

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal Decree/TA/6333/2006/Bikaner

1. Ganga Ram s/o Pancha Ram by caste Bishnoi r/o Village Godu, Tehsil Kolayat, District Bikaner.
2. Bidami d/o Pancha Ram by caste Bishnoi r/o Village Godu, Tehsil Kolayat, Distt. Bikaner.

.....Appellants

Versus

1. State of Rajasthan
2. Shri Shankarlal s/o Shivilal Bishnoi, r/o 13 PSD (Godu) Tehsil Kolayat, Bikaner.

...Respondents

D.B.

Shri Pramil Kumar Mathur, Member
Shri Bajrang Lal Sharma, Member

Present:-

Shri N.K.Goyal, Counsel for the appellants,
Shri Hagamilal Chaudhary, Dy. Govt. Advocate for the State
Shri Manish Pandya, Counsel for the respondent No.2

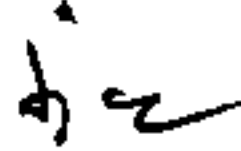
JUDGMENT

Dated 11-10-2011

This second appeal has been preferred under Section 224 of the Rajasthan Tenancy Act (In short 'the Act') by appellants being aggrieved by the judgment and decree passed by the Additional Colonization Commissioner-cum-Revenue Appellate Authority, Bikaner on 17.8.2006 in appeal No.144/2003.

2- The brief facts of this case are that the appellants filed a regular suit under Section 88 of the Act and under Section 125 and 136 of the Rajasthan Land Revenue Act, 1956 in respect of the land situated in village Godu (Tehsil Koilayat) measuring 58 bighas. This suit was filed against the State Government


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on 12.3.87 in the court of Assistant Colonization Commissioner, Kolayat, which was decreed on 12.5.1992. A reference was filed on behalf of the Govt. by Dy. Commissioner, Colonisation in this court. This court partly accepted the reference on 6.6.1996 and remanded the matter to decide the matter afresh. The Asstt. Commissioner, Colonisation, Kolayat dismissed the suit of the appellants/plaintiffs on 29.5.2003, against which the appellant filed first appeal before the Additional Commissioner, Colonization, Bikaner which was dismissed on 17.8.2006. Hence, this second appeal before this court.

3. Heard the counsels of rival parties.

4. The learned counsel for the Appellants/plaintiffs contended that the impugned judgments & decrees of the lower courts are against the established principles of law & evidence available on record. He further argued that the land in question has been in peaceful possession of the appellants since Svt. 2010. He also submitted that the appellants/plaintiffs, produced oral evidence which is sacrosanct & uncontraverted but the lower courts misused their jurisdiction and just ignored the ocular evidence. He contended that no revenue record existed in Jaisalmer State prior to Svt.2012, therefore, he could not produce the documentary evidence. He also attracted the attention of the court on the specific provision made in Section 15 AAA (8) pertaining to oral evidence where documentary evidence is not available. The learned advocate urged the court to accept the appeal and quash the judgments & decrees passed by the lower courts and to decree the suit of the appellant.

5. The learned Govt. Advocate contended that the judgment passed by the lower courts are based on the evidence available on record. He argued that there is no evidence about the relationship of the appellants/plaintiffs with Shri Mamraj. He further submitted that the reply & documentary evidence submitted by the Tehsildar on behalf of the State in the trial court explicitly manifest that the possession of the appellants is not proved since Svt. 2010 and their case does not fall in the ambit of Section 15 AAA of the Act. He contended that there is no documentary evidence about his possession and on the basis of the vague oral evidence of three witnesses khatedari of 58 bighas of Govt. land cannot be conferred. He finally urged that the land in question is classified as 'agor' land on which khatedari rights cannot be given to some individual as it is under restricted category mentioned in section 16 of the Rajasthan Tenancy Act. The learned advocate finally urged the court to dismiss this appeal as it is devoid of any merit.


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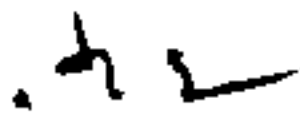
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6. The learned counsel for the respondent no.1 argued that since the land in question was Govt. land, therefore, I was allotted only 8 bighas of land out of the land in question. He contended that he has deposited the price of land with the Govt. and the land has been allotted after adhering due procedure of law. He urged the court to dismiss the appeal as the appellants were sheer trespassers on this big chunk of land and by any memo the appellants want to grab it.

