

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER**Appeal Decree No.2324/2000/TA/Dungarpur :**

Natwardas S/o Shri Gautamdas Bairagi Sadhu, resident of
Village Cheetri, Tehsil Sagwara, District Dungarpur.

... Appellant.

Versus

1. Raghavji S/o Shri Lalji Suthar (Deceased), through
legal representatives :-
 - 1/1. Narendra) sons of Shri Raghavji
 - 1/2. Premshanker)
 - 1/3. Bhagwati Bai } daughters of Shri Raghavji
 - 1/4. Pushpa }
 - 1/5. Madhu }
 - 1/6. Kamla }

All residents of Village Cheetri, Tehsil Sagwara,
District Dungarpur.
2. Mavji S/o Shri Natha Patel Wagdiya, resident of
Village Cheetri, Tehsil Sagwara, District Dungarpur.
3. Shanker Lal S/o Shri Onkar Ji Soni (Deceased), through
legal representatives :-
 - 3/1. Tulsi Lal S/o Shri Shanker Lal
 - 3/2. Kailash Chand S/o Shri Shanker Lal

Both residents of Village Cheetri, Tehsil Sagwara,
District Dungarpur.

 - 3/3. Nirmala D/o Shri Shanker Lal W/o Shri Prabhu Lal,
by caste Sunar, R/o P.O.Kharka, District Udaipur.
 - 3/4. Bhanu D/o Shri Shanker Lal W/o Shri Keshrimal,
by caste Sunar, R/o Ghatol, Tehsil Ghatol,
District Udaipur.
 - 3/5. Shakuntala D/o Shri Shanker Lal W/o Shri Bharat Lal,
by caste Sunar, R/o Kherwara, Tehsil Kherwara,
District Udaipur.
 - 3/6. Lata D/o Shri Shanker Lal W/o Ramesh Chand,
by caste Sunar, R/o P.O. Jolana, Tehsil Gadi,
District Banswara.
4. Laxminarain S/o Shri Laxmi Shanker, resident of
Village Cheetri, Tehsil Sagwara, District Dungarpur.
5. Moti Lal S/o Shri Bhagiji (Deceased), through
legal representatives :-
 - 5/1. Soni Bai widow of Shri Moti Lal
 - 5/2. Narendra } sons of Shri Moti Lal
 - 5/3. Kamla Shanker }
 - 5/4. Hari Vallabh }

All residents of Village Cheetri, Tehsil Sagwara,
District Dungarpur.

 - 5/5. Manjula D/o Shri Moti Lal W/o Shri Kanti Lal,
R/o P.O. Gariyata, Tehsil Sagwara, District Dungarpur.
 - 5/6. Gayatri D/o Shri Moti Lal W/o Shri Bhagwati Lal,
R/o P.O. Jethana, Tehsil Sagwara, District Dungarpur.

6. Shri Amba Lal S/o Shri Bhagiji
 7. Shri Nathu Lal S/o Shri Kuriya
- No.6 & 7 are residents of Village Cheetri, Tehsil Sagwara,
District Dungarpur.

... Respondents.

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D.B.

Shri Pramil Kumar Mathur, Member
Shri Madan Mohan Sharma, Member

Present :

Shri Purna Shankar Dashora, counsel for the appellant.
Shri Jaswant Singh Sankhla, counsel for the respondents.

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Dated : 12 July, 2012

J U D G M E N T

Having failed before both the learned subordinate courts, appellant has preferred this second appeal against the judgment passed by Revenue Appellate Authority, Dungarpur dated 24.5.2000 in appeal no.25/96.

2. Briefly stated, plaintiff Gautamdas had filed a revenue suit for declaration & correction of entries before the Sub Divisional Officer, Dungarpur stating that the disputed land bearing khasra nos. 1119, 1121, 1125, 1127, 2538, 2539, 3884, 4563 to 4569, 4578, 4818, 4852, 4854, 4855 total 19 in number was recorded in his name by virtue of patta issued on 03.5.1952, since then he is in continuous cultivatory possession of the land. In February 1967, Assistant Settlement Officer has replaced the name of plaintiff and recorded the name of defendants without affording any opportunity of hearing to the plaintiff and without any jurisdiction as settlement has no right to change the entries. Therefore, the order passed by Assistant Settlement Officer on 21.02.1966 be declared as null & void and the disputed land be ordered to be recorded in the name of the plaintiff.

3. Present respondents/ defendants contested the suit by filing written statement on the ground that disputed land belongs to the khatedari of Mandir Shri Laxminarain Ji as khudkasht land. Plaintiff has the status of

only Pujari appointed by the local villagers. He has no right to challenge the entries made in record of rights and khatedari right of the disputed land.

