

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

I. Appeal Decree No.1995/2002/TA/Dholpur :

State of Rajasthan, through Tehsildar Basedi, District Dholpur.

... Appellant.

Versus

1. Ramcharan S/o Shri Sunder
2. Buddha S/o Shri Rajaram (Deceased), through
legal representatives :-
 - 2/1. Dharmendra
 - 2/2. Ramphool
 - 2/3. Shyamlal
 - 2/4. Devicharan
 - 2/5. Hari Singh
 - 2/6. Gauri Devi widow of Shri Buddha
3. Ramphool S/o Shri Shyamlal

} sons of Shri Buddha

All are by caste Meena, residents of Durgasi,
Sub Tehsil Sarmathura, Tehsil Basedi, District Dholpur.

... Respondents.

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II. Appeal Decree No.1855/2002/TA/Dholpur :

1. Buddha S/o Shri Rajaram (Deceased), through
legal representatives :-
 - 1/1. Devicharan
 - 1/2. Hari Singh
 - 1/3. Ram Singh
 - 1/4. Dharmendra
 - 1/5. Gaura Bai widow of Shri Buddha
2. Ramphool S/o Shri Shyamlal

} sons of Shri Buddha

All are by caste Meena, residents of Durgasi,
Sub Tehsil Sarmathura, Tehsil Basedi, District Dholpur.

... Appellants.

Versus

1. Ramcharan S/o Shri Sunder, by caste Meena,
resident of Durgasi, Sub Tehsil Sarmathura,
Tehsil Basedi, District Dholpur.
2. State of Rajasthan

... Respondents.

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D.B.

Shri Pramil Kumar Mathur, Member
Shri H.S. Bhardwaj, Member

Present :

Shri R.K. Gupta : Government Counsel for appellant i.e. State in appeal no.1995/2002 and for respondent no.2 in appeal no.1855/2002.

Shri Khadag Singh : counsel for respondents no.2 & 3 in appeal no.1995/2002 and for appellants in appeal no.1855/2002.

Shri Rod Mal : Brief Holder of counsel for respondent no.1 in both appeals no.1995/2002 and 1855/2002.

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Dated : 8 August, 2012

J U D G M E N T

This batch of appeals was filed challenging the judgment & decree dated 09.01.2002 passed by Settlement Officer-cum-Revenue Appellate Authority, Bharatpur (Camp - Dholpur) in appeal no.36/96 whereby the learned Settlement Officer-cum-Revenue Appellate Authority accepted the appeal preferred against the judgment & decree dated 08.4.1996 passed by the Sub Divisional Officer, Badi (Dholpur). As both appeals emanate from the common judgment dated 09.01.2002 and contain similar facts & law points, therefore, both are being disposed of by this single judgment.

2. Briefly stated, the facts of the case are that the respondent no.1 Ramcharan as plaintiff instituted a suit for declaration & permanent injunction in respect of the land bearing khasra no.1088 area 1 bigha & khasra no.1084/2 area 2 bigha situated at Village Khurdia Tehsil Basedi District Dholpur by alleging that above lands were allotted to the plaintiff on 09.6.1970 by the Allotment Committee whereof possession was handed over to him by concerned Patwari on 21.7.1970. Since allotment, the plaintiff is in continuous cultivatory possession of the disputed land, but due to slackness of the revenue officials, the name of the plaintiff was not entered in the revenue record. On the disputed land bearing khasra no.1088, the respondents are creating threat on the peaceful enjoyment of the plaintiff by stating that the allotment of the land bearing khasra no.1088 had been made to them. As the land of khasra no.1088 area 1 bigha was initially allotted to plaintiff and still the allotment order is in force,

therefore, on the basis of the subsequent allotment, respondents have no right to disturb the possession of plaintiff on the disputed land, hence the plaintiff may be declared as the khatedar tenant of the disputed land and respondents be restrained by the permanent injunction.

3. The defendants Buddha, Ramphool and State did not appear before the trial court and thus chose not to contest the suit.

