from the side of defendants to prove issue No.3 & 4 in this case. Therefore, it is not 'Justifiable to accord entitlement of damages in favour of the defendants. Consequently, this issue is also decided against the defendants.

12. As discussed above, this court finds the judgments and decrees passed by the courts below as legally infirm. Khatedari rights of an individual cannot be divested on the basis of solitary oral evidence who has been continuously entered as khatedar in possession since 2012 in revenue records. Even before the settlement or the jagir records there is no entry in favour of the plaintiff. The plaintiff did not claim khatedari on the basis of adverse possession either. The only strong aspect of this case is the oral evidence of 7 witnesses supporting his possession on the land in question. And this has been the basis of complete volte face on the part of trial court.





13. In such a case wherein there is no entry of tenancy/sub tenancy or possession in favour of the plaintiff and there is no reliable evidence of close familial connection amongst the parties either, khatedari rights cannot be conferred solely on the basis of oral evidence. In such cases the trial court is required to be very vigilant. If the courts allow such claims on the basis of ocular evidence ignoring 50 years revenue record favouring the opposite party, this will create anarchy in the justice delivery system specially in land disputes.

14. We also hold that despite availability of systematically maintained land record since Svt. 2012 (1955), only oral evidence is produced by some party of the dispute, it is the duty of the revenue court to call for and examine such land record suo moto available in tehsil or other public office. No oral evidence is capable to contravert an entry made in land record 20-30 years ago. In settlement of land disputes documentary evidence is of utmost consequence. And it should be ensured that the land related disputes are not settled in utter ignorance of the available land records.

15. In the light of the above observations, we accept the appeal filed by the appellants and quash the judgment & decrees passed by the courts below.

16. Pronounced in the open court.


(B.L. Naval)
Member


(Bajrang Lal Sharma)
Member