IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal Decree/TA/4804/2005/Barmer

The State of Rajasthan through Tehsildar Sheo, Barmer

...Appellant

Versus

1. Shri Faglu (deceased) through his following legal representatives:
   - 1/1 Ms. Muli wife of Shri Faglu
   - 1/2 Shri Luna son of Shri Faglu
   - 1/3 Shri Amno son of Shri Faglu
   - 1/4 Shri Saybano son of Shri Faglu
   - 1/5 Shri Peeru son of Shri Faglu
2. Shri Hasam
3. Shri Moyab
4. Shri Alana

-all are sons of Shri Pandhi by caste Muslim resident of Kalijal Negarda Tehsil Sheo District Barmer.

...Respondents

****

D.B.

Shri Bajrang Lal Sharma, Member

Shri D.R.Meena, Member

Present:-

1. Shri Hagami Lal Chaudhary, Dy. Govt. Advocate for the State
2. Shri Virendra Singh, Counsel for the respondents.

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JUDGMENT

Dated 13.2.2012

सत्य प्रतिलिपि
निब-धक
राजस्व मण्डल राजस्थान,
अजमेर,

This appeal has been preferred by the State of Rajasthan under Section 224 of the Rajasthan Tenancy Act, 1955 (hereinafter mentioned as the Act) being aggrieved by the judgment and decree passed by the Settlement Officer-cum-Revenue Appellate Authority, Jodhpur in Appeal No.9/2005 on 27.6.2005.

2. The thumb nail sketch of the case is that the respondents/ plaintiffs filed a regular suit against the State of Rajasthan under Section 88 and 188 of the Act in the court of Assistant Collector, Sheo (Barmer). The trial court decreed the suit on 02.09.2004. The State assailed the judgment & decree of the trial court before the Settlement Officer cum Revenue Appellate Authority, Jodhpur. The first appellate court dismissed the appeal filed by the State on 27.6.2005. Being aggrieved by this judgment & decree passed by both the lower courts this second appeal has been filed in this court.

3. Heard the learned counsels of the parties.

4. The learned Govt. Advocate contended that the judgments & decrees passed by both the lower courts are contrary to the evidence available on file and against the basic principles of settled law. He submitted that the respondents had trespassed some portion of the disputed land firstly in samvat 2034 and every year the respondents were evicted by adopting due process of law under Section 91 of the Rajasthan Land Revenue Act, 1956 He further argued that there was no evidence to prove their possession before settlement or since Svt.2012 when the existing Tenancy Act came into force. But both the trial courts just ignored the evidence available on file and granted them khatedari of 243.02 bighas of land capriciously. He argued that their claim based on adverse possession was also not proved because every year they were dispossessed by the land holder and they were never in possession of 243.02 bighas of land as per the revenue record produced by the plaintiffs. He further submitted that the trial court framed 8 issues in this case but did not infer explicitly on each issue on the basis of evidence available on file. He argued that it is a perverse decree and it has been a case of miscarriage of justice. The provision of Order 20 Rule 5 of the Civil Procedure Code has been flouted by the trial court. He submitted that the appellate courts also casually dismissed the appeal without addressing the contentions raised in appeal by the State. He also argued that the land in question is a

community land which is being used by the local people for grazing their cattle and in drainage area. A writ petition was also filed before the Hon'ble High Court (DBCWP No.4548/2001) wherein the report of the Geological Survey of India was also produced which reads that the land in question is in drainage area (Nadi) therefore no khatedari could have been given on such a land. He also submitted that the disputed land is located in desert district of Barmer wherein the allotment/regularization has been restricted as a measure of desert stabilization and the report of CAZRI (Central Arid Zone Research Institute, Jodhpur) also dissuades the State on allotment of such land. He finally urged the court to accept the appeal and quash the judgments & decrees passed by both the lower courts.

5. The learned advocate for the respondents submitted that the judgment & decrees passed by the lower courts are supported by sufficient documentary & oral evidence. He argued that the respondents along with their father have been in continuous possession on the land in question prior to settlement and during the settlement some land located in khasra no.59 was entered in their khatedari but the land in question (k.n. 59/3 and 60/2 measuring 162.16 and 80.06 bighas in total 243.02 bighas) could not be entered in their name. He further submitted that the land in question is not a nadi or located in drainage/catchment area. The revenue record clearly explains that the disputed land is Barani land and as per report of the Collector, Barmer dated 15.10.2003 the land is in possession of the respondents and is cultivable. The report also makes it clear that the land in question is not nadi or in drainage area. He further contended that the revenue record in form of documentary evidence produced in the trial court proves beyond any doubt that the disputed land is in possession of the respondents for more than 30 years and they have become khatedars on the basis of even adverse possession. He took support from the pronouncement of a Rajasthan High Court decision passed in Khuman Mal Vs. Bheru (1994 RBJ 50). He further contended that the issuewise findings given by the trial court are based on the

evidence available on file and as per law. Therefore, there is hardly any scope for interfering with the concurrent findings of the courts below.

