

**IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER****Reference No.6293/2002/TA/Bikaner :**

State of Rajasthan.

... Petitioner.

**Versus**

1. Baage Khan
  2. Goman Khan
  3. Punu Khan
- } sons of Shri Mithu Khan
4. Kamu Khan
  5. Bakhu Khan
- } sons of Shri Yaaru Khan
6. Kamalo widow of Shri Yaaru Khan

All are by caste Mohammaden, residents of Village Rawwala, Tehsil Kolayat, District Bikaner.

... Non-Petitioners.

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**S.B.**

Shri Pramil Kumar Mathur, Member

**Present :**

Smt. Poonam Mathur : Additional Govt. Advocate for the State.

None present : on behalf of the non-petitioners.

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Dated : 2<sup>nd</sup> May, 2013**J U D G M E N T**

This reference has been made by Collector-cum-Dy.Commissioner (Colonisation), Bikaner under section 232 of the Rajasthan Tenancy Act, 1955 and section 82 of the Rajasthan Land Revenue Act, 1956 (in short to be referred as 'the Act') by order dated 14.10.2002.

2. Brief facts of the case are that Mithu Khan, father of non-petitioners no.1 to 3 and Yaaru Khan, father of non-petitioners no.4 & 5 filed a suit in the court of Assistant Commissioner (Colonisation), Kolayat District Bikaner, claiming that the disputed land situated at Village Rawwala bearing khasra no.265 area 149 bigha 12 biswa was recorded in the name of their father Deenu Khan and after the death of Deenu Khan, this land was entered in the name of Mithu Khan being head of family (Karta). This land has continuously been cultivated by them & their forefathers, but is not so recorded in the revenue records. Hence, on the basis of long cultivatory

possession, it may be declared that they are the gair khatedar of disputed land. The Assistant Commissioner (Colonisation), Kolayat decreed the suit on 27.10.1986 and ordered to record the above mentioned land in favour of non-petitioners as gair khatedar tenant. Considering this judgment & decree in favour of non-petitioners as beyond jurisdiction, illegal and against record, Collector-cum-Dy.Commissioner (Colonisation), Bikaner has made this reference to the Board of Revenue after affording an opportunity of hearing to the non-petitioners.

3. I have heard the arguments of learned Addl.Govt.Advocate and perused the record.

4. In support of reference, learned Addl.Govt.Advocate submitted that non-petitioners have not submitted any documentary evidence of ancestral cultivatory possession before trial court. Assistant Commissioner (Colonisation), Kolayat has passed the judgment & decree without looking into the facts of the written statement. The above said judgment & decree is absolutely against the record and in violation of the provisions of Revenue Courts Manual because there is no provision in the revenue law to grant the gair khatedari, hence deserves to be set aside. In view of above, learned Addl.Govt.Advocate requested that the reference be accepted.

5. I have given my thoughtful consideration to the contentions made by learned Addl.Govt.Advocate and examined the record cautiously.

6. From perusal of available record, it appears that the non-petitioners had filed a revenue suit on the basis of fact that they are in the continuous possession of the land long ago before inception of Rajasthan Tenancy Act, 1955. Due to special geographical conditions of particular area, revenue records were not prepared. So on the basis of continuous possession since before Samvat 2012, they may be declared as khatedar.

7. This fact is admitted in the plaint presented by non-petitioners before trial court that they are not the khatedar tenants of the disputed land, so in absence of any cogent written authorization, mere on the basis of

possession, it cannot be presumed that non-petitioners have acquired this land in the capacity of “Tenant”. This land does not belong to khatedari of Particular Private Person, but vests with government and without any written authority of competent person, one cannot be presumed as “tenant” on such land. So in the absence of any lawful permission, only inference can be gathered from above circumstance is that plaintiffs were in so called possession of land as ‘trespasser’ only and not as tenant. Moreover, it is also settled position that trespasser cannot get any relief against true owner in the eye of law.

8. As per definition of “Tenant” provided in Rajasthan Tenancy Act, 1955 tenant shall mean the person by whom rent is payable, so this important fact has to be proved by non-petitioners that they are in possession of land as tenant and they have paid the rent regularly. But before learned trial court, non-petitioners did not prove & exhibit any kind of documentary evidence in support of their contentions. Though, the learned trial court has made the reference of khasra girdawari and Dhaal Banchh in impugned judgment, but those documents were not proved & exhibited before the learned trial court. Even otherwise also in khasra girdawari, the land was recorded as sewai chak land and Dhaal Banchh did not contain any identification of the disputed land. It will also be pertinent to mention that above documents did not cover the entire area of 149 bigha 12 biswa land. The evidence produced does not reveal that non-petitioners are in possession of land as tenant and have paid the rent whatsoever any time to competent authority. Besides it, their continuous possession before & after commencement of Rajasthan Tenancy Act was also not proved by any documentary evidence. So on the background of this holistic view of the case, it appears that only on the basis of unsupported & uncorroborated testimony of evidence produced, gair khatedari rights of disputed land cannot be granted to non-petitioners. Hence under this circumstance, learned trial court has passed the judgment & decree in utter violation of sound & settled position of law. Therefore, the judgment & decree passed by Assistant Commissioner (Colonisation), Kolayat on 27.10.1986 being illegal and against provisions of law is liable to be quashed and the reference

made by Collector-cum-Dy.Commissioner (Colonisation), Bikaner deserves to be accepted.

9. Hence, in view of above discussion, the reference is accepted and the judgment & decree of Assistant Commissioner (Colonisation), Kolayat dated 27.10.1986 made in favour of non-petitioners is quashed. The reference is disposed of accordingly.

Pronounced in open court.

**(PRAMIL KUMAR MATHUR)**  
Member

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