

IN THE BOARD OF REVENUE FOR RAJASTHAN AJMER

**Appeal Decree/TA/5771/1999/Alwar.**

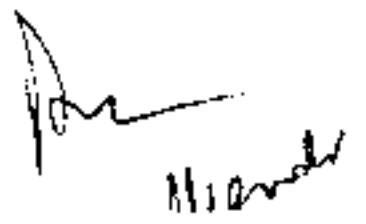
1. Raj Kumar
2. Lalit Kumar son of Ramkunwar ) grandsons of Gopi Ram
3. Inder Kumar son of Ramkunwar )
4. Raja Ram
5. Radheshyam
6. Nanak Chand
7. Ramdev son of Gopi Ram
8. Jairam son of Kishori Lal
- All residents of Jhivana Tehsil Tijara presently residing at Lucknow  
Naka Didolan Ka Chauraha Kallu Mal Ka Mandir (U.P.)
9. Santra daughter of Tara Chand widow of Kanhaiya Mahajan resident  
of Bayram Ghat, Barabanki (U.P.)
10. Shyam minor son of Shanti Ram grandson of Tarachand through  
guardian mother Kamla caste Mahajan resident of Jhivana.
11. Manna Devi wife of Ramchandra
12. Gangadhar son of Ramchandra Mahajan  
Residents of Jhivana presently residing Titri Bajar Distt. Basti  
(U.P.)

...Appellants.

Versus

1. Ram Kunwar son of Harkishan resident of Jharwana Tehsil Tijara  
presently residing at Lucknow Naka Hindaulan Ka Chauraha Kallu  
Ka Mandir (U.P.)
2. Gyan Chandra son of Tansukh ) residents of Jhivana presently
3. Devi daughter of Tansukh ) residing at Titri Bajar Distt.
4. Champa son of Tansukh ) Basti (U.P.)
5. Rameshwar son of Vishambhar (name deleted)
6. Laxmi daughter of Vishambhar
7. Urmila daughter of Vishambhar  
All residents of Tapukada Distt. Alwar.
8. Kashi Ram son of Mani Ram
9. Jaiprakash son of Mani Ram
10. Mst. Kiran daughter of Mani Ram (name deleted)
11. Dharam son of Dhanni  
All residents of Jhivana through Moti Ram son of Ram Bilas  
residents of Jharvana.
12. Mst. Subhdra daughter of Mani Ram (name deleted)
13. Mst. Sita daughter of Mani Ram  
Both residents of Jhivana presently residing at Kasba Taudu Tehsil  
Nooh Distt. Gurgaon (Haryana)
14. State of Rajasthan through Tehsildar Tijara.

...Respondents.

  
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**D.B.**  
**Smt. Meenakshi Hooja, Chairman**  
**Dr. G.K. Tiwari, Member**

Present:-

Shri O.L. Dave, counsel for the appellants.  
 Shri P.S. Dashora, counsel for the respondents No. 1 and 9.  
 Shri R.K. Gupta, Govt. Advocate for State.

Date:- 01.11.2011

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

This second appeal, under section 224 of the Rajasthan Tenancy Act 1955 (in short 'the Act'), is directed against the impugned judgment and decree dated 30.8.1999 of Settlement Officer-cum-Revenue Appellate Authority Alwar passed in appeal No. 27/ 98 (286/81).

2. The factual matrix of this chequered case is that Prasadi Lal and Chhaju Ram sons of Khyali Ram mortgaged two-thirds share of their tenancy rights in the suit lands in favour of Tansukh Ram son of Birbal Mahajan and Vishmbhar Dayal son of Amichand (defendants No. 1 and 2 and respondents No. 3 to 6 herein) through a registered usufructuary mortgage deed executed on 22.12.1943. Subsequently these mortgagees - Vishambhar Dayal and Tansukh Ram - further sold their mortgagee rights in the suit lands to Mani Ram son of Bhullad Mal through a sale deed executed on 19.10.1951. The descendents of Mani Ram (deceased) are impleaded as defendants No. 3 to 9 (respondents before this court). Thereafter the transferees of the mortgagees further sub-let the land for one year to one Ram Kunwar who was added as defendant No. 13 later on by the trial court.