6. We gave serious consideration on the contentions raised by the learned advocate of the parties and perused the record carefully.

7. As per the plaint filed by the respondents/plaintiffs in the trial court it has been averred that the land in question has been in possession of the respondents and their father prior to settlement. The Tehsildar while filing the written statement has vehemently denied that the land in question has not been in possession of the respondents/plaintiffs prior to settlement. The written statement clearly mentions that their first trespass has been entered only in Svt.2034 (year 1977) and that too on 27 bighas only. The Tehsildar has also mentioned that 47 bighas and 12 biswas of land had already been allotted to the plaintiff Shri Faglu and his father and this suit has been filed just to grab the large chunk of Govt. land i.e. 243.02 bighas on which they are not in possession. The trial court framed the following issues in this case;

1. Whether disputed land located in khasra no.59/3 & 60/2 measuring 243.02 bighas of village Negarda (New Revenue Village Kali jaal) are part of khasra no.58 which is in khatedari of the plaintiffs and plaintiffs are entitled to get their khatedari rights declared on the disputed land ?

- Plaintiffs

2. Whether the plaintiffs are entitled to get their khatedari rights declared on the disputed land on the basis of adverse possession ?

- Plaintiffs

3. Whether the plaintiffs who are landless are entitled for regularization of the disputed land ?

- Plaintiffs

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4. Whether the plaintiffs are entitled for the relief of perpetual injunction on the disputed land?

- Plaintiffs

5. Whether the plaintiffs are the trespassers on this land?

- Defendant

6. Whether the disputed land is a Govt. land and the plaintiffs have filed this suit just to grab it and the suit is not maintainable.

- Defendant

7. Whether there is a writ pending in the high court pertaining to the disputed land.

- Defendant

8. Relief.

8. We have carefully perused the judgments and decrees passed by the trial court. Admittedly the trial court has not given issue wise judgment after analyzing the evidence produced by both the parties in this case. The trial court was under legal obligation to accord its explicit findings on each issue distinctly as per the provisions of order 20 Rule 5 of the Civil Procedure Code. The trial court failed in his duty and summarized the findings on all the issued merely in two hand written pages. In this case the documentary evidence produced by the plaintiffs reveals that the respondents have never been in possession of entire land in dispute ie 243.02 bighas. There were some 10 issues raised before the Appellate court by the State of Rajasthan in appeal but the Appellate court has also cursorily passed the judgment ignoring the evidence and facts available on file.

9. On the basis of oral and documentary evidence available on record, the findings of this court are recorded on each issue:

Issue No.1 - Whether disputed land located in khasra no.59/3 & 60/2 measuring 243.02 bighas of village Negarda (New Revenue Village Kali jaal) is part of khasra no.59 which is in khatedari of the plaintiffs and plaintiffs

are entitled to get their khatedari rights declared on the disputed land ?

Admittedly, this suit was filed by the plaintiffs on 6.9.2001 in the trial court. The documentary evidence produced in the trial court (Ex.2 to Ex.10) unequivocally reveals that Shri Pandhi (Father of the respondents) and respondent Shri Faglu was allotted/regularized land measuring 46 bighas in khasra no.59 in Svt.2018-21 (1961-62). Initially the land was in gair khatedari but subsequently khatedari rights were conferred on them. There is no evidence on record which can prove that the respondents or their father were in possession of the disputed land prior to settlement or prior to the Tenancy Act came into force. We have perused the oral evidence produced before the trial court. The statements of the witnesses (PW-1 to PW-3) are vague and not reliable. The statements of the witnesses are not reliable because they can not testify a fact of Svt. 2012 when their own age was below 20 years at that time. This is also very pertinent to mention here that the Saie Govt. is maintaining systematic revenue record in Tehsil Sheo (Barmer) since Svt.2012 (year 1955). If they were in possession on the disputed land since Svt.2912, it could have been factually reflected in the khasra girdawari or khasra Parivartansheel (P-14). The revenue record produced even by the plaintiff manifests that their trespass has been entered in the revenue record in Svt.2034 (year 1977) first time.

