

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal Decree/T.A./4228/2004/alwar

Bagh Singh (Died) s/o Rangasingh through LR. :-

- 1- Karmo Bai w/o Bagh Singh
 - 2- Chhindo Bai w/o Rol Singh
 - 3- Virendra Singh s/o Rol Singh
 - 4- Paramjeet Singh s/o Rol Singh
 - 5- Shamsheer Singh s/o Rol Singh (minor) through mother and natural guardian Mst. Chhindo Bai w/o Rol Singh
 - 6- Raj Singh s/o Rol Singh (minor) through mother and natural guardian Mst. Chhindo Bai w/o Rol Singh
 - 7- Beersingh s/o Bagh Singh
 - 8- Balveersingh s/o Bagh Singh
 - 9- Chhindo Bai w/o Gurdeep Singh
 - 10- Gurmeet Kaur d/o Gurdeep Singh (minor) through mother and natural guardian Mst. Chhindo Bai w/o Gurdeep Singh
 - 11- Dilip Singh s/o Bagh Singh
- All by Caste Raisikh Residence Village shahpura, Tehsil Tijara, Dist. Alwar.

---Appellants

Versus

- 1- Rampat s/o Jasram by caste Ahir (Died) through legal representatives:-
 - 1/1. Prakash s/o Rampat
 - 1/2. Jalkaur s/o Rampat
 - 1/3. Mayadevi d/o Rampat
 - 1/4. Maamani d/o Rampat

All by caste Ahiran r/o village Silarpur Tehsil Tijara Dist. Alwar (Raj.)
- 2- Bhaluram s/o Thakaria by caste Ahir (Died) through legal representatives:-
 - 2/1. Giriraj s/o Bhaluram
 - 2/2. Mahendra s/o Bhaluram
 - 2/3. Gilu d/o Bhaluram
 - 2/4. Dhanpati d/o Bhaluram

All by caste Ahiran r/o village Silarpur Tehsil Tijara Dist. Alwar (Raj.)
- 3- Umrav s/o Medsingh
- 4- Kanhaiya /o Medsingh

- 5- Ragbir s/o Medsingh
6- Roshanlal /o Manaram
All by caste Ahiran r/o Gram Silarpur Tehsil Tijara
Dist. Alwar (Raj.)

-----Respondents

D.B.
Shri B.L. Naval, Member
Shri Moolchand Meena, Member

Present :-

Smt. Poonam Mathur, Advocate, Appellants.
Shri Ajit Lodha, Advocate. Respondents.

J U D G E M E N T

Dated:- 30-05-2013

1- This 2nd appeal, under section 224 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as 'the Act of 1955') has been preferred by the appellants against the judgment dated 14-06-2004 passed by the Settlement Officer-cum-ex-officio Revenue Appellate Authority, Alwar.

2- Facts of the case in brief, leading to the present appeal, are that plaintiff-appellants filed a suit, in the Court of Sub-Divisional Officer, Tijara (Trial Court), under section 188 of the Rajasthan Tenancy Act, 1955 against defendants-respondents for permanent injunction with averments that disputed land bearing khasra No. 94 area 19 Biswa, No.123 area 2 Bigha 2 Biswa, No.126 area 2 Bigha 1 Biswa, No.131 area 1 Bigha 6 Biswa, No.133 area 1 Bigha 8 Biswa No. 216 area 19 Biswa No.218 area 16 Biswa No.401 area 2 Bigha 6 Biswa and No.432 area 11 Biswa situated in village Shahpur Tehsil Tijara District Alwar is the khtedari land of the plaintiff and he is in cultivatory possession of the disputed land. The defendants have no right on the land in question, but they are threatening to disposes the plaintiff from the suit land. The defendants have given such threatening to the plaintiff on 15-03-1987. If they succeed in such intention, an irreparable loss will occur to the plaintiff. Therefore the suit under section 188 of the Act of 1955 has been filed with request to issue a permanent injunction

restraining the defendants from interfering in cultivatory possession of the plaintiff.