3. Thus, after the suit lands having passed hands in such a manner, the original mortgagors of the lands filed a suit in the court of Assistant Collector Kishangarhbas for ejection of the defendants (respondents herein) from the suit lands on the ground, inter alia, that the mortgage-period had expired and the mortgage stood redeemed. The Assistant Collector after framing thirteen issues and giving opportunity of hearing to contending parties allowed the suit vide his judgment and decree dated 10.6.1981. This was challenged by the respondent No. 1 in first appeal under section 223 of the Act before Settlement Officer-cum-Revenue Appellate Authority Alwar who allowed the appeal and set aside the judgment and decree dated 10.6.1981 of Assistant

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Collector Kishangarhbas by the impugned judgment dated 30.8.1999. Aggrieved against this judgment dated 30.8.1999 of Settlement Officer-cum-Revenue Appellate Authority, the appellants-plaintiffs have preferred the second appeal in this court.

4. We have heard the learned counsels of both the parties.

5. The learned counsel for the appellants contended that the suit lands are recorded in all the revenue records in the names of Prasadi Lal, Chhaju and Tarachand sons of Khyali Ram. Of these three co-tenants, Prasadi Lal and Chhaju Ram who held two-thirds share in the suit lands as khatedars mortgaged their two-thirds share in the land to Vishambhar Dayal and Tansukh Ram through a registered mortgage deed dated 22.12.1943. Thereafter these mortgagees further sold their mortgagee rights to Mani Ram who in turn, later handed over suit lands to one Ram Kunwar for cultivation for one year. But Ram Kunwar did not deliver possession back to the subsequent mortgagee and continued to occupy the land forcibly. The learned counsel submitted that under section 43(4) of the Act a mortgage which was made before the commencement of the Act cannot survive after twenty years from the date of execution of the mortgage deed. In the given case mortgage deed was executed on 22.12.1943; so twenty years thereafter i.e. on 22.12.1963, the mortgage was deemed to be satisfied in full and the mortgagee and their transferees are legally bound to hand over possession back to the mortgagor-khatedars. But respondents-defendants continue to occupy the lands forcibly. After expiry of the period of twenty years after execution of the mortgage, the respondents-defendants have now become trespassers and be ejected under section 183-A of the Act.

6. It was further contended that the original mortgagees of the suit land, Vishambhar Dayal and Tansukh have given a reply of consent in their written statement in the trial court to decree the suit. Mani Ram, the subsequent transferee, has also stated in his written statement that Ram Kunwar (respondent No.1) is forcibly occupying the land unauthorisedly. In such a situation the appellants who are the khatedar tenants of the suit lands are entitled to recover possession of the land from the trespassers after expiry of the period of mortgage. Citing 2000 RRD 395, it was contended by the learned counsel for the

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appellants that there is no adverse possession on the mortgaged land and as such trespassers do not have any right after mortgage is redeemed. The learned counsel for the appellants forcefully pleaded that the impugned judgment of Settlement Officer-cum-Revenue Appellate Authority does not conform to provisions of Order 41 Rule 31 of the Civil Procedure Code. The trial court had framed thirteen issues and discussed every issue and given explicit finding on each of the issues. But Revenue Appellate Authority in his reversing judgment neither discussed any issue nor gave any reason as to how he was not agreeable with the findings of the trial court on respective issues. Relying on 2001 AIR (SC) 2171, the learned counsel asserted that it was mandatory for the first appellate court to discuss all the issues; but Revenue Appellate Authority has failed to discharge this mandatory duty cast upon him. As such, the impugned judgment should be set aside and the judgment of Assistant Collector should be upheld.