4. After the regular trial, the learned trial court has dismissed the suit filed by the plaintiff vide judgment & decree dated 8.4.1996. Feeling aggrieved by the judgment of the trial court, plaintiff Ramcharan had preferred an appeal before Settlement Officer-cum-Revenue Appellate Authority, Bharatpur (Camp - Dholpur) who allowed the appeal by impugned judgment dated 09.01.2002 and set aside the judgment & decree passed by the learned trial court & ordered to record the plaintiff Ramcharan as gair khatedar of the disputed land.

5. Being dissatisfied with the judgment of the first appellate court, two sets of appeal namely appeal no.1995/2002 and appeal no.1855/2002 have been preferred before the Board of Revenue which are being decided by this judgment.

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

7. Learned Government Counsel for the State has submitted that the revenue record did not reflect the khatedari rights of the respondent Ramcharan. As per revenue records, disputed land was government land, therefore was allotted subsequently to Buddha and Ramphool. Resultantly, the impugned judgment in favour of respondent Ramcharan is not sustainable.

8. Learned counsel for the appellants Buddha and Ramphool has contended that disputed land was allotted to Buddha and Ramphool by way of competent authority. Respondent Ramcharan did not avail the remedy as enshrined in the Rule 14(4) of the relevant allotment rules. Respondent

Ramcharan is not in cultivatory possession of the land; so without the possession, declaration cannot be granted.

9. Per contra, the learned counsel for respondent Ramcharan has submitted that earlier the disputed land was allotted to him which is well proved by the allotment order Ex.-1 which itself clearly contains the fact of delivering the possession to Ramcharan. Learned trial court did not examine the matter in rightful manner. First appellate court has evaluated the matter meticulously. Hence, both the appeals are liable to be rejected.

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

11. Having heard the learned counsel for the parties and after going through the judgment of both the courts below and the material available on record, we are of the view that learned trial court was not justified in rejecting the suit instituted by the plaintiff Ramcharan. It appears that the suit instituted by Ramcharan was not contested by any of the defendants and no written statement or any defence has been produced by the defendants.

12. On the contrary, plaintiff Ramcharan in support of the suit has adduced the allotment order Ex.1 which itself abundantly makes it clear that the disputed land bearing khasra no.1088 area 1 bigha was allotted to him by the allotment committee on 09.6.1970. At the footsteps of Ex.-1, factum of tendering the possession of khasra no.1088 area 1 bigha to the plaintiff Ramcharan was also recorded in presence of the witnesses. Thus, learned trial court utterly ignored the material document Ex.-1 in delivering the judgment and did not consider & appreciate the allotment order as well as the possession delivered as contained in the document Ex.1. If the learned trial court would have carefully made scrutiny of this document, then its finding that allotment was made to plaintiff Ramcharan on papers would not have been found any place in the trial court's judgment. Therefore, the trial court had failed to take into consideration the documentary evidence adduced by the plaintiff Ramcharan.

13. This fact is not disputable that after the allotment and delivery of the possession to the allottee, it was incumbent upon the revenue officials to make the consequential entry in the revenue records. If the revenue officials have failed to perform their imperative duty, then for their omission rather for their negligence & reluctance towards the official duties, the accrued rights of plaintiff Ramcharan in the disputed land cannot be curtailed. Therefore, the trial court has not viewed the matter from above angle and the first appellate court did not commit any factual or legal flaw while allowing the appeal preferred by the plaintiff Ramcharan and passed the impugned judgment in the right perspective.

14. As plaintiff Ramcharan has filed the suit for declaration of his khatedari rights and did not seek any relief about the allotment made to the defendant Buddha and Ramphool; therefore, the contention of the learned counsel for the appellants that plaintiff Ramcharan should have made grouse under section Rule 14(4) of the relevant allotment rules, is not sustainable.

15. That being the position, we are of the view that the judgment of the first appellate court is sustainable in law and both the appeals are liable to be dismissed for the reasons indicated above; hence, dismissed accordingly.

Pronounced in open court.

(H.S. BHARDWAJ)
Member

(PRAMIL KUMAR MATHUR)
Member

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