3- After hearing both the parties, the Trial Court dismissed the suit vide its decision dated 30-04-2002, against which the plaintiff-appellant filed an appeal in the Court of the Settlement Officer-cum-ex-officio Revenue Appellate Authority, Alwar (First Appellate Court), which was rejected on 14-06-2004. Hence, this 2nd appeal in the Board of Revenue.

4- We have heard learned counsels for both the parties.

5- The learned counsel for the appellant, while repeating the contents of appeal memo, has contended that the plaintiff-appellant is recorded khatedar of the suit land and he is in continuous cultivatory possession of the suit land. But the Trial Court has not appreciated oral as well documentary evidence adduced by the plaintiff and summarily dismissed the suit. The First Appellate Court has also not valued the evidence available on record and has rejected first appeal against the law and facts. The learned counsel has submitted that the disputed land was allotted to the appellant Bagh Singh on registration Card No.150/KH-51 on 13-05-1951. At the same time, another land was allotted to appellant's father Ranga Singh s/o Phoola Singh on registration Card No.151/KH-51 on the same date. The rehabilitation department while issuing these registration cards, entered the appellant's father's name as Ganga Singh instead of Ranga Singh in the Registration Card No.150/KH-50, and therefore land allotment order was also issued in the name of 'Bagh Singh s/o Ganga Singh' instead of 'Bagh Singh s/o Ranga Singh.' When the appellant came to know this mistake, he managed to enter correct name of his father as 'Ranga Singh' in the Revenue Records through the Settlement Department. Thereafter, appellant's correct name as 'Bagh Singh s/o Ranga Singh' is continue in the Revenue Records. But revenue record prior to such correction, stood in the name of 'Bagh Singh s/o Ganga Singh', and the defendants-respondents, taking undue advantage of this position of revenue record, got a forged registered sale deed executed in their favour by some fictitious person as 'Bagh Singh s/o Ganga Singh' and now in the garb of that forged sale deed, the defendants-respondents are trying to disturb peaceful possession of the plaintiff-appellant. In spite of a long chain of documents and witnesses submitted by the

plaintiff, both the lower courts have not appreciated the facts of the case and have unlawfully and wrongly dismissed the plaintiff's suit.

6- The learned counsel for the respondents has submitted that the plaintiff's suit in the Trial Court was simply for permanent injunction under section 188 of the Act of 1955. To succeed in the suit under section 188 of the Act of 1955, the plaintiff must be in physical possession of the suit land. The plaintiff in the present suit has utterly failed to prove his possession on suit land on the date of institution of the suit. The Trial Court has categorically observed that the plaintiff has not produced any evidence to prove his possession. The plaintiff even, does not know whereabouts of the disputed land. He has also not produced any record regarding allotment of the land. The learned counsel for the respondents have also argued that the plaintiff-appellant is not a Khatedar tenant of the suit land. He is recorded as Gair Khatedar and a Gair Khatedar cannot bring a suit for permanent injunction under section 188 of the Act of 1955. In the last he has submitted that since the suit for permanent injunction was not proved in the Trial Court, concurrent findings of both the lower court does not require any interference at second appeal level.

7- We have given a thoughtful consideration to the rival contentions made by both the learned counsels for the parties and we have also gone through the record and the impugned order available on the file. The Trial Court, on the basis of plaint and the written statement, had framed following issues in this case:-

- (1) Whether the plaintiff is allottee Gair Khatedar and he is in cultivatory possession of the disputed land? (आया वादी विवादित आराजी का अलोटी गैर खातेदार एवं काबिज काश्त है?)
- (2) Whether the plaintiff is entitled to get permanent injunction against defendants? (आया वादी आराजी की बाबत हुक्मइस्तनाईदमामी से प्रतिवादी को पाबन्द कराने का अधिकारी है?)
- (3) Whether the disputed land is custodian land and is the suit is maintainable in the Revenue Court? (आया आराजी कस्टोडियन लैण्ड है एवं दावा काबिल समाअत अदालत है?)
- (4) Relief? (अनुतोष?)