7. The learned counsel for the appellants further contended that the respondents did not fulfill their duty of informing the court about the death of respondents No. 10 and 12 under Order 22 Rule 10-A of the C.P.C. As soon as the appellants came to know of the said death of the respondents No. 10 and 12, the appellants moved an application for deletion of their names, as subsequent transferee of the mortgaged land was Mani Ram whose other legal representatives are already on record. The appellants are the khatedar tenants of the suit lands and their right to redeem the mortgage and get the recovery of the possession of the mortgaged land survives even after death of the subsequent transferee of the original mortgagees. Thus, the appeal does not abate. It was pleaded that a power of attorney holder can represent the plaintiffs and come in evidence in place of the plaintiffs as is held in 2001 AIR (Karnataka) 231. A mortgagee cannot acquire tenancy right as is maintained in 2002 RRD 289. Therefore, transferee of the mortgagees and subsequent transferee, too, cannot claim any tenancy right in the land mortgaged by the appellants-plaintiffs. Section 43 of the Act specifically protects the interest of the mortgagor-khatedar. Therefore, the suit was rightly allowed by the trial court; but Revenue Appellate Authority decided the appeal without any legal basis; so the impugned judgment deserves to be quashed and set aside.



8. Countering the contentions of the appellants, the learned counsel for the respondents vehemently raised preliminary objection that the appeal abates in toto as the appellants have not impleaded legal representatives of the deceased respondent No. 10 Mst. Kiran daughter of Mani Ram and respondent No. 12 Mst. Subhdra daughter of Mani Ram. The appellants have illegally got the names of these two deceased respondents waived and deleted on 29.9.2011. Since legal representatives of the deceased respondents have not been taken on record, no order can be passed against the dead respondents. Therefore, the appeal abates in toto.

9. It was also contended that the suit lands were initially the land of 'Biswedari'; as such the appellants did not become khatedars of the suit land. The learned counsel cited 1991 RRD 274 and 2000 RRD 278 in support of his contention. The respondents have become 'mortgagees of the tenancy rights' and as such are tenants under section 5(43)(h) of the Act. So they have acquired khatedari rights. It was further pleaded that on the date of commencement of the Act mortgagees were in possession of the suit lands, so they automatically became khatedar tenant under section 15 of the Act. The learned counsel cited 1959 RRD 61, 1966 AIR (SC) 1721, 1985 RRD 190 and 1983 RRD 243 in support of his contention. It was further pleaded that the appellants-plaintiffs themselves did not appear in evidence and they were represented by the power of attorney holder. A power of attorney holder cannot take the place of the principal, as is held in 2005 AIR (SC) 439. As such the suit is not proved and deserves to be dismissed. The learned counsel submitted that the appellants-plaintiffs have sought recovery of possession without getting themselves declared as khatedar tenants of the suit lands which presently stand in the names of the mortgagees. The learned counsel cited 1989 RRD 527, 774 and 1992 RRD 114 in support of his argument. It was contended that the plaintiffs cannot take advantage of the weakness of the defendants; they have to stand on their own legs as is held in 1955 AIR (SC) 1506. It was pleaded that the impugned judgment of Revenue Appellate Authority is although not issuewise yet Revenue Appellate Authority has dealt with the substantial matter of the dispute and given a reasoned judgment, quashing the judgment of the trial court. Thus, there is no

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infirmity in the judgment of Settlement Officer-cum-Revenue Appellate Authority which should be upheld with dismissal of the appeal.

10. The learned Government Advocate contended that the judgment of Revenue Appellate Authority is not issuewise and as such it is in contravention of the Order 41 Rule 31 of the C.P.C.. He further contended that section 43 of the Act protects the right of the mortgagor-khatedar and under section 43(4) of the Act a mortgage did not survive twenty years after the commencement of the Act in case such mortgage was carried out before coming into the force of the Act. The learned Government Advocate supported the judgment of the trial court.

11. We have given thoughtful consideration to the rival contentions, perused the impugned judgments of the courts below and gone through the material on record.

