

Reportable

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal Decree/TA/3899/2002/Sawai Madhopur.

1. Harphool) sons of Shriya
 2. Ramji Lal)
 3. Badri)
 4. Bhorya son of Gopi (deceased) through LRs:-
 - 4/1 Raju son of late Bhorya
 - 4/2 Jagdish son of late Bhorya
 - 4/3 Kamlesh son of late Bhorya
 5. Kanhaiya son of Gopi
 6. Shriya son of Kallu (deceased) through LRs:-
 - 6/1 Mohan son of late Shriya
 - 6/2 Uttam son of late Shriya
 - 6/3 Smt. Gyarasi widow of late Shriya
- All by caste Bairva residents of village Donamcha Tehsil
Baulin Distt. Sawai Madhopur.

...Appellants.

Versus

1. Mool Chand son of Mauji Ram (deceased) through LR:-
 - 1/1 Smt. Janaki wife of Mool Chand caste Bairva resident of
Malrna Dungar Tehsil Baulin Distt. Sawai Madhopur.
2. State of Rajasthan through Tehsildar, Baulin.

...Respondents.

D.B.

**Shri Bajrang Lal Sharma, Member
Shri Chain Singh Panwar, Member**

Present:-

Shri Mukesh Jain, counsel for the appellants.

Shri Thaneshwar Sharma, counsel for the respondent.

Date: 5.6.2013

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, Sawai Madhopur on 9.10.20012 in appeal No. 53/2000.

2. The factual matrix of the case is that the appellants-plaintiffs filed a regular suit under section 88 and 188 of the Act against the respondents-defendants in the court of Assistant Collector, Sawai Madhopur. The plaintiffs averred before the trial court that they are in possession of the disputed land since Svt. 2008, therefore, tenancy rights be

conferred on them. The learned trial court dismissed the suit filed by the plaintiffs on 29.10.1999 on the ground that the disputed land is a ceiling surplus land and has been allotted to Mool Chand in the year 1976 and since the day of allotment he is entered in the revenue record as tenant of the disputed land, therefore, in these circumstances khatedari rights cannot be conferred on the plaintiffs. Being aggrieved by the judgment and decree passed by the trial court, the appellants filed first appeal before Revenue Appellate Authority, Sawai Madhopur under section 223 of the Act which was also dismissed on 9.10.2001. The appellants have filed this second appeal before us assailing the judgment and decree passed by Revenue Appellate Authority, Sawai Madhopur on 9.10.2001.

3. Heard the learned counsels of the parties.

4. Mr. Mukesh Jain, learned counsel appearing for the appellants contended that the respondents filed written statements before the trial court. On the basis of plaint and written statements, issues were also framed by the trial court but the judgment passed on 29.10.1999 does not express opinion of the court issuewise. He submitted that as per documentary evidence produced by the appellants before the trial court, they are in possession of the disputed land since Svt. 2008, therefore, their rights as tenants have been created by operation of law and the trial court was under obligation to express its issuewise inference. The learned advocate for the appellants argued that the appeal before the appellate court was also summarily dismissed without giving any opinion of the court on the issues raised in the appeal. He finally urged the court that since the appellants are in possession of the disputed land since Svt. 2008, they have become tenants even on the basis of adverse possession and by operation of law, therefore, both the courts below have committed grave error in passing the impugned judgments.

5. The learned advocate for the respondents contended that the concurrent findings of both the courts below do not warrant any interference at the level of second appeal. He submitted that Mool Chand was allotted ceiling surplus land in the year 1976. The appellants also challenged his allotment under the allotment rules before District Collector but did not succeed. If they were in possession of the disputed land they should have become party in the ceiling proceedings which were initiated against Gulab and Gopi Mali in the 70s. Since land held by Gopi and Gulab was acquired under the ceiling law, the land vested in the State and it was allotted to the respondent as a landless person. In these circumstances the second appeal filed by the appellants is devoid of any merit so be dismissed.

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. We have carefully perused the proceedings and judgments of both the lower courts. In light of the facts available on record we reach to the following inescapable conclusions:-

(i) The disputed land situated in khasra No. 2119 and 2116 in village Malarna Dungar Tehsil Baulin was a ceiling surplus land acquired under the ceiling proceedings by the authorized officer in a ceiling proceeding initiated against Gulab widow of Gopi Mali.

(ii) After acquisition of the disputed land as ceiling surplus, the disputed land was allotted to Mool Chand on 23.4.1976 under the allotment rules.

(iii) The appellant Harphool challenged the allotment made in favour of Mool Chand in the court of District Collector under rule 14(4) of the Rajasthan Land Revenue (Allotment of Government Land for Agricultural Purposes) Rules, 1970. The learned District Collector dismissed the application filed by Harphool on 21.1.1985.

(iv) When the disputed land was entered in name of Gulab widow of Gopi Mali in the revenue records till early 70s and the ceiling proceedings were initiated against her, the appellants chose not to contest as a party in the ceiling proceedings.

(v) There is no certified copy of jamabandi (record of right) which could prove their entry in the revenue record as a tenant or sub-tenant prior to commencement of the Rajasthan Tenancy Act, 1955.

8. On bare perusal of the plaint filed by the plaintiffs in the trial court, para 2 specifically mentions that the plaintiffs filed an application against the allotment under rule 14(4) of the Rules of 1970 which resulted in cancellation of the allotment. This averment of the plaintiffs is entirely misplaced and false because the District Collector rejected their application under rule 14(4) of the Rules of 1970 on 21.1.1985 and they did not prefer any appeal against the order of the Collector. Consequently, the allotment made in favour of Mool Chand attained finality against the appellants.

9. This court is also aware that the ceiling proceedings under the ceiling law and allotment under the Rajasthan Land Revenue (Allotment of Government Land for Agricultural Purposes) Rules, 1970 are two disjoint and independent proceedings. The appellants preferred to challenge the allotment proceedings and they lost the case before District Collector and they chose not to become party in the ceiling proceedings which were initiated against Gulab widow of Gopi Mali. In such circumstances, in view of this court the allotment made in favour of Mool Chand is as per law and does not suffer from any illegality and it has become final against the appellants.

10. After perusal of the judgments and decrees passed by both the courts below, this court is also of the view that the lower courts have not committed any illegality in passing the impugned judgments. The learned advocate has vehemently

argued that the judgment passed by the trial court is not issuewise and does not comply with the provisions of Order 20 Rule 5 of the Civil Procedure Code. In this regard this court is of the view that in this case most important aspect was that whether the allotment of the ceiling surplus land made in favour of Mool Chand is as per law or not? The learned trial court has adequately examined this issue and dismissed the suit filed by the appellants which does not suffer from any legal infirmity. The appellate court has also answered the legal issues raised before it in a plausible manner.

11. As discussed above, the second appeal filed by the appellants fails and the judgments passed by both the lower courts are upheld.

Pronounced.

(Chain Singh Panwar)
Member

(Bajrang Lal Sharma)
Member