8- The Trial Court has referred documents as khasra girdawari of Samvat 2043, zamabandi Samvat 2039, receipts, Cooperative Societies' passbooks produced by the plaintiff, witnesses produced by the plaintiff as PW-1 Bagh Singh, PW-2 Kala Singh and PW-3 Ranveer Singh. Documents produced by the defendants like Registration Card, Sale deed dated 25-02-1969, Voter-list of Gram Panchayat and witnesses of the defendants as DW-1 Roshan, DW-3 Hukamchand and DW-3 Kashmir Singh have also been referred. After referring above mentioned documents and witnesses, the Trial Court has concluded as follows:-

“बकुलाये फरीकेन की बहस पर मनन किया। पत्रावली का अवलोकन किया। प्रस्तुत रिकॉर्ड एवं रूलिंग का भी अवलोकन किया। जिससे स्पष्ट है कि वादी का विवादित आराजी पर कोई कब्जा काश्त वर्ष 1967 से नहीं है। तथा उसको विवादित आराजी का भी पता नहीं है जैसा कि उसने स्वयं अपने बयान में दर्ज कराया है। वादी द्वारा अलोटमेंट सम्बन्धी भी कोई रिकॉर्ड पेश नहीं किया है ना ही रजिस्ट्रेशन कार्ड पेश किया है जिससे यह सिद्ध हो सके कि वादी को विवादित आराजी अलोट हुई थी। कस्टोडियन भूमि का वाद भी इस न्यायालय में नहीं चल सकता है। प्रतिवादीगण द्वारा विवादित आराजी अलोटी बागसिंह पुत्र गगासिंह से जरिये रजिस्टर्ड बैनामा खरीद की है तब से मौके पर भी काबिज काश्त चला आ रहा है।

अतः वादी का मौके पर कब्जा नहीं होने से स्थाई निषेधाज्ञा प्राप्त करने का भी अधिकारी नहीं है।

अतः उपरोक्त विवेचन के आधार पर दावा वादी खारिज किया जाता है।”

9- From the perusal of the Trial Court's decision dated 30-04-2002, it is clearly evident that the Court has not discussed and analyzed documentary as well testimonial evidence issue-wise. Though the Court has given a summarized finding on all points contained in the issues, but documents and statements of the witnesses have been simply referred. The contents of the documents and testimony deposed by the witnesses have not been discussed, nor any mention has been made as to which issue is being decided on what documentary or testimonial evidence. Thus the Trial Court has clearly failed to comply with mandatory provisions of Order 14 Rule 2 of the Civil Procedure Code, 1908. It was the duty of the Trial Court to discuss and decide each and every issue on the basis of evidence available.

We are of a firm view that mere perusal of a judicial decision should reveal precisely which issue has been decided on basis of what documentary or oral evidence and that how the court has reached on conclusion on a particular issue. Since it has not been done in the present case, we do not deem it fit to affirm the decision dated 30-04-2002 passed by the Trial Court. The First Appellate Court has also, without discussing issues in the light of evidence available, has endorsed the decision of the Trial Court, therefore decision dated 14-06-2004 of the First Appellate Court also does not deserve to be affirmed. In view of this state of affairs, decision of both the lower courts deserves to be set aside. However, since documents and evidence is available on the file of the Trial Court and contending parties have not requested to produce any additional evidence, so remanding the case back to the Trial Court or First Appellate Court would not serve any specific purpose, instead it would delay the disposal of the case. Therefore we deem it fit to decide the case on merits at our level.

10- The learned counsel of the defendant-respondent has argued that a Gair Khatedar tenant is not entitled to file a suit for permanent injunction under section 188 of the Act of 1955. To understand this issue, it is proper to have a look at section 188 of the Act, 1955, which is as under:-

"188. Injunction against wrongful ejectment.- (1) Any tenant whose right to or enjoyment of whole or a part of his holding is invaded or threatened to be invaded by his landholder or any other person may bring a suit for the grant of a perpetual injunction.