12. It is admitted fact that Prasadi Lal (father of the original plaintiff No. 1 Gopi Ram) and Chhaju Ram (father of the plaintiff No. 2 Kishori Lal) carried out usufructuary mortgage of their two-thirds share in the suit lands bearing khasra No. 632 measuring 4 bigha 16 biswa and khasra No. 634 measuring 19 biswa to Vishambhar Dayal and Tansukh Ram, who were defendants No. 1 and 2 before the trial court, through a registered mortgage deed executed on 22.12.1943. Only khatedar tenant can mortgage their khatedari land. Jamabandi Svt. 2012 to 2016 (Ex.-4) shows that the suit land was entered in the khatedari right of Prasadi Lal, Chhaju Ram and Tarachand; but the name of Mani Ram son of Bhullad Mahajan is also entered as a mortgagee. It is also an admitted fact that the original mortgagees Tansukh and Vishambhar Dayal further sold the lands they held in mortgage to Mani Ram. This fact is admitted in the written statements of Tansukh and Vishambhar Dayal as well as in the written statement of defendants No. 3 to 9 who are legal representatives of the deceased Mani Ram, the subsequent transferee of the mortgagees. It is interesting to note that Mani Ram - the mortgagee (transferee) of the mortgagee - handed over the disputed lands for one year to one Ram Kunwar son of Hari Kishan who was added as defendant No. 13 later on, as Mani Ram was said to be ailing. But Ram Kunwar, respondent-defendant, continues to retain possession without returning it to Mani Ram or his successors. This is evident

from perusal of the para 4 of the written statement of defendants No. 3 to 9 who are successors to Mani Ram, the mortgagee of the mortgagee. Thus, it can be safely concluded that the disputed mortgaged lands are neither in possession of original mortgagees Vishambhar Dayal and Tansukh Ram nor in possession of subsequent transferee of the mortgagees Mani Ram or his descendants; but it is in possession of Ram Kunwar who is claiming right over the land simply on the ground that he has been in possession of this land since 1963, as the ailing Mani Ram handed him over the possession of the land for cultivation.

13. In view of the peculiar and chequered history of the case as briefly stated hereinabove, the main issues before us for consideration and adjudication are whether the appellants-plaintiffs are khatedars of the disputed land and as such entitled to recovery of possession of the mortgaged suit lands under the provisions of the Act; and whether the respondents-defendants as prior mortgagees, transferee/ mortgagee of the prior mortgagees, and sub-lettee of the transferee/mortgagee of the mortgagees have any right or interest in the suit lands, to continue with the possession.

14. Section 43 of the Act is both a substantive and procedural law providing for remedy of redemption after expiry of the period of usufructuary mortgage. Section 183-A of the Act also provides for special remedy to the aggrieved person with provision for summary eviction of mortgagee on non-delivering of possession of the land after the expiry of the period of mortgage. Section 43(2) of the Act restricts the period of mortgage to five years, i.e. after coming into force of the Act no agricultural land of khatedari rights can be usufructuarly mortgaged for a period exceeding five years. Under section 43(4) of the Act a usufructuary mortgage which was executed before the commencement of the Act shall, **upon the expiry of the period mentioned in the mortgage deed or twenty years from the date of execution thereof**, whichever period is less be deemed to have been satisfied in full without any payment whatsoever by the mortgagor; and the mortgage-debt shall accordingly be deemed to have been extinguished and thereupon the mortgaged land shall be redeemed and possession thereof shall be delivered to the mortgagor free from all encumbrances. Thus, in light of this provision of section 43(4) of the

Act, the impugned mortgage which was carried out on 22.12.1943 i.e. prior to the commencement of the Act, stood extinguished after the stipulated period of twenty years i.e. on 22.12.1963. Section 43(4E) of the Act provides for conviction with imprisonment to defaulter-mortgagee up to a period of one year, with or without an award of fine up to Rs. 1000/-. Under sub-section (5) of section 43 of the Act a defaulter-mortgagee can also be evicted in a summary manner in accordance with provisions of section 183-A of the Act.