7. We gave thoughtful consideration to the rival contentions of the parties. Also perused the available record.

8. In this case, it is evident from the record that initially the appellants/plaintiffs filed a suit under Section 88 of the Raj. Tenancy Act along with Section 126 & 136 of Raj. Land Revenue Act. There was no documentary evidence from the appellants/plaintiffs to prove their possession on the land in question except the statements of three witnesses produced by the plaintiffs from his own community. The Age of the witnesses in 1988 was 40, 41 and 55 years respectively and they are supporting the possession of plaintiffs since Svt.2012 when they were only 7 years, 8 years and 22 years old. This is an undisputed fact that since 1955 revenue records are being regularly maintained village wise by the state Govt. but the plaintiffs chose not to submit any documentary evidence pertaining to their possession since 1955 to 1987 (when they filed the suit). On the basis of the oral evidence available on file the trial court originally decreed the suit and declared the plaintiffs khatedar of 58 bighas of land in Godu village. When a reference was filed in this court by the Dy. Colonisation Commissioner, the decree was quashed by this court while accepting the reference and the case was remanded to the Assistant Colonisation Commissioner, Kolayat on 31.10.2002. The appellant plaintiffs filed the amended plaint. In the new plaint they added Section 15 AAA of the Act and deleted section 125 & 136 of the RLR Act, 1956 from the plaint. After submission of the amended plaint in the year 2002, the appellants/plaintiffs did not produce any other evidence even on the amended plaint. Only the State Govt. filed copies of revenue record along with their reply. The statement Govt. categorically mentioned in the reply that the plaintiffs are not nephew of Shri Mamraj son of Shri Bhoma Ram and they are not resident of Godu village. The State's reply has revealed that the possession of the plaintiffs is nowhere entered in the revenue record. One Shri Mamraj son of Shri Bhoma Ram was in possession of 132.5 bighas of land in village Godu. This area of land was shown in kutchha bigha in summary settlement and when properly measured Shri Mamraj was given khatedari of 71 - 15 Pakka bighas which is equal to about 132 bighas.

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9. We have carefully read the judgment of the trial court. The trial court in its judgment dated 29.5.2003 dismissed the suit on this ground that there is no documentary evidence of their possession since 2012, whereas the revenue record exists. The trial court has framed 7 issues on the amended plaint and the reply thereon by the State Govt. The trial court has analyzed the evidence produced before it and given lucid findings on each issue.

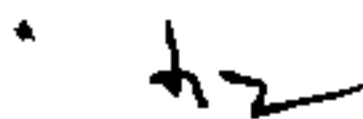
10. We also carefully went through the impugned judgment passed by the R.A.A. cum Additional Colonisation Commissioner, Bikaner on 17.6.2006. The appellate court has concurred with the findings of the trial court.

11. The learned counsel has raised one important issue before us in this case that the lower courts have ignored their oral evidence. This is undisputed that the Jaisalmer State, there was no systematic revenue record prior to Svt. 2010-12. This particular case was filed in the year 1987. There has been regular maintenance of revenue record since 1955 when Rajasthan Tenancy Act came into force. The appellants could have easily produced the copies of khasra girdawari or khasra Parivartansheel from 1955 to 1987. Despite the fact that the revenue record was meticulously maintained by the State instead to that the plaintiffs chose to produce only the oral ocular evidence. The reply of the State Govt. and the revenue record vehemently affirms that the appellants/plaintiffs were not in possession. In these circumstances, this court conforms the view taken by both the lower courts.

12. In this case we carefully went through the statements of the witnesses produced by the appellant/plaintiffs. The statements of the witnesses are stereotype and very general. This is very pertinent that out of three witnesses - two witnesses were only 6-7 years of age in Svt. 2012 and they are making such assertions that the land is ancestral out of Joint Hindu Family and in possession of the plaintiffs since 2012. This court is aware that the ocular evidence is of consequence when no other direct evidence is available. In case in hand, systematic revenue record about possession, title, encroachment etc. is being maintained by the state in Kolayat tehsil since Svt. 2012 i.e. the year 1955. The appellants/plaintiffs chose not to produce the documentary evidence pertaining to this land in question when it is available with tehsil office. In such circumstances the ocular evidence which is available on file is not adequate reliable to prove the claims of the appellants/plaintiffs.

13. In this case this is also pertinent to mention that the courts below have observed that the appellants/plaintiffs are not the residents of Godu village of


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Kolayat tehsil and they have no relation of nephew & uncle with Shri Mamraj son of Shri Bhomaram. Since there is no adequate evidence to prove that the appellant/plaintiffs are nephew of Shri Mamraj. Therefore the appellants have no strong case to succeed.

14. As discussed above, we find no merit in this second appeal, therefore, this appeal fails and the judgment & decree of the courts below are upheld.

15. Pronounced in the open court.

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(Bajrang Lal Sharma)
Member

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(Pramil Kumar Mathur)
Member