The revenue record depicts their possession in Bigha on the disputed land as under:-

S.No.	Samvat/year	Khasra No.59/3 (Total Area 162.11 Bighas)	Khasra No.60/2 (Total Area 80.06 Bighas)	Total area under trespass in Bighas
1.	2034 (1977)	03	24.00	27,00

प्रतिलिपि 31/10/07 राजस्व मण्डल राजस्थान, अजमेर,

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2.	2035 (1978)	-	42.00	42.00
3.	2036 (1979)	-	80.06	80.06
4.	2037 (1980)	-	80.06	80.06
5.	2038 (1981)	-	80.06	80.06
6.	2039 (1982)	0.5	80.06	80.11
7.	2040 (1983)	-	80.06	80.06
8.	2041 (1984)	24.00	40.11	64.11
9.	2042 (1985)	11.00	23.00	34.00
10.	2043 (1986)	6.00	15.00	21.00
11.	2044 (1987)	15.00	60.00	75.00
12.	2045 (1988)	75.00	60.00	135.00
13.	2046 (1989)	75.00	60.00	135.00
14.	2047 (1990)	27.10	60.00	87.10
15.	2048 (1991)	27.10	60.00	87.10
16.	2049 (1992)	27.10	60.00	87.10
17.	2050 (1993)	27.10	60.00	87.10
18.	2051 (1994)	53.00	27.00	80.00
19.	2052 (1995)	20.00	27.00	47.00
20.	2053 (1996)	2.00	13.00	15.00
21.	2054 (1997)	-	-	-
22.	2055 (1998)			-
23.	2056 (1999)	02.00	12.00	14.00
24.	2057 (2000)	12.00	06.00	18.00
25.	2058 (2001)	03.00	26.00	29.00
26.	2059 (2002)	-	-	-
27.	2060 (2003)			

The above table depicts that the respondents were never in possession of the entire 243 bighas & 2 biswas of disputed land of khasra no.59/3 and 60/02. This is also evident that the respondents/plaintiffs started trespassing on this Govt. land since 1977 only and that too on some portion of it. There is a report of Tehsildar Sheo dated 30.04.04 which exhibits that a thatched hut (Jhumpa) and a water tank (Tanka) have been erected ~~every year~~

on khasra no.60/2 which are hardly 2-3 years old. The report also reveals that the respondents are simply trespassers and they have been evicted under Section 91 of the Rajasthan Land Revenue Act, 1956.

Therefore, the evidence available on file positively indicates that some 46 bighas of land in khasra no.59 allotted/regularized to Shri Pandhi (Father of the respondents) and Shri Faglu, the respondent in Svt. 2018-21 (In the year 1961-1964) and the respondents started trespassing the adjoining Govt. land in Svt.2034 (in the year 1977). The report of the Commissioner (Tehsildar Sheo) dated 20.4.2004 clearly mentions that they erected a water tank and a thatched hut in the year 2002 after filing this suit in the trial court just to create evidence in their favour. We fail to comprehend that on the basis of this documentary evidence how the courts below could decide this issue in favour of the respondents ! After perusing the evidence available on record we are of the considered opinion that the finding on this issue by both the lower courts is baseless, erroneous and contrary to the evidence available on file we also hold that issue no.1 has not been proved by the plaintiffs therefore we infer that the disputed land has not been in possession of the plaintiffs prior to settlement and they are not entitled for khatedari rights on the dispsuted land.

Issue No.2: Whether the plaintiffs are entitled to get their khatedari rights declared on the disputed land on the basis of adverse possession ?

We are aware that when the trial court & appellate court passed the impugned judgments & decrees khatedari rights could be conferred on the basis of adverse possession. But in this case, the adverse possession of the respondents is not proved in the manner it is required. In this case the first trespass of the respondents was recorded in 1977 and that too was not on the entire disputed land. The report of the Tehsildar, as Commissioner of the Court, the statement of the

patwari and certified copies of khasra Parivartansheel (P-14) produced by the plaintiffs patently indicate that proceedings under Section 91 Rajasthan Land Revenue Act, 1956 were drawn against the respondents/plaintiffs and they were evicted every year. Therefore their continuous, hostile and adequate possession has not been proved as required under the law of adverse possession.

Hon'ble Supreme Court has held in T. Anjanappa & others. Vs. Somalangappa and Anr. (2006 SCC 570) as under :-

It is well recognized proposition in law that mere possession however long does not necessarily mean that it is adverse to the true owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous.

The same view has been reiterated by the Apex Court in Annakili Vs. Vedanayagam & Ors. (2008 AIR SC 346), Swaroop Singh Vs. Banto & Ors. (2005 SCC 3301); Hemaji Waghaji Jat Vs. Bhikhabhai and Ors. (AIR 2009 SC 103) and Munnichi Kanna Reddy & Ors. (2007-6 SCC 59).