15. In the back-drop of the above legal provisions, the original mortgagees of the suit lands Vishambhar Dayal and Tansukh Ram further transferred the suit lands to Mani Ram through a registered deed executed on 15.10.1951 (Ex.-1). Thus, Mani Ram as a subsequent transferee of the prior mortgagee or rather a puisne mortgagee came into the foot step of Tansukh Ram and Vishambhar Dayal. Under section 43(2) of the Act only a khatedar tenant can transfer his right and interest in the whole or part of his holding in the form of usufructuary mortgage. Obviously, Tansukh Ram and Vishambhar Dayal as mortgagees were not khatedar tenants and as such did not have power to further transfer the disputed lands by way of sale or mortgage to Mani Ram. Thus the subsequent transfer made by the mortgagees by way of sale/ mortgage is illegal not being provided for in the Act. Even a khatedar tenant is barred from making second mortgage within two years of the expiry of the first mortgage under sub-section (4-B) of section 43 of the Act.

16. It has emerged from the record that respondent-defendant Ram Kunwar obtained possession of the suit lands from Mani Ram, the transferee of the mortgagee, to cultivate the land for one year, as Mani Ram was said to be ill and too weak to till the land. But Ram Kunwar refused to hand over possession after one year to Mani Ram or his descendants or to Tansukh Ram and Vishambhar Dayal - the original mortgagees. Apparently possession of respondent-defendant Ram Kunwar can said to be that of a rank trespasser who continues to be in forcible occupation of the land without any lawful authority. Even Tansukh Ram and Vishambhar Dayal (original mortgagees) and Mani Ram (deceased) - the transferee of the prior mortgagees - did not have any right and interest in the land after 22.12.1963, the date on which

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the said mortgage stood expired. Section 5(44) of the Act defines trespasser, inter-alia, as a person who retains possession without authority and/or who prevents another persons from occupying the land duly let-out to him. Thus, the respondent-defendants are trespassers on the suit lands from 22.12.1963, the date on which the said mortgage stood extinguished and all mortgage debts were deemed to have been satisfied in full. Therefore, it was mandatory for the mortgagees to re-deliver the possession to the mortgagor-appellant-plaintiffs of the mortgaged land free from all encumbrances.

17. The learned counsel for the respondents vehemently asserted that on the date of commencement of the Act, mortgagees were tenants as defined under section 5(43)(h) of the Act being 'mortgagees of tenancy rights'. Even if, for the sake of argument, the contention of the learned counsel is admitted, a mortgagee of tenancy rights does not have such right after the expiry of the period of mortgage i.e. after 22.12.1963. But curiously in the given case the said 'mortgagees of tenancy rights' (Vishambhar Dayal and Tansukh Ram) transferred the lands to Mani Ram; and both of them i.e. original mortgagees and the subsequent transferee, have categorically made averments in the written statements that the suit lands are not in possession of any one of them. But a third person (Ram Kunwar) who is not even remotely related to the disputed land has been in forcible occupation of the land unauthorisedly. In such a situation there is no question of conferment of khatedari right in respect of the mortgaged land which passed hands among so many persons illegally. We are not inclined to agree with the contention of the learned counsel for the respondents that the mortgagees and subsequent transferee have acquired khatedari right in the disputed land. The judgment of Hon'ble Supreme Court as reported in 1966 AIR (SC) 1721, with utmost regard to it, is not applicable on the case under consideration. According to this judgment the mortgagees were 'admitted as tenants' but in the given case the mortgagees - Vishambhar Dayal and Tansukh Ram - themselves have declined to be either tenants or in possession of the lands. They have given consent in their written statement to allow and decree the suit. The subsequent transferee of the mortgagees and and still subsequent sub-lettee of one year of the transferee of the mortgagee, by no stretch of imagination or argument.

could be 'admitted as tenant'. Therefore, the citation of 1966 AIR (SC) 1721 is not applicable.

