

**REPORTABLE**

**IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER**

**Appeal/LR/807/2012/Ajmer.**

1. Farooq Khan Advocate (Vidhik Paramarshdata)
2. Dr. G.M. Chouhan, Sarankshak  
Madar Sahab Mohalla Vikas Samiti (regd.) Madar Tekri  
Kundan Nagar, Ajmer.

...Appellants.

Versus

1. Prem Swaroop Chandak son of Onkar Dutt Chandak resident of  
156/10, Civil Lines, Ajmer.
2. Kishan Dutt Chandak son of Onkar Dutt Chandak resident of  
156/10, Civil Lines, Ajmer (deceased) through LR:-  
2/1 Smt. Shanta Chandak widow of Kishan Dutt Chandak resident  
of D-122, Kabir Marg, Bani Park, Jaipur.
3. Urban Improvement Trust, Ajmer through Secretary.
4. State of Rajasthan through Tehsildar, Ajmer.

...Respondents.

**S.B.**

**Shri Bajrang Lal Sharma, Member**

**Present:-**

Shri Sameer Ahmed, counsel for the appellants.

Shri P. Gandevia and Shri S.K. Sharma, counsel for the respondents No. 1 and 2.

Shri Ajit Singh, counsel for the respondent No.3.

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Date: 17.2.2014

**J U D G M E N T**

This second appeal has been filed under section 76 of the Rajasthan Land Revenue Act, 1956 (in short 'the Act') being aggrieved by the judgment passed by Divisional Commissioner, Ajmer on 17.1.2012 in appeal No. 80/2011.

2. The brief facts of the case are that in village Thok Maliyan Tehsil Ajmer, Onkar Dutt son of Chaturbhuj Chandak was entered as khatedar tenant in revenue records. After his death, his legal representatives filed an application for sanctioning the mutation on the basis of succession. Patwari Thok Maliyan Ajmer-I entered a mutation No. 52 but learned Tehsildar, Ajmer rejected the mutation on 12.1.1984. Thereafter the respondent-applicants filed an application on 8.9.2006 for sanctioning the mutation but the application was rejected on the basis that the mutation No. 52 has already been decided on 12.1.1984. The respondent No. 1 and 2 filed an appeal against the order dated 10.10.2006 before

Additional Collector, Ajmer which was partly accepted on 9.1.2007 and the order passed on 12.1.1984 and 10.10.2006 by Tehsildar, Ajmer were quashed and set aside and the case was remanded to Tehsildar to decide the case on merits. Tehsildar, Ajmer passed an order on 19.8.2010 holding that the disputed land may be entered in the names of respondents. Being aggrieved by the order passed by the Tehsildar, appellants filed an appeal before Divisional Commissioner, Ajmer. Learned Divisional Commissioner dismissed the appeal on the technical ground that the appeal has been filed against the dead persons. This second appeal has been emanated from the judgment passed by learned Divisional Commissioner on 17.1.2012.

3. I have heard the learned counsels of the parties.

4. Mr. Sameer Ahmed, learned advocate for the appellants contended that Onkar Dutt was entered as khatedar tenant of the disputed land measuring 16.02 bighas in village Thok Maliyan Tehsil Ajmer. On death of Onkar Dutt, his legal representatives filed an application to enter mutation in favour of the successors of the deceased tenant but the said mutation No. 52 of village Thok Maliyan was rejected by the Tehsildar on 12.1.1984. The legal representatives of the deceased tenant remained silent for about 22 years and they filed an application before Tehsildar on 8.9.2006 which was also rightly rejected on 10.10.2006 by the Tehsildar. He further contended that on filing the appeal before Additional Collector, Ajmer, the case was remanded to Tehsildar and an application under Order 1 Rule 10 of the Civil Procedure Code was filed before the Tehsildar by the petitioners along with certain documents. There is explicit mention in the order sheet of Tehsildar's court on 28.2.2007 and it has also been mentioned in the order sheet that some part of the disputed land has been acquired under urban ceiling. Since the respondents had filed a suit under section 188 of the Rajasthan Tenancy Act for obtaining a decree of perpetual injunction before Sub-Divisional officer, Ajmer, the proceedings of the case was deferred till final decision

