

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal Decree/TA/6136/2002/Karauli.

Mst. Ramdulari widow of Mishri Lal daughter-in-law of Banshi caste
Kachhi resident of Karauli.

...Appellant.

Versus

1. Thakur Ji Kalyanrai Ji Virajman Mandir Basuwala Kalyanrai Ji
Karauli through Mahant Ramesh Das son of Durga Lal Brahmin
resident of Karauli.
 2. Chhote Lal son of Banshi
 3. Smt. Rampati daughter of Banshi wife of Bhorya
 4. Mst. Kishan Bai daughter of Banshi wife of Ratan Lal
 5. Geeta daughter of Banshi wife of Bhagati
 6. Ashok Kumar son of Mishri Lal
- All by caste Kachhi residents of Karauli Tehsil & Distt. Karauli.

...Respondents.

D.B.

**Shri Bajrang Lal Sharma, Member
Shri Kan Singh Rathore, Member**

Present:-

Shri Khadag Singh, counsel for the appellant.
Shri J.K. Pareek, counsel for the respondents.

Date: 6.12.2013

J U D G M E N T

The appellant has 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 30.8.2002 in appeal No. 133/2001.

2. The factual matrix of the case is that on behalf of temple-idol Kalyanrai Ji a regular suit was filed under section 188 of the Act against the appellant-respondent No. 2 in the court of Assistant Collector, Karauli. The learned trial court decreed the suit on 14.6.2001. Being aggrieved by the judgment and decree passed by the trial court, two appeals were preferred, one by Chhote Lal son of Banshi and the second was filed by Ramdulari. The learned appellate court dismissed both the appeals on 30.8.2002. Being dissatisfied by the judgment and decree passed by the learned appellate court on 30.8.2002, this second appeal has been preferred by the appellant before this court.

3. Heard the learned counsels of the parties.

4. Mr. Khadag Singh, learned counsel for the appellant contended that the judgment and decree passed by the trial court as well as by the appellate court are capricious, illegal and against the record available on

file. He further submitted that the learned appellate court did not address the issues raised in appeal memo and also chose not to record its finding on all the issues framed in this case. He also contended that the disputed land is in possession of the appellant right from her forefathers and the disputed land has not been in khudkasht of the temple idol land and since the disputed land was not in possession of the temple-idol no decree of perpetual injunction could be issued in their favour. He also contended that on 25.6.1937 the disputed land was given for cultivation to the forefathers of the appellant by Mahant Bheru Charan Das but both the courts ignored the patta issued by Mahant Bheru Charan Das. He finally urged the court that the khasra girdawari and other land records manifestly reveal that the disputed land has been in continuous possession of Banshi and after Banshi's death the appellant and other respondents are in continuous possession of the disputed land, therefore, a decree of perpetual injunction could not have been passed by both the courts below.

5. Mr. J.K. Pareek, learned counsel for the respondent No. 1-temple-idol contended that Mandir Murti Kalyanrai Ji is a perpetual minor and it has been given protection under section 46 of the Act. He further contended that the Rajasthan Land Reforms and Jagir Resumption Act also provides absolute protection to the minors and the lands which are entered in name of the minors are to be treated in their personal cultivation, if such lands are being cultivated by others on behalf of the minor or by servants in his supervision. The learned advocate finally urged the court that both the lower courts have given concurrent judgments and restrained the appellant and other respondents not to interfere with its peaceful possession. He finally urged the court that the temple-idol is physically disabled person and therefore, incapable to cultivate the land. In these circumstances it is immaterial that the land is cultivated by somebody else or by the pujari but it is always presumed that it has been cultivated by the temple-idol. The learned advocate cited in support of his arguments.

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. This court has carefully perused the plaint filed by the temple-idol Kalyanrai Ji Maharaj before Assistant Collector, Karauli. After filing of

written statements by the defendants, the trial court framed the following issues in this case:-

- (i) Whether the disputed land is in possession of temple-idol Shri Kalyanrai Ji?
- (ii) Whether the defendants worked as servants with the temple-idol?
- (iii) Whether the defendants are interfering with the peaceful cultivatory possession of the plaintiff and the plaintiff is entitled for relief of perpetual injunction against the defendants?
- (iv) Whether the suit under section 188 of the Act is not maintainable as the plaintiff is not in possession of the disputed land? ...Defendants.
- (v) Whether the defendants are cultivating the disputed land on rent continuously? ...Defendants.
- (vi) Whether the suit filed by the plaintiff is time barred?
- (vii) Relief.

The learned trial court analyzed the evidence produced before it by both the parties and recorded its findings on all the issues framed in this case. The learned trial court manifestly inferred that the disputed land is khudkasht land of the temple-idol who is a perpetual minor and it has also held that the disputed land is in possession of the temple-idol and on the basis of the evidence produced before it the trial court passed the decree of perpetual injunction in favour of the temple-idol.

8. The first appellate court has also concurred with the findings given by the trial court. The appellate court has very explicitly held that Mahant of the temple-idol was not competent to give this land on sub-tenancy because the land belonged to the temple-idol who is a perpetual minor and such a sanction given by the Mahajan is without jurisdiction as it is against the basic principles of law. The Mahanat of the temple cannot work against the interests of the temple. The appellate court also held that the land held by the temple-idol will always be termed to be in personal cultivation of the temple-idol, as such protection has been provided under Rajasthan Land Reforms and Jagir Resumption Act and Rajasthan Tenancy Act.