18. The learned counsel has also cited 1983 RRD 240 (Hasti Mal Vs. Panna). This is a judgment of this court on application of provision of 'Kanoon Miyad Mewar' of the then Mewar State. Another ruling relied upon by the learned counsel for the respondents is 1985 RRD 190 (Nathi Vs. Ramsahay), which is pertaining to the provision of Jaipur Tenancy Act. Neither Jaipur Tenancy Act nor the Mewar Tenancy Law applies in respect of the suit lands which are located in a village of Alwar District. Without resorting to the laws of erstwhile princely states, the dispute under consideration is fully covered under the Rajasthan Tenancy Act, 1955 which provides for effective and expeditious remedy in respect of the mortgage of the agricultural lands. There is no provision under the Act to confer khatedari rights on a mortgagee in respect of the mortgaged lands.

19. It would not be out of place to mention here that the legislators have made their intention abundantly clear in formulating laws relating to mortgage of agricultural lands and restricting the period of mortgage, as a major of agrarian and land reforms. The legislators in framing tenancy laws have ensured that rural/ agricultural indebtedness of the tenants-peasants does not rob them off their khatedari lands in the hands of usurious money lenders operating as mortgagees. That is why, section 43 of the Act is so elaborately formulated providing for the substantive and procedural aspects of the law in dealing with the disputes relating to mortgage of khatedari lands. Stringent measures are provided as remedy against willful defaulter mortgagees under section 43(4)(e) of the Act which provides for the conviction as cognizable offence as well as financial penalty besides the relief of ejection <sup>under</sup> subsection (5) of section 43 of the Act. Not only this, such mortgagees retaining forceful possession after expiry of period of mortgage are treated as trespassers and can be ejected under section 183-A of the Act in a summary manner. Thus, it is amply and abundantly clear that the law-makers never intended to confer any khatedari right on a mortgagee in respect of the land mortgaged by a khatedar tenant by way of usufructuary mortgage.

20. The learned counsel for the respondents has also pleaded that the suit for ejection was not maintainable without declaration of khatedari rights in favour of the plaintiffs. In fact the appellant-plaintiffs never ceased to be khatedar tenants of the suit lands simply because the suit lands were mortgaged by them to respondents No. 1 and 2. It is established principle of law that khatedari rights do not extinguish on mortgage of the land. As such there is no need for the appellants-plaintiffs to file a suit for declaration of khatedari rights in the suit land, as they are already khatedar tenants of the disputed lands. In fact a mention in the jamabandi of the name of Mani Ram as a mortgagee in column No. 4 meant for khatedar tenant is not legally correct. At the most, the entry about mortgage can be made in the remark column of jamabandi and such entry should be deleted after expiry of the period of mortgage. As appellant-plaintiffs are already khatedar tenants of the suit land, they are not required to file a declaratory suit. Therefore, the rulings 1989 RRD 527, 774 and 1992 RRD 114 cited by the learned counsel for the respondents do not apply here.

21. The learned counsel for the respondents has also contended that the suit lands were the lands of 'Biswedari' and when such land is mortgaged, the mortgagee acquires khatedari rights. The learned counsel cited 1991 RRD 274 (Budha Vs. Ami Lal) and 2000 RRD 278 (Veer Singh Vs. Pyare Singh). The facts and circumstances of both the cases are altogether different, as in both the cases it was Jagirdar/Biswedari himself who executed a mortgage deed in respect of the land which was not his 'khudkasht' land; but such is not the facts of the case under consideration. Firstly, it is not proved that the land was of 'Biswedari' system. Secondly, even if it is presumed that the land was of 'Biswedari' system it was not the 'Biswedari' who executed mortgage deed. As such with all due reverence to these rulings, they do not apply to the case under consideration.