(2) The court may after making the necessary enquiry grant a perpetual injunction in the following cases, namely-

(a) if there exist no standard for ascertaining the actual damage caused likely to caused by invasion;

(b) if the invasion is such that pecuniary compensation does not afford relief;

(c) where it is probable that pecuniary compensation cannot be got for the invasion;

(d) where the injunction is necessary to prevent a multiplicity of proceedings."

It is clear from perusal of section 188 that expressions "Khatedar" or "Gair Khatedar" have not been used in the said section, but expression "tenant" has been used in sub-section (1) of the said section 188. Meaning thereby, a tenant can file a suit

for permanent injunction under section 188 of the Act, 1955 if his cultivatory possession over the suit land is threatened by someone. Classes of tenants have been defined under section 14 of the Act of 1955, wherein Gair Khatedar is also recognised as a tenant at par with the Khatedar “for the purpose of this Act.” In view of this legal position, this court is of considered view that not only a Khatedar tenant, but also a **Gair Khatedar tenant having possession over the suit land, is entitled to bring a suit for permanent injunction under section 188 of the Act of 1955, if his possession is threatened.** Therefore, objection raised by the learned counsel of the respondent in this regard is not sustainable and is hereby rejected.

11- Out of 3 issues framed by the Trial Court in this case, we wish to decide first of all issue No.3 (आया आराजी कस्टोडियन लैण्ड है एवं दावा काबिल समाअत अदालत है?), as it is purely a legal issue regarding jurisdiction of the Revenue Court. It is not disputed that the suit land is custodian land. The Trial Court has concluded that land being a custodian land, Revenue Court is not empowered to try this case. We are inclined to disagree with this conclusion of the Trial Court. We are of the view that a suit for permanent injunction under section 188 is not barred by any provision of the Acts applicable to the custodian land. It is appropriate to have a look at relevant provisions of the three major Acts dealing with the custodian or Evacuee land, which are as under:-

(1) Section 46 of the Administration of Evacuee Properties Act, 1950:

“46.Jurisdiction of civil courts barred in certain matters:

Save as otherwise expressly provided in this Act, no civil or revenue Court shall have jurisdiction -

- (a) to entertain or adjudicate upon any question whether any property or any right to or interest in any property is or is not evacuee property; or*
- (b) [Omitted by Administration of Evacuee Property (Amendment) Act, 1953 (11 of 1953). S. 14 (6-5-1953).]*
- (c) to question the legality of any action taken by the Custodian-General or the Custodian under this Act; or*
- (d) in respect on any matter which the Custodian-General or the Custodian is empowered by or under this Act to determine.”*

(2) Section 20 of the Evacuee Interest (Separation) Act, 1951:

“20. Jurisdiction of Civil Courts barred in certain matters:

(1) Save as otherwise expressly provided in this Act, no Civil or Revenue Court shall entertain any suit or proceeding in so far as it relates to any claim to composite property which the competent officer is empowered by or under this Act to decide, and no injunction in respect of any action taken or to be taken by the competent officer in respect of the composite property shall be granted by any Civil Court or other authority.

(2) All suits and proceedings pending before a Civil or Revenue Court at the commencement of this Act shall, in so far as they relate to any claim filed before a competent officer under section 7, be stayed during the pendency of any proceeding under this Act.

(3) Nothing in sub- section (1) shall prevent any Civil or Revenue Court from entertaining any suit or proceeding relating to any right in respect of any payment made, or property transferred or delivered, to a claimant under the provisions of this Act which any other claimant or other person may be entitled by due process of law to enforce against the claimant to whom the payment is made or the property is delivered or transferred.”