4. On the basis of the pleadings, the learned trial court has framed seven issues on 04.3.1974 and after completion of trial, learned trial court has dismissed the suit on 10.10.1996 filed by the appellant/ plaintiff. Being dissatisfied with the judgment & decree dated 10.10.1996, appellant preferred an appeal before Revenue Appellate Authority, Dungarpur which too was dismissed vide judgment dated 24.5.2000. Hence, this appeal.

5. We have heard the learned counsels for the parties and perused the record.

6. The learned counsel for the appellant submits that plaintiff Gautamdas was appointed as Pujari of Mandir Shri Laxminarain Ji and has got patta of disputed land on 03.5.1952 by then Jagirdar. He emphasised that settlement has no right to change the entries in the Jamabandi of Samvat 2022. Settlement has deleted his name and recorded the name of respondents/ defendants which adversely affects the rights of the plaintiff. Both the subordinate courts have dismissed the plaintiff's contentions erroneously on the ground that on the land of temple, Pujari has no right while appellant's claim is restricted to the right of cultivation on the disputed land. The first appellate court did not comply with the provisions of Order 41 Rule 31 Code of Civil Procedure and has not given finding issuewise. Hence, judgments of both the learned trial courts deserve to be set aside.

7. On the contrary, learned counsel for the respondents has submitted that admittedly Mandir Shri Laxminarain Ji is the khatedar of the disputed land, but appellant/ plaintiff has not impleaded Mandir as a party in the proceedings; therefore, the appellant/ plaintiff cannot succeed in the suit for declaration. He submits that order of settlement cannot be challenged under the provisions of Rajasthan Tenancy Act, 1955. The right to cultivate or right to continue as a Pujari does not fall within the ambit of jurisdiction of the revenue courts and only civil courts are competent to grant the relief. As the first appellate court has concurred with the judgment of the trial court, therefore, strict compliance of Order

41 Rule 31 CPC is not mandatory. Hence second appeal is liable to be dismissed. Learned counsel for the respondents has submitted following judgments in support of his contentions :-

- (i) 1978 RRD page 190
- (ii) 1983 RRD page 197
- (iii) 2010 RBJ (17) page 297
- (iv) 2012 RBJ (19) page 152

8. We have given our thoughtful consideration to the rival contentions and scanned the matter carefully.

9. The core question which emanates from present appeal is whether Pujari of a Mandir is entitled for right to cultivate and manage the land belongs to khudkasht khatedari of the temple land.

10. On a first blush and during the course of arguments, it is admitted by both the parties that the khatedari of the disputed land vests in Mandir Shri Laxminarain Ji. In the Jamabandi of Samvat 2022 to 2089 (Exhibit 1), the temple Laxminarain Ji is the khatedar tenant of the disputed land having the status of khudkasht. Indisputably, the khatedari of the khudkasht land of temple cannot be given to any person, then the only contention remains about the right to cultivate & right to manage the land as Pujari as mentioned in para no.8 of appeal memo.

11. It is evident that appellant has preferred his claim to the temple land as Pujari. The crux is as to only Pujari has any right to cultivate or manage the land on behalf of the temple. The dispute about Pujari and thereby managing the temple land is definitely not a matter to be decided by the revenue courts. The controversy between the appellant & the respondents is basically about the right to manage as Pujari of the temple. Such a conflict cannot be resolved by a revenue court.

12. On the perusal of the Rajasthan Tenancy Act, 1955, there is no provision which empowers the revenue court to grant the relief of right to cultivate or right to manage the land as prayed. Both the reliefs appear to be of civil nature and it can only be claimed before the civil court and only the civil courts are competent to grant the requested relief to the craving appellant.

13. The next contention about the compliance of Order 41 Rule 31 CPC is not fatal to the respondents because both the courts below have passed concurrent judgments and the Hon'ble Supreme Court in judgment reported in AIR 2008 Supreme Court page 673 has categorically held that :-

"the appellate court agreeing with the view of trial court need not reinstate the effect of the evidence or reasons given by the trial court, expression of general agreement with the reasons given by the court, decision of which is under appeal, would ordinarily suffice."

14. Apart from that, learned first appellate court in imugned judgment has issued specific direction to regain the status of Pujari by applying before Devsthan Department, which looking to the overall facts & circumstances of the case, is justified.

15. Resultantly, as both the courts have passed concurrent judgments which are based on the proper evaluation & appreciation of the evidence on record and this legal position is not disputable that the concurrent finding of fact cannot be disturbed in the second appeal.

16. Therefore, in view of what has been discussed above, both the two courts below did not commit any illegality or irregularity in passing the judgments. Hence, the second appeal, being devoid of any merit, is dismissed.

Pronounced in open court.

(MADAN MOHAN SHARMA)
Member

(PRAMIL KUMAR MATHUR)
Member

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