of the suit. He also stated that the suit filed by the respondents (suit No. 27/98) was dismissed in default on 22.6.2009 and a suit was also pending before the civil court in which the Urban Improvement Trust also filed its reply that the disputed land to the tune of 7837 Sq. meters and 7192 sq. mtrs. have been in possession of the Urban Improvement Trust. He also submitted that the report filed by Tehsildar in this case before the court explicitly mentioned that there is grave yard, mosque, *chilla* and nalla etc on the disputed land and the Urban Improvement Trust also carved out martyr Sudhir Kumar Mehta residential scheme but since the petitioners raised the objection that the disputed land is part of graveyard, mosque and mela ground, the residential scheme was dropped by the Urban Improvement Trust. The learned advocate further argued that respondent No. 1 and 2 are real brothers and it was never reported before any court that the respondent No. 2 is dead. The learned appellate court arbitrarily dismissed the appeal without looking into the merits of the case. He also submitted that if by omission some appeal has been preferred against a dead person, the entire appeal cannot be dismissed solely on this ground. Learned appellate court should have decided the appeal on merits in larger interest of justice instead of dismissing it on technical grounds. He also argued that the disputed land is being used in larger public interest; therefore, the petitioners filed the appeal in a representative capacity which should not have been dismissed on the small technical grounds. He finally urged the court that when the disputed land is being used as a graveyard, mosque, mela ground etc. and the title of the disputed land vests with the Urban Improvement Trust after being acquired under Urban land ceiling therefore the respondents do not have any right, title on the disputed land but in connivance with the revenue officials, this land is being sold in residential plots and misused by the respondents having no right, title. He requested the court to accept the second appeal and quash and set

aside the impugned judgments passed by Divisional Commissioner and Tehsildar, Ajmer.

5. Mr. P. Gandevia and Mr. S.K. Sharma, learned advocates for the respondents contended that this appeal has been filed against the judgment passed by Divisional Commissioner and only this limited issue is to be examined that whether the appeal could have been dismissed being a nullity as it was filed against a dead person. The learned advocates further argued that all other issues are extraneous and cannot be decided on merits at this stage of second appeal only the Divisional Commissioner has the jurisdiction to decide the case on merits. The learned advocates argued that since the appeal filed before the Divisional Commissioner was against Kishan Dutt Chandak also who died on 29.10.2010, therefore, the appeal was a nullity. The learned advocate cited 1985 RRD 564 and 2009 RBJ 483 in support of his arguments.

6. Mr. Ajit Singh, learned advocate for the Urban Improvement Trust argued that the disputed land was acquired under Urban Land Ceiling and 7837 Sq. mtrs and 7192 sq. mtrs. land was transferred to Urban Improvement Trust on 13.3.1993. He also submitted that Martyr S.K. Mehta was launched on the disputed land but the scheme was dropped owing to some serious objections from some quarters. He also admitted that the disputed land was entered in name of Urban Improvement Trust and the rights of the tenants were extinguished after the disputed land was acquired under Urban Land Ceiling.

7. I have given serious consideration to the rival contentions raised by the learned counsels of the parties and have perused the record available on file.

8. Indisputably, being aggrieved by the order passed by Tehsildar, Ajmer on 19.8.2010 in case No. 20/2007 an appeal was preferred by the petitioners on 11.10.2011 before Additional Divisional Commissioner, Ajmer. Along with the appeal an application under section 5 of Indian Limitation Act was also

filed. This is also factually true that the appeal was filed against Prem Swaroop Chandak, Kishan Dutt Chandak sons of Onkar Dutt Chandak, Urban Improvement Trust and against the State of Rajasthan. This is also an accepted fact that Kishan Dutt Chandak died on 29.10.2010 before filing the appeal before Additional Divisional Commissioner, Ajmer on 11.10.2011.

9. The learned Divisional Commissioner has dismissed the appeal on 17.1.2012. The operative portion of the learned Divisional Commissioner's impugned judgment is reproduced as under:-

“मैंने दोनों पक्ष के विद्वान अभिभाषकगण द्वारा इस प्रारम्भिक आपत्ति पर उठाये गये बिन्दुओं पर मनन किया। यह सर्वविदित प्रावधान है कि मरे हुए व्यक्ति के विरुद्ध अपील नहीं की जा सकती है। इस सम्बन्ध में न्यायिक दृष्टान्त आर.आर.डी. 1985 पृष्ठ 564 (गुलकन्दी/भगवन्दी) में यह सिद्धान्त पारित किया है कि मृतक व्यक्ति के विरुद्ध प्रस्तुत की गई अपील nullity है। इसी प्रकार माननीय उच्चतम न्यायालय द्वारा आर.बी.जे. (16) 2009 पृष्ठ 483 सिविल अपील संख्या 1259/2009 (टी. ग्लानवेल बनाम टी.एस. कनगराज व अन्य) में यह सिद्धान्त पारित किया गया है कि मृतक व्यक्ति के विरुद्ध पारित आदेश nullity है। अभिलेख के अवलोकन से स्पष्ट है कि रेस्पोंडेन्ट संख्या 2 श्री किशनदत्त चण्डक का देहान्त दिनांक 28-10-2010 को हो गया और अपील दिनांक 11-10-2011 को इस न्यायालय में प्रस्तुत की गई है।

अतः उपरोक्त वर्णित माननीय न्यायालयों द्वारा पारित निर्णयों का सम्मान करते हुए दोनों पक्ष की बहस एवं अभिलेख के आधार पर अपीलान्त की अपील मृतक व्यक्ति के विरुद्ध होने के कारण इस बिन्दु पर ही निरस्त की जाती है।”

10. This court has scanned the record of learned Divisional Commissioner. Learned advocate for Prem Swaroop has filed his Vakalatnama on 3.11.2011 before Additional Divisional Commissioner's court and he also filed another application on 20.12.2011 but did not mention that his real brother Kishan Dutt Chandak has already died and his legal representatives should be brought on record. He has filed an application on 21.12.2011 in which he has mentioned that Kishan Dutt Chandak has died on

28.8.2010 but he has not given details of his legal representatives. Thereafter this fact has been argued before learned Divisional Commissioner without bringing the legal heirs of the deceased on record. The learned Divisional Commissioner dismissed the appeal on the ground that it has been filed against a dead person.

11. This court has also been apprised that 7192 sq. mtrs. of land was acquired under urban ceiling from khasra No. 3809 and 3753 to 3783, 3786 and 3787 which was in tenancy of Prem Swaroop Chandak, the Urban Improvement Trust took possession of this land on 13.9.1993. Likewise 7837 Sq. mtrs. of land was acquired under urban land ceiling from khasra No. 3753 to 3784, 3786 and 3787 held by Kishan Dutt Chandak son of Onkar Dutt Chandak, possession of this land was taken by Urban Improvement Trust on 13.9.1993. This is also an accepted fact that Prem Swaroop Chandak filed a regular suit No. 27/98 against Urban Improvement Trust, Ajmer and his own brother Kishan Dutt Chandak in the year 1998 and Mr. P. Gandevia, the then learned advocate for the Urban Improvement Trust filed the reply on behalf of the Trust before Sub-Divisional Officer, Ajmer wherein the Urban Improvement Trust unequivocally averred that in total 15029 sq. mtrs. (7192 and 7837 sq. mtrs.) land has been taken in possession and this land is situated in martyr Sudhir Mehta residential scheme carved by the Urban Improvement Trust. This was further apprised that the Urban Improvement Trust gave up this scheme because the disputed land was largely used for graveyard, mela ground and other community facilities. Later on the suit filed by Prem Swaroop Chandak was dismissed in default on 22.6.2009 by the trial court.

12. This court has also been apprised that Prem Swaroop Chandak is alienating some part of the disputed land to various individuals during the pendency of the mutation appeal/ revision before competent courts. Two sale deeds have been executed in favour of Sharif Khan son of Hamid Khan and Mrs. Anjuman Ara on 15.10.2013, the other two sale deeds have been executed in

favour of Mrs. Yasmin Khan and Tajwar Khan and Sikander son of Wali Mohammed on 26.6.2012. The sale deeds executed on 26.6.2012 categorically mention that the plots sold by Prem Swaroop Chandak are situated in khasra No. 3774 of village Ajmer Thok Maliyan-I. The land acquired under urban land ceiling also includes khasra No. 3774 of Ajmer Thok Maliyan-I. Therefore, when the title of the land in dispute is hanging in balance, the non-petitioners should not have alienated the disputed land adding to multiplicity of proceedings.

13. The reports of the revenue officials available on file manifestly reveal that the classification of the disputed land is nalla, abadi and mosque. Even the Tehsildar has reported that only few khasra numbers are vacant and rest are still under mosque, abadi and nalla. Mr. Ajit Singh, learned advocate for the Urban Improvement Trust has also admitted that on some part of the disputed land a residential colony in name of Martyr Sudhir Mehta was notified but on protest from various corners, the scheme was given up by the Urban Improvement Trust.

14. This court has also carefully perused mutation No. 52 in which succession of Onkar Dutt son of Chaturbhuj Chandak was entered by the Patwari and rejected by Tehsildar on 12.1.1984. Prem Swaroop Chandak and his brother again filed an application in the year 2006 which was also rejected stating that the mutation No. 52 has already been decided on 12.1.1984, therefore, no application can be made in this regard. On an appeal filed by Prem Swaroop Chandak, the learned Additional Collector, Ajmer partly accepted the appeal on 9.1.2007 quashing and setting aside the orders passed on 12.1.1984 and 10.10.2006 and remitted the case to Tehsildar. The Tehsildar passed an order on 19.8.2010 holding that succession of Onkar Dutt vests only in Kishan Chand and Prem Swaroop Chandak, his two surviving sons. The Tehsildar did not find it appropriate to ask the Patwari to sanction the new Mutation on the basis of his order, as mutation no 52 was already quashed by the Additional collector on 09-01-2007. On an appeal

by the appellants before learned Divisional Commissioner under section 75 of the Rajasthan Land Revenue Act, the learned Divisional Commissioner disposed of the appeal by dismissing it as the appeal was filed against the dead person and hence a nullity.

15. This court is also mindful of this fact that this second appeal is directed against the impugned order passed by the Divisional Commissioner and this court has to examine only this issue that whether dismissal of the appeal on the ground of filing it against a dead person is legally sustainable or not. The learned advocate for the non-petitioners has vehemently argued that this court has very restrictive jurisdiction in deciding this second appeal and it cannot go on merits of the case. Under section 76 of the Rajasthan Land Revenue Act, 1956 following provision has been provided:-

**76 Second appeal** [xxx] An appeal shall lie from [an order] passed in appeal-

(a) by a Collector in matters not connected with settlement or land records- to the [revenue appellate authority], or

(b) by a Settlement Officer acting under section 181, to the Settlement Commissioner, or

(c) by a Land Records Officer- to the Director of Land Records, or

(d) by the [commissioner or the] [revenue appellate authority] or the Settlement Commissioner to the Board.

16. Indisputably, as per the clear provisions of law, this second appeal has been filed against the impugned judgment passed by learned Divisional Commissioner, Ajmer on 17.1.2012. In view of this court, some vital issues of public interest are involved in this case because some part of the disputed land was acquired under urban land ceiling, therefore, it will be in larger interest of justice to adjudicate the issues involved in this case on merits. Therefore, it will not be justifiable to keep this matter closed solely on the



ground of submission of appeal against a dead person. This court finds it appropriate to provide an opportunity to the appellants to file fresh appeal before learned Divisional Commissioner, Ajmer under section 75 of the Act within thirty days of this judgment after impleading the legal representatives of the deceased Kishan Dutt Chandak as respondents. The learned appellate court will also liberally consider the issue related to limitation looking into the circumstances of this case.

17. As discussed above, the second appeal filed by the appellants is partly accepted. The impugned judgment passed by learned Divisional Commissioner is accordingly amended. If need be, the appellants are also directed to file application of temporary injunction before the appellate court for restraining the respondents for further alienation. If such an appeal is preferred before the appellate court, the appellate court is directed to dispose of the appeal within ninety days of filing the appeal.

Pronounced.

(Bajrang Lal Sharma)  
Member