9. The main contention of the learned advocate for the appellant that since the appellant has been in possession of the disputed land right from the admission of her forefather a perpetual injunction could not have been issued by the trial court. In this connection it will be appropriate to discuss here that minor has been given special protection in Rajasthan Land Reforms and Resumption of Jagir Act. The lands which have been

held by the minors are treated as their personally cultivated lands. If the disputed land is a muafi land and was held by the temple idol it will not be resumed nor given in tenancy of the cultivator as per section 9 of the Jagirs Act. The definition of land cultivated personally given in the Jagirs Act unequivocally makes it clear.

10. This is not disputed that deity or Mandir Murti is a perpetual minor and it has the right to hold properties in its own name. This is also an accepted fact that the plaintiffs were the pujaries of these temples. Therefore, they had a fiduciary relationship with the temple idols. Pujaries are trustees and guardians of the lands and properties held by the temple idols and are under obligation to protect the interests of the deity. As per Rajasthan Public Trust Act, 1959 every temple is a public trust which is open for the community at large for worship. The pujaries are the guardians of the temple idol and if they act adversely to the interest of temple idol, it will tantamount to breach of trust. In these cases, the respondent-plaintiffs were the pujaries and they have filed suits for declaration of tenancy rights on the disputed land which belonged to the deity. Hon'ble Rajasthan High Court has very explicitly held in 'Temple of Thakur Ji Vs. State of Rajasthan and ors' (1998 AIR (Raj.) 85):-

Para 22-

II. The provisions of section 46 of the 1955 Act are based on public policy and have been enacted to secure a laudable object. 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.

III. 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.

The same view has been reiterated in Aidan Vs. State of Rajasthan (2001(3) WLN 363) wherein the Hon'ble Rajasthan High Court took the view that under no circumstances, the land of the deity can be subject matter of transfer, nor any person even having cultivatory possession, can claim khatedari rights over it. The said judgment of the Hon'ble Single Bench of the High Court was

challenged before the Division Bench in D.B. Civil Special Appeal No. 767/2000 and the same view has been affirmed by the Hon'ble D.B. of the Rajasthan High Court on 12.9.2000. |

11. It will be quite appropriate to reproduce the provisions of section 2(i), (K), Section 9 and section 10 of Rajasthan Land Reforms and Jagir Resumption Act, 1952 and Section 15 of Rajasthan Tenancy Act, 1955 for ready reference:

(i) *Khudkasht* means any land cultivated personally by a jagirdar and includes-

(i) any land recorded as *khudkasht*, Sir, or Hawala in settlement record; and

(ii) any land allotted to a jagirdar as *khudkasht* under Chapter IV.

2(K) **'Land cultivated personally'** with its grammatical variations and cognate expressions means land cultivated on one's own account-

(i) by one's labour; or

(ii) by the labour of any member of one's family; or

(iii) by servants on wages payable in cash or in kind (but not by way of a share in crops) or by hired labour under one's personal supervision or the personal supervision of any member of one's family.

Provided that in the case of a person who is a widow or a minor or is subject to any physical or mental disability or is a member of the Armed Forces of the Union, or who being a student of an educational institution recognised by the Government is below the age of twenty five years, land shall be deemed to be cultivated personally even in the absence of such personal supervision.

“Jagirs Act – Section 9 – Khatedari rights in jagir lands

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Every tenancy in a jagir land who at the commencement of this Act is entered in the revenue records as a khatedar, pattedar, *khadamdar*, or under any other description implying that the tenant has heritable and full transferable rights in the tenancy shall continue to have such rights and shall be called a khatedar tenant in respect of such land.”

Jagirs Act- section 10- Khatedari rights in *khudkasht* land:

As from the date of resumption of any jagir land, any *khudkasht* land of a jagirdar (.....) shall be deemed to be held by the jagirdar (.....) as a khatedar tenant and shall be assessed at the village rate.

“Rajasthan Tenancy Act, 1955 – Section 15 –

Khatedar tenants :-

- (1) Subject to the provisions of section 16 and clause (d) of sub-section (1) of section 180 every person who, at the commencement of this Act, is a tenant of land otherwise than as a sub-tenant or a tenant of *Khudkasht* or who is, after the commencement of this Act, admitted as a tenant otherwise than a sub-tenant or tenant of *Khudkasht* or an allottee of land under, and in accordance with, rules made under section 101 of the Rajasthan Land Revenue Act, 1956 (Rajasthan Act 15 of 1956) or who acquires Khatedari rights in accordance with provisions of this Act or of the Rajasthan Land Reforms and Resumption of Jagir Act, 1952 (Rajasthan Act VI of 1952) or of any other law for the time being in force shall be a khatedar tenant and shall, subject to the provision of this Act be entitled to all the rights conferred; and be subject to all the liabilities imposed on Khatedar tenants by this Act:

Provided that no Khatedari rights shall accrue under this section to any tenant, to whom land is or has been let out temporarily in Gang Canal, Bhakra, Chambal or Jawai project area or any other area notified in this behalf by the State Government.”

12. We are also fortified by the observations made by Hon'ble Supreme Court in A.A. Gopalkrishnan V. Cochin Devaswom Board (2007) 7 SCC 482. It was indicated as under: -

The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their trustees/ archakas/ shebaitis/ employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the authorities concerned. Such acts of "fences eating the crops" should be dealt with sternly. The Government, members or trustees of boards/ trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious charitable institutions from wrongful claims or misappropriation.

(emphasis supplied)

As discussed hereinabove, we are of the considered opinion that the disputed land belonged to the temple-idol and could not have been entered in name of the appellants, therefore, there is no infirmity in the judgments and decrees passed by both the lower courts. Hence, this second appeal filed by the appellants is hereby dismissed being devoid of merits. The judgments and decrees passed by the lower courts are upheld.

Pronounced.

(Kan Singh Rathore)
Member

(Bajrang Lal Sharma)
Member