(3) Section 36 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954:

“36. Bar of jurisdiction:

Save as otherwise expressly provided in this Act, no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Central Government or any officer or authority appointed under this Act is empowered by or under this Act to determine, and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”

12- Mere perusal of relevant sections of all the three Acts, dealing with the administration and allotment of custodian or evacuee lands, as cited above, reveals that bar of jurisdiction of civil or revenue courts has been provided only in respect of any action taken or purported to be taken by any officer or

authority appointed and empowered to take such action by these three Acts. In the present case, the plaintiff has filed a suit under section 188 of the Rajasthan Tenancy Act, 1955 against a private person who allegedly threatens peaceful possession of the plaintiff on his khatedari land. Therefore such a suit for permanent injunction does not come under domain of laws relating to custodian or evacuee land. We are also of the view that **once the custodian land is allotted by a competent authority to a person and such an allottee gets Khatedari/ Gair Khatedari rights thereof, the land no more vests in the Custodian and it becomes Khatedari/ Gair Khatedari agricultural land of an individual tenant at par with other revenue land. All the provisions of Rajasthan Tenancy Act, 1955 applicable to tenancy land automatically becomes applicable to such land also.** If cultivatory possession of a tenant is threatened by someone, the aggrieved person is entitled to get relief of permanent injunction under section 188 of the Act of 1955 read with entry No.23-C of the Schedule-III of the said Act, from competent Revenue Court, and it is not material from which source the tenant has got such Khatedari land. This view of this court finds support from RRD 1975 NUC 115 (case of Ramjilal versus Custodian-cum-Regional S.C. Jaipur), wherein a Division Bench of the Board in a case under section 88, 89 and 188 Rajasthan Tenancy Act, 1955, after discussing section 46, 12 and 9 of the Administration of Evacuee Properties Act, 1950, section 20, 2(b) and 11 of the Evacuee Interest (Separation) Act, 1951 and section 36 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, has held that suit for declaration and permanent injunction is entertainable by a competent Revenue Court.

13- In view of the discussions as above, we set aside the decision of the Trial Court as well as First Appellate Court on issue No.3 and we hold that the suit under section 188 of the Rajasthan Tenancy Act, 1955 in the present case, is well within the jurisdiction of the Revenue Court.

14- Issue No. 1 (आया वादी विवादित आराजी का अलोटी गैर खातेदार एवं काबिज काश्त है?) is about title and possession of the plaintiff-appellant. This issue is based on pleadings of plaintiff. The plaintiff, in his plaint has averred that he is the Gair-Khatedar tenant of the disputed land and he is in cultivatory

possession. He is paying rent to the government and presently he has sown crop of Wheat, Barley and Mustard, and he has started harvesting the Mustard crop. So far as recorded khatedari is concerned, documents like Ex-A-21 Khasra Milan (comparative chart of old and new khasra numbers), Ex-2, Zamabandi Samvat 2019, Ex-3, Zamabandi of Samvat 2019, Ex-A-16 Zamabandi of Samvat 2029, Ex-A-16 Zamabandi of Samvat 2029, Ex-A-17 Zamabandi of Samvat 2029, Ex-A-18 is Zamabandi of Samvat 2019 are there in the Trial Court's file which prove that the disputed land excepting khasra number 94 is recorded in the Revenue Record in the Gair Khatedari of the plaintiff-appellant. Zamabandi of Samvat 2056 is also available in appeal's file and it also shows that the disputed land apart from khasra number 94 is in the Gair khatedari of the plaintiff. Thus it is proved that apart from present khasra number 94, all other khasra numbers of the disputed land are recorded in Gari khatedari of Bagh Singh s/o Ranga Singh. Present khasra number 94 is recorded in the name of Bagh Singh s/o Ganga Singh as allottee. It is otherwise also not disputed that the suit-land is recorded in the name of present appellant Bagh Singh s/o Ranga Singh.