In State of Rajasthan Vs. Harphool Singh, (2000) 5 SCC 652, the Supreme Court has held that the adverse possession, being a hostile user, involves, expressly or impliedly, the denial of title of the true owner and the burden is always on the adverse possesser, who asserts such a claim, the Courts must have regard to the animus of the person doing such acts. There must be legally acceptable direct evidence and the necessary legal ingredients of adverse possession

to substantiate the claim of such a party. Some concrete title of the nature of occupation with proper proof thereof, would be absolutely necessary and mere vague assertions cannot be substituted for such concrete proof required for open and hostile possession. Lackadaisical findings cannot be recorded upon mere surmises and conjectures in a case of adverse possession for the reason that the person claiming adverse possession must show the possession to be overt and without and attempt of concealment so that the person, against whom time is running if he exercises due diligence, should be aware of what is happening.

In case in hand there is no adequate documentary evidence which can prove their uninterrupted, hostile and adequate possession of the respondents on both the disputed land.

This court is of the considered view that the claim of respondents/plaintiffs does not comply with the basic ingredients required to be fulfilled under the law of adverse possession. Therefore, this case is quite far from the controversy of conferment of tenancy rights on the basis of adverse possession is legally permissible or not. In these circumstances the findings of the trial court as well as of the appellate court on this issue are perverse, arbitrary and baseless. We decide this issue against the respondents/plaintiffs. We also hold that in such a case where the trespasser has been evicted by adopting due process of law under Section 91 of the Land Revenue Act, his possession cannot be said to be uninterrupted, overt and peaceful.

Issue No.3: Whether the plaintiffs who are landless are entitled for regularization of the disputed land ?

This issue relates to regularization of disputed land to the respondents/petitioners under rule 20 of the Rajasthan Land Revenue (Allotment of Govt. land for Agricultural Purposes) Rules, 1970. These rules explicitly provide that the

regularization of lands under trespass is done by the advisory committee constituted under the rules. The respondents want to grab this land by any means - either under adverse possession or through regularization or through declaration of tenancy rights by the court. When once the Govt. has allotted/regularized them some 46 bighas of land in khasra no.59 in the year 1961-63 why they should be regularized again 243.02 bighas of land? There may be other landless persons, persons of disadvantaged sections of the society in the village who can be poorer or may have better claim than them. In desert districts like Barmer the villagers use such Siwai Chak land for grazing cattle and community purposes. If such land is given in regularization to one particular family, the village community will loose faith in the system.

In this case, the Gram Panchayat also filed a petition in the high Court (D.B.C.W.P. No.4548/2001) and averred that the disputed land is Nadi and falls in the catchment area. Therefore, the respondents be ejected from this community land and it should not be allotted/regularized to them. Though the Hon'ble High Court disposed the writ petition and directed the Collector to enquire and do needful in this regard. This is also very pertinent to mention here that allotment/ regularization of such lands is restricted in the desert districts.

The Hon'ble Apex court has observed in Jagpal Singh & Ors.Vs. State of Punjab & Ors. (2011 RLW 389 SC):-

"We find no merit in this appeal. The appellants herein were trespassers who illegally encroached on to the Gram Panchayat land by using muscle power/moneypower and in collusion with the officials and even with the Gram Panchayat. We are of the opinion that such kind of blatant illegalities must not be condoned. Even if the appellants have built houses on the land in question they must be ordered to remove their constructions and possession of the land in question must be handed back to the Gram Panchayat. Regularization such illegalities must not be permitted because it is Gram Sabha land which must be kept for the common use of villagers of the village. The letter dated 26.09.2007 of the Government of

Punjab permitting regularization of possession of these unauthorized occupants is not valid. We are of the opinion that such letters are wholly illegal and without jurisdiction. In our opinion such illegalities cannot be regularized. We cannot allow the common interest of the villagers to suffer merely because the unauthorized occupation has subsisted for many years."

As discussed above we are not inclined to infer this issue in favour of the respondents/plaintiffs. We are of the considered view that only the advisory committee can examine this issue of regularization in light of the latest guidelines and relevant rules.

Issue No.4 : Whether the plaintiffs are entitled for the relief of perpetual injunction on the disputed land?

