

1/13/12

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

1. Appeal Decree/TA/4229/2001/Baran

- 1. Shri Ram Kalyan
- 2. Shri Rambharoshe
- sons of Shri Shyolal Mina
- 3. Shri Motilal son of Shri Hardev
- 4. Shri Gopal son of Shri Nathulal
- 5. Shri Sukhdev son of Shri Kishan Das

- all are by caste Mina residents of Talsa, Tehsil & Distt. Baran.

...Appellants

Versus

- 1. Murti Kalyanrai Ji Through Manager Tehsildar Baran
- 2. The State of Rajasthan

...Respondents

D.B.

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

Present:-

- Shri Ashok Agarwal, Counsel for the appellants
- Shri R.K.Gupta, Govt. Advocate for the respondents No.1 & 2.

JUDGMENT

Dated 12-12-2011

This is an appeal filed under Section 224 of the Rajasthan Tenancy Act, 1955 (In short the Act) being aggrieved & dissatisfied by the judgment & decree dated 15.10.1999 passed by the Settlement Officer cum-Revenue Appellate Authority, Kota (In appeal No.386/99).

2. The brief facts of the case in hand are that the appellants/plaintiffs filed a suit under Section 88, 89, 90, 91 & 92 of the Act against the respondents/defendants before the Assistant Collector, Baran. The trial court dismissed the suit on 16.9.1999. The appellants filed the first appeal before the Settlement officer cum Revenue Appellate Authority, Kota which was also dismissed on 15.10.1999. The second appeal has been filed in

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this court assailing the judgment & decree of the first appellate court dated 15-10-1999.

3. Heard the learned counsels of the parties.

4. The learned counsel for the appellants contended that the judgments & decree passed by both the lower courts are against basic principles of law and have been passed ignoring the evidence available on file. He submitted that it was evident from the jamabandi Svt. 2005-12 & 2017-20 of village Tulsa that the disputed land was Muafi land and in column No.4 of the jamabandi name of Shri Motilal and Sheolal were entered as cultivators. He further argued that by operation of Rajasthan Land Reforms & Jagir Resumptions Act Shri Motilal, Shri Sheolal became the khatedar of the land in question. He submitted the appellants inherited the tenancy rights in succession but the settlement officials arbitrarily entered the disputed land in name of the defendant temple. The learned counsel urged the court that the application under Section 5 of the limitation Act be accepted and the appeal be decided on merits looking to the provisions of Rajasthan Land Reforms & Jagir Resumption Act.

5. The learned Govt. Advocate contended that the judgments & decree passed by the courts below are just and based on the evidence available on file. He submitted that the appeal is hopelessly time barred, therefore, it should be dismissed solely on the ground of limitation. He further argued that the plaint filed by the appellants/plaintiffs in the trial court does not have any mention of provisions of Rajasthan Land Reforms & Jagir Resumption Act, nor these jamabandies of Svt. 2005-12 and 2017-20 have been filed before the trial court. He argued that para 8 of the plaint is self explanatory and reads that the land in question is auctioned every year and in this year the Tehsildar has arbitrarily raised the amount for annual cultivation. He argued that the land is in name of temple and the Tehsildar is managing the land in dispute for the temple. Therefore the judgments passed by both the courts are as per law and record. He urged the court to dismiss the appeal as it is devoid of any merit.

6. We gave thoughtful consideration to the contentions raised by the learned counsels of the parties. We also studied the record available on file.

7. At the onset we take the issue of limitation raised by the learned counsels. The application filed by the appellants under Section 5 of the limitation Act is accompanied with an affidavit and the respondents have not controverted the facts of the affidavit. We rely on the facts-explained in the affidavit and accept the application for condonation of delay.

8. On bare perusal of the plaint filed by the appellants/plaintiffs it is unequivocally clear that the land in question is under the management of Tehsildar, Baran and he is putting the land to public auction for annual cultivation. The perusal of the jamabandi manifests that the land in question is entered in khatedari of the temple. The plaintiffs have filed a copy of khasra girdawari Svt.2026 which reveals that it is a muafi land and Shri Motilal and Shri Sheolal have been shown as cultivators.

9. We are aware that temple idol has been granted exemption under Section 46 of Rajasthan Tenancy Act, 1955 for not cultivating the land personally. Deity, being minor and incapable of cultivation falls under this category. We are fortified by the Hon'ble High Court pronouncement in Temple Thakurjee Vs. State of Rajasthan & others (AIR 1998 Rajasthan 85).

"The provisions of Section 46 of the 1955 Act are based on public policy and have been enacted to secure a laudable objects. The provisions of any other act cannot override the special protection accorded to the class of persons mentioned therein. Thus, the protection/exemption granted to deity a perpetual minor/ permanently disabled/infirm person cannot be taken away by the provisions of any other Act.

It is the solemn duty of and legal obligation on the State Administrative Authorities and Courts to protect the interest of minor, disabled person and the deity being perpetual minor, physically disabled and infirm, is entitled to special protection of law."

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10. The appellants have just made out a different case in the second appeal which is not compatible to their plaint. The appellants also have filed some photocopies of jamabandies along with the appeal memo in this court. There is no application showing justification for filing these photocopies of record along with the appeal. The second appeal is largely based on the provisions of Rajasthan Land Reforms & Jagir Resumption Act which is entirely different from their original plaint filed in the suit. The judgment and decree passed by the courts below are based on the plaint filed by the appellants/plaintiffs. Therefore, the second appeal filed by the appellants is misconceived and ill drafted.

11. In this case, we are of the considered opinion that the land in question is recorded in name of the temple idol Shri Kalyanjee which is a temple of direct charge and directly managed by the State Govt. The land in question is being managed by the Tehsildar since a long time. Therefore, the judgments and decree passed by the lower courts do not suffer from any legal infirmity hence are upheld.

12. As discussed above, the second appeal filed by the appellants is devoid of any merit, therefore is dismissed. No order as to costs.

13. Pronounced in the open court.


(Chain Singh Panwar)
Member

 12.12.2011
(Bajrang Lal Sharma)
Member