22. The learned counsel for the respondents has pleaded that the appeal abated as legal representatives of the deceased respondents No. 10 and 12 are not taken on record. In this respect it is stated that the appellants' right to sue survives, as discussed above, even after the death of the respondents No. 10 and 12. Secondly no relief is sought against respondents No. 10 and 12 per-se. The original transferee of the

mortgagee - Mani Ram is well represented by his other wards even without respondents No. 10 and 12. Apart from this, no information of legal representatives was given under Order 22 Rule 10-A of the C.P.C. Therefore, deletion of the names of the respondents No. 10 and 12 is not fatal to the appeal. Therefore, we are not inclined to agree with the learned counsel that the appeal abates.

23. It is pleaded by the respondents' counsel that the power of attorney holder cannot replace the principal and as the plaintiffs did not appear in witness, the appeal and the suit fail. In this respect it is worthwhile to cite observation of Hon'ble Supreme Court as reported in AIR 2005 (SC) 439. Hon'ble Supreme Court has propounded: "he (power of attorney holder) cannot depose for the principal in respect of the matter which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined". In the case under consideration the plaintiffs were not to depose for any matter of which they exclusively had personal knowledge of. In fact it is a widely known fact about the usufructuary mortgage of the suit lands of which a registered mortgage deed is executed. Only this mortgage deed was to be proved. Thus, the power of attorney holder can file a suit on behalf of the mortgagor tenants and it does not make the suit or appeal fatal because of this reason. We are fortified in holding this view by the pronouncement of Hon'ble High Court of Karnataka as reported in AIR 2001 (Karnataka) 231 (Smt. Gangavva Vs. Arjuna).

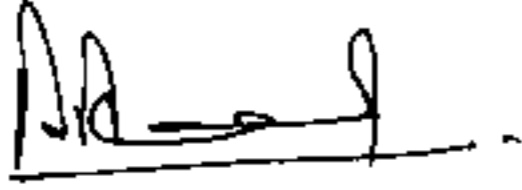
24. A bare perusal of the impugned judgment of Revenue Appellate Authority shows that it is sketchily drawn without dealing with the substantial issues. The judgment of first appellate court must conform to the provision laid down under Order 41 Rule 31 of the Civil Procedure Code; particularly a contrary judgment of Revenue Appellate Authority disagreeing with the findings of the trial court must necessarily deal with all the issues separately, and a reasoned judgment should be passed as to why and on what grounds Revenue Appellate Authority holds a divergent view, in light of the evidence available on the record. Assistant Collector had framed thirteen issues and he has dealt with all the issues separately and given explicit finding on each one of them. Revenue Appellate Authority has not dwelt upon

any of these issues and passed the impugned judgment in a cavalier manner. Evidently the judgment of Revenue Appellate Authority is not in accordance with the provisions of Order 41 Rule 31 of the C.P.C.

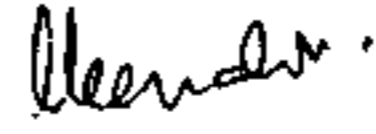
25. Revenue Appellate Authority has illegally held that Mani Ram became a 'tenant of mortgagee' in 1951. There is neither any term like 'tenant of mortgagee' in the Act nor is there any provision of imparting tenancy rights to the so-called 'tenant of mortgagee' in respect of the mortgaged land after expiry of the period of mortgage. It is pertinent to observe that presently it is neither the original mortgagees nor the transferee of the mortgagees but the respondents-defendant Ram Kunwar - an alleged sub-lettee of one year from transferee of the mortgagee - who is in possession of the suit lands. Apparently, respondent No.1-defendant Ram Kunwar is a rank trespasser on the khatedari lands of the appellant-plaintiffs.

26. In view of the foregoing discussion, the appeal succeeds. The impugned judgment dated 30.8.199 of Settlement Officer-cum-Revenue Appellate Authority Alwar is set aside and the judgment dated 10.6.1981 of Assistant Collector Kishangarhbas of District Alwar is upheld.

Pronounced.



(Dr. G.K. Tiwari)  
Member



(Meenakshi Hooja)  
Chairman