In this case, the respondents are rank trespassers on the disputed land and they hardly have any right title on this land. The vast chunk of this disputed land is, undisputedly, a Govt. land and granting perpetual injunction in favour of a trespasser will not be justifiable. If some individuals on the basis of their better resources and muscle power obtain a court order on 243.02 bighas of open Govt. land on which they do not have even the trespass, what local people will think of the courts and their justice delivery system. It conveys a bad message to the public at large that trespassers are rewarded by the courts and law abiding poor people feel cheated. In our opinion the respondents who are simply trespassers on the siwai chak land do not deserve to get the relief of perpetual injunction decree on the disputed land measuring 243.02 bighas.

Issue No.5 : Whether the plaintiffs are the trespassers on this land?

The evidence available on file indisputably suggests that the possession of the respondents on this disputed land was not prior to Svt. 2034 (1977). The recorded trespass of the

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respondents has been from 14 bighas to 135 bighas of land is different years. But this is factually correct that possession of the respondents was never recorded on 243.02 bighas. Their construction of water tank and thatched hut has been done after filing the suit in the trial court. This is a manipulative evidence for grabbing this vast chunk of land. As per the report of the Tehsildar dated 20.4.2004 and the documentary evidence produced by the plaintiffs (Ex.P-4 to Ex-P-10) they have been evicted by the court under Section 91 of the Rajasthan Land Revenue Act, 1956 every year. Therefore, we are of the considered opinion that the plaintiffs encroached some part of the Govt. land and they were evicted by adopting due process of law. We do not endorse the inference of the lower courts on this issue as it is arbitrary, erroneous and contrary to the evidence. We decide this issue in favour of the appellant/defendant State.

Issue No.6: Whether the disputed land is a Govt. land and the plaintiffs have filed this suit just to grab it and the suit is not maintainable.

The documentary evidence produced in this case before the trial court unquestionably indicates that most of the disputed land has been open and free from the periodical cultivatory trespass. Whatsoever encroachment was done by the trespassers was a crop bound and periodical trespass and that too was removed under the due process of law. The report of the Tehsildar and documentary evidence produced by the plaintiffs produced in the trial court prove that this suit has been filed just to grab this big chunk of land. Therefore, we decide this issue in favour of the Defendant State.

Issue No.7: Whether there is a writ pending in the high court pertaining to the disputed land.

Admittedly, a writ petition was filed by the Gram Panchayat, Jhanpali Kalan (Barmer District) in the High Court, Jodhpur (D.B.C.W.P.No. 4548/2001). The High Court disposed of this writ petition on 22.7.2003 observing that if the disputed land (k.No.59/3 & 60/2) is in catchment area it should not be encroached upon or allotted for raising construction. Hon'ble High Court directed Collector, Barmer to enquire into the matter. The Collector, Barmer got the enquiry done by Tehsildar, Sheo and a report was prepared on 15.10.203 wherein the Collector has found that the classification of the disputed land is Barani soyam and is being used for cultivation. The Collector has mentioned in his report that the disputed land is neither Nadi nor in catchment. But many local villagers have filed affidavit stating that this land is in catchment. The report of the geological Survey of India which is on record also suggests that the disputed land forms the part of the old drainage area and as per the existing Govt. instructions this land is not available for allotment/ regularization being located in the desert district. In our considered opinion tenancy rights on this land cannot be given tc the respondents only on the basis of partial trespass when the Gram Panchayat and local community vehemently oppose the regularization.

10. We have carefully perused the judgments passed by the lower courts and scanned the evidence available on record. Both the courts have not given their findings on each issue. They have not even perused the documentary evidence produced before them carefully and just passed the decree which is wholly perverse and arbitrary. It is a case of miscarriage of justice and the both the courts have passed the impugned judgments in complete ignorance of legal provisions and facts available on file.

11. It is a case of simple judicial impropriety as there was no evidence of trespass on 243.02 bighas and both the lower courts

granted khatedari rights on 243.02 bighas ignoring the glittering facts available on record. There is no evidence to indicate the possession of plaintiffs prioir to settlement or since Svt.2012 (1955) when Tenancy Act came into force. The findings of the trial court are based on surmises & conjectures ignoring the factual evidence produced by the plaintiffs. This court is also of the considered view that when systematic land record has been maintained in the tehsil office about the land use, rent & crop pattern since Svt.2012 the other oral evidence is hardly of any consequence.

12. As discussed above, we accept the second appeal filed by the appellant State of Rajasthan and quash the Impugned judgments & decrees passed by the trial court & first appellate court respectively. The suit filed by the respondents/plaintiffs is devoid of any merit, hence be dismissed. Tehsildar, Sheo is directed to evict the respondents/plaintiffs from the disputed land as per law.

13. Pronounced in the open court.

13.02.2012 13.02.2012

(D.R.Meena) (Bajrang Lal Sharma)
Member Member