15- The suit filed by the plaintiff-appellant is for permanent injunction, and for succeeding in a suit for permanent injunction, the plaintiff should prove his title as well as physical possession over the suit land on suit date. The title of the land, apart from one khasra number 94 is in the name of plaintiff-appellant. The suit was filed on 18-03-1987 and to get a decree of permanent injunction, the plaintiff has to prove that he was in physical possession of the disputed land in the year 1987. The calendar year 1987 is corresponding with the Vikram Samvat 2043-44. The plaintiff has submitted Ex-P-1 which is khasra Girdawari of Samvat 2043. Plaintiff's name is mentioned in column number 5 of that khasra Girdawari as Gair Khatedar, but possession of the plaintiff cannot be presumed on the basis of this khasra Girdawari as there is no entry regarding cultivatory possession in it. It is a settled position that writing of cultivator's name in khasra Girdawari was discontinued after Samvat 2033. So this khasra Girdawari of Samvat 2043 cannot be treated as a conclusive proof of plaintiff's possession on the disputed land. The plaintiff examined on oath as many as 3 witnesses. PW-1 Bagh Singh is plaintiff himself and major part of his testimony is regarding issuance of registration card, allotment of land etc. About his possession over the suit land, PW-1 admits in cross-

examination that he does not know whereabouts of the land in question. He does not know also about surroundings of the disputed land. He says that- "मेरे नम्बर जो मुझे अलॉट हुये मुझे याद नहीं। नये नम्बर बाबत भी मुझे याद नहीं। मेरी जमीन 16 बीघा के 9 खेत हैं। सबसे बड़ा खेत कौन सा है, मौके पर बता सकता हूँ। रकबा नहीं बता सकता। अन्य खेत का भी रकबा नहीं बता सकता। मैं खेतों के चारों ओर के नाम 9 खेतों के तो नहीं बता सकता। पड़ोसियों को जानता हूँ। मैंने अपने खेतों में गेहूँ और सरसों की फसल बो रखी है।" Thus the plaintiff does not know whose land is there surrounding the disputed land. A witness, who is plaintiff himself and who does not know whereabouts of the land, cannot be relied upon regarding possession of the land. PW-2 Kala Singh also does not know anything about the disputed land. He says in cross-examination that- "आठों खेतों के चारों कोने के काश्तकारान के नाम मुझे मालूम नहीं। उस तरफ के सभी खेतों में गुवार बाजरा बो रखा है। इन आठ खेतों का पता नहीं क्या बो रखा है।" Another witness Kashmir Singh (PW-3) also does not tell any thing regarding identity of the disputed land. Even he also does not know that whose land surrounds around the disputed land. Therefore his evidence cannot be relied upon for the purpose of possession over the land in question.

16- The plaintiff has also submitted some other documents like registration card issued by rehabilitation department. On the other hand there is also Allotment Farm Araaji of year 1956 (Samvat 2012) according to which old khasra numbers of the disputed land are recorded in the name of Bagh Singh s/o Ganga Singh. But the suit in hand is not for declaration of title, so these documents are not relevant in the present litigation which is only for permanent injunction, and only recorded title and physical possession on suit date is relevant.

17- Our discussions hereinabove can be summarized that disputed land apart from one khasra number 94 is in the Gair Khatedari of the plaintiff on suit date, but the plaintiff is unable to prove his physical possession over the suit land. Therefore issue No.1 (आया वादी विवादित आराजी का अलोटी गैर खातेदार एवं काबिज काश्त है?) is partially, to the extent that disputed land except khasra No.94 is in the Gair Khatedari of the plaintiff, is decided in favour of the plaintiff. However the physical possession of the plaintiff over the suit land on suit date is not

proved. Therefore issue to the extent of possession is decided against the plaintiff.

18- Issue No.2 (आया वादी आराजी की बाबत हुक्मइस्तनाईदमामी से प्रतिवादी को पाबन्द कराने का अधिकारी है?) is regarding entitlement of the plaintiff to get a permanent injunction against defendants. It has already been decided in issue number-1 that the plaintiff is unable to prove his physical possession over suit land on suit date. So we are of the view that he is not entitled to get a decree of permanent injunction against defendants. Therefore issue No.2 is decided against the plaintiff.

19- As a result of discussions hereinabove, this court is of the considered view that the plaintiff is not able to prove his suit for permanent injunction under section 188 of the Act of 1955. Resultantly the 2nd appeal in hand fails and it deserves to be disallowed and rejected. Hence the appeal in hand is hereby rejected.

Pronounced in the open court.

(Moolchand Meena)
Member

(B. L. Naval)
Member