

(2023) 03 RAJ CK 0037

In the Rajasthan High Court

Case No : D.B. Special Appeal Writ No. 560 Of 2015

Bhanwaru Khan And Others

APPELLANT

Vs

State Of Rajasthan And Others

RESPONDENT

Date of Decision : 10-03-2023

Acts Referred:

Rajasthan Land Reforms And Resumption Of Jagirs Act, 1952 — Section 9

Citation : (2023) 03 RAJ CK 0037

Hon'ble Judges : Arun Bhansali, J;Yogendra Kumar Purohit, J

Bench : Division Bench

Advocate : J.L.Purohit, Shashank R. Joshi, Sajjan Singh, Vikram Sharma

Final Decision : Dismissed

Judgement

Arun Bhansali, J

This appeal is directed against the order dated 27/5/2015 passed by the learned Single Judge, whereby, the writ petition filed by the petitioner has been dismissed. Jamal Khan, father of petitioners – Bhanwaru Khan, Yasin Khan, Peeru Khan & Ahmed Khan filed a suit before the Addl.

Collector, Sujangarh for declaration, correction in revenue record and partition against the children of Alladeen Khan with the averments that the original plaintiff Jamal Khan and father of defendants Alladeen Khan were brothers being children of Jeevan Khan. It was claimed that the land ad measuring 3 Bigha and 19 Biswa situated in khasra no. 163 (old khasra No. 52) was in possession of Jamal Khan and Alladeen Khan from the life time of Jeevan Khan. It was claimed that Jeevan Khan in his life time partitioned the said land and southern portion ad measuring 1 Bigha 9 Biswa was given to Alladeen Khan and northern portion ad measuring 02 Bigha was given to Jamal Khan, since then he was in peaceful possession and presently same was in possession of children of Jamal Khan. It was claimed that the portion which was received by way of partition continued to be in possession of both the parties/their children.

It was also claimed that as Jamal Khan was illiterate and was aged 80 years, the entire land comprised in khasra no. 163 was got recorded in the name of Alladeen Khan and, thereafter, in the name of his children about which Jamal Khan did not know though he and, thereafter, his children remained in possession. When the defendants attempted to take forcible possession of the land in question, they became aware of the fact that the land has been wrongly recorded in the name of defendants. Based on the said submissions, it was prayed that it be declared that the land comprised in Khasra No. 163 ad measuring 3 Bigha 19 Biswa situated at village Dulia, Tehsil Sujangarh is of joint tenancy of Jamal Khan and Alladeen Khan in which Jamal Khan had half share and, therefore, plaintiffs are entitled to get their names entered in revenue record. The property be partitioned and same be recorded in the name of plaintiffs.

The suit was resisted by the defendants with the submissions that Jeevan Khan never partitioned the land and Jamal Khan was never in possession of 02 Bigha land, the land was always recorded as Khatedari of Alladeen Khan and only in Jamabandi of Samvat Year 2014-2017 and Girdawari of 2018-2020 the same was shown in cultivatory possession of Jamal Khan. It was averred that merely on the basis of said entries, the khatedari rights cannot be claimed.

The trial court framed four issues and the parties led evidence.

After hearing the parties the Assistant Collector, Sujangarh by his judgment and decree dated 30/7/1991 decreed the suit.

Feeling aggrieved, the defendants filed first appeal. The Revenue Appellate Authority by its judgment dated 24/5/2002 dismissed the appeal, against which second appeal was filed before the Board of Revenue.

The Board of Revenue by its judgment dated 16/2/2012 reversed the finding recorded by the trial court as well as the first appellate court and dismissed the suit.

Feeling aggrieved, the petitioners filed writ petition before this Court, which has been dismissed by the learned Single Judge by the judgment impugned.

Learned counsel for the petitioners made submissions that the Board of Revenue and learned Single Judge fell in error in accepting the appeal/dismissing the writ petition.

Submissions were made that in Jamabandi pertaining to Samvat Year 2014-2017 the land was recorded in the name of Alladeen as Jagirdar, however, in respect of 02 Bigha of land name of Jamal Khan was entered as tenant and, therefore, in view of the provisions of Section 9 of the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 ('the Act, 1952'), Jamal Khan became khatedar tenant of 02 Bigha of land and Alladeen became khatedar tenant of 01 Bigha 09 Biswa of land, however, learned Single Judge wrongly refused to consider the provisions of the Act, 1952 only on account of the fact that the said plea was not

raised in the suit.

Submissions have been made that as from the record the said aspect is apparent, the Board of Revenue and learned Single Judge by applying the provisions of the Act, 1952 should have held in favour of the petitioners and on that count alone the orders impugned deserve to be set aside.

Submission were also made that once the land was recorded in favour of the appellant's father in Jamabandi of Samvat Year 2014-2017 and only in subsequent years the same was recorded in the name of Alladeen Khan, in absence of any explanation for deletion of the name of Jamal Khan, the plea raised regarding absence of name of Jamal Khan qua the Jamabandi of Samvat year 2011-2013 could not be countenanced.

Learned counsel for the appellants made submissions that it was an admitted case that the land in question was ancestral and, therefore, as Jamal Khan and Alladeen Khan were the only two successors of Jeevan Khan, they were entitled to half share each and as the appellants were in possession of half portion of land i.e. 02 Bigha out of 3 Bigha 19 Biswa, the Board of Revenue and learned Single Judge fell in error in allowing the appeal/dismissing the writ petition.

Reliance was placed on the judgment in Tara & Ors. vs. State of Rajasthan : D.B.Civil Special Appeal No.185/2001 decided on 15/7/2015.

Learned counsel for the respondents vehemently contested the submissions. It was submitted with reference to the Jamabandi of Samvat Year 2011-2013 that the land in question was recorded in the name of Alladeen Khan alone and once the same was recorded in the name of Alladeen alone, the introduction of name of Jamal Khan in the Jamabandi for the year 2014-2017 requires explanation inasmuch as it is not even the case of the plaintiffs in the suit that Jamal Khan was introduced as tenant of the said land by Alladeen Khan.

It was submitted that mere fact that the name of Jamal Khan without any explanation stands indicated in the Jamabandi of Samvat year 2014-2017 by itself cannot create any right as entries in the revenue record and Jamabandi are only for fiscal purposes and no ownership is conferred on the basis of said entries.

Submissions were made that in the plaint, no averments worth the name were made claiming benefit of Section 9 of the Act, 1952/status as tenant of khudkast at the time of Jagir resumption and only before the Board of Revenue, orally said aspect was raised, which was turned down for lack of pleadings by the Board of Revenue and said aspect regarding lack of pleading was upheld by the learned Single Judge, which aspect does not call for any interference as it is well settled that no decision based on grounds outside the pleadings of the parties can be made and that pleadings are necessary to enable the court/authority to decide the said aspect and, therefore, the judgment impugned passed by the learned Single Judge does not call for any interference.

It was emphasized that the land in question was recorded in the name of

Alladeen Khan and the respondents all alone as is evident from Ex.A/5, A/6, A/7 and A/9 produced before the trial court and, therefore, the plea raised has no basis and, therefore, the appeal deserves dismissal.

Reliance was placed on the judgments in Shri Narain & Ors. vs. State of Rajasthan & Ors. : 2007 (3) RLR 769, National Textile Corporation Ltd. Vs. Naresh Kumar Badri Kumar Jagad & Ors. : AIR 2012 SC 264, Jitendra Singh vs. State of Madhya Pradesh & Ors. : 2021 (3) RLW 2291 and Jattu Ram vs. Hakam Singh & Ors. : AIR 1994 SC 1653.

We have considered the submissions made by learned counsel for the parties and have perused the material available on record.

At the outset it may be noticed that the case set up in the plaint was that the land in question was being used from the life time of Jeevan Khan, father of Jamal Khan and Alladeen Khan jointly and Jeevan Khan in his life time by partitioning the property gave a portion of the land ad measuring 02 Bigha to Jamal Khan, which was in his possession followed by his children's possession and, therefore, based on the said submissions correction in revenue entries as well as partition was sought by the plaintiffs.

The foundation of the plea, apparently, is that the property was joint/belonging to father, who partitioned the same amongst his two sons. The averments in the plaint are too hazy in this regard. Further, the revenue record which has been relied on by both the parties does not support either of the case of the plaintiffs inasmuch as the land in question was at no stage recorded in the name of Jeevan Khan and in none of the documents produced, the same is shown in joint tenancy of Jamal Khan and Alladeen Khan and as such, apparently, the plea raised in the suit was not established.

In