

REPORTABLE

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

**Appeal Decree/TA/757/2003/Jalore.**

1. Mangi Lal son of Uda Ji (deceased) through LRs:-

1/1 Smt. Ramu widow of Mangi Lal

1/2 Pukhraj son of Mangi Lal

1/3 Kheta Ram son of Mangi Lal

1/4 Tara Ram son of Mangi Lal

1/5 Magha Ram son of Mangi Lal

1/6 Jagdish son of Mangi Lal

1/7 Devi daughter of Mangi Lal

1/8 Pawani daughter of Mangi Lal

1/9 Manju daughter of Mangi Lal

All by caste Mali residents of Jalore.

...Appellants.

Versus

State of Rajasthan.

...Respondent.

**D.B.**

**Shri Bajrang Lal Sharma, Member**

**Shri R.C. Gupta, Member**

**Present:-**

Shri O.L. Dave, counsel for the appellants.

Shri R.K. Gupta, Govt. Advocate for respondent.

-----

Date: 29.11.2013

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

The appellants have filed this second appeal under section 224 of the Rajasthan Tenancy Act, 1955 (in short 'the Act') being aggrieved by the judgment and decree passed by Revenue Appellate Authority, Pali camp Jalore on 30.1.2003 in appeal No. 115/2001.

2. The factual matrix of the case is that the appellant-plaintiff filed a regular suit under section 15, 88 and 188 of the Act against the State of Rajasthan before Assistant Collector (Headquarters), Jalore. The plaintiff averred in his plaint that he is in long possession of khasra No. 798 of village Jalore-B measuring 20 bighas. The learned trial court dismissed the suit filed by the plaintiff on 31.8.2001. Being aggrieved by the judgment and decree passed by the trial court, an appeal was preferred by the appellant before Revenue Appellate Authority, Pali which was also dismissed on 30.1.2003. The appellant has assailed the judgment and decree passed by the first appellate court before this court under section 224 of the Act.

3. Heard the learned counsels of the parties.

4. Mr. O.L. Dave, learned counsel appearing for the appellant contended that the appellant is in continuous possession of the disputed land since svt. 2008 and he is entitled for conferment of khatedari rights on 19 bighas 18 biswas land situated in khasra No. 798 in village Jalore. He further argued that when Tenancy Act came into being in the year 1955, as the appellant was in possession of the disputed land at the time of commencement of the Act he became tenant by operation of the law under section 15 of the Act. He further contended that the dispute land has been erroneously entered as pasture land but actual ground reality is different and the disputed land is being continuously cultivated by the appellant. He further argued that the appellant has proved his plaint before the trial court on the basis of documentary and oral evidence but both the courts below failed to consider the evidence in right perspective. The learned advocate also contended that when the stay application came up to Board of Revenue, the Hon'ble Single Bench of the Board of Revenue observed in its judgment dated 4.11.1996 (Review No. 10/96/TA/Jalore) that the disputed land be given in tenancy of the appellant-plaintiff. He finally urged the court that the second appeal be accepted and the judgments and decrees passed by both the courts below be quashed and set aside.

5. Mr. R.K. Gupta, learned Government Advocate on behalf of the respondent-State contended that the appellant was not in possession of the disputed land in svt. 2012 as there is no documentary evidence produced by him to support this averment. He further submitted that the disputed land has been classified as pasture land in land records and his possession has been as a trespasser on 2 bighas or 3 bighas only and concerned Tehsildar ejected him under the proceedings of section 91 of the Rajasthan Land Revenue Act, 1956. The learned advocate finally urged the court that the suit filed by the appellant-plaintiff was not covered under section 15 and 88 of the Act and since the disputed land has been classified as pasture land there is prohibition to grant tenancy rights under section 16 of the Act. In these circumstances, the judgments and decrees passed by both the lower

courts are well within the legal provisions of Rajasthan Tenancy Act and do not require any interference at this stage of second appeal.

6. We have given thoughtful consideration to the rival contentions raised by the learned counsels of the parties and have perused the record available on file.

7. This court has carefully perused the judgments and decrees passed by both the lower courts. This is factually true that the disputed land has been entered as *gair-mumkin-gochar* at the time of filing of the suit. This is also factually true that the appellant-plaintiff did not produce jamabandi of svt. 2012 which could prove his possession on the disputed land at the time of commencement of the Rajasthan Tenancy Act, 1955. Therefore, it is baseless to state that the appellant-plaintiff was in possession when the Rajasthan Tenancy Act came into being.

8. This court has also carefully perused the judgment passed by the learned Single Bench of this court on 4.11.1996 in Review No. 10/96/TA/Jalore. In considered opinion of this court Hon'ble Member's observation that petitioner be entered as tenant of 19 bighas 18 bswas land in village Jalore Badi is misconceived. Such an observation should not have been made by the learned Member in a review petition under section 229 of the Act. In our view the observation made by the learned Member is arbitrary in nature and cannot be considered while deciding this appeal on merits.

9. This court is mindful of this fact that the tenancy rights cannot be conferred on the land classified as pasture land because there is absolute prohibition provided under section 16 of the Act. And in this case both the courts below considered this provision of law in the right spirit. In our view the appellant has trespassed over some part of the disputed land sporadically and his possession has never been uninterrupted, therefore, his claim of conferment of tenancy rights on the basis of long possession or adverse possession is also misconceived. There is no provision in Rajasthan Tenancy Act which enables any court to confer tenancy rights on the basis of long

possession/ adverse possession. It is very pertinent to mention here that Rajasthan Tenancy Act is a special law which has been legislated as a measure of land reform in the State. The legislature deliberately did not provide any provision to confer tenancy rights on the basis of adverse/ long possession to protect the small peasants from the threats of powerful people. In this case the appellant has utterly failed to prove his possession in svt. 2012 when the Tenancy Act came into existence.

10. As discussed hereinabove, we are of the considered view that both the courts below have considered all the evidence available on file and in light of the legal provisions claim of the appellant-plaintiff has been examined and disposed of in a just and appropriate manner. We do not find any infirmity in both the impugned judgments and decrees. We are in full conformity with these impugned judgments and decrees. Therefore, the second appeal filed by the appellant is dismissed being devoid of any merit. Both the impugned judgments and decrees are upheld.

Pronounced.

(R.C. Gupta)  
Member

(Bajrang Lal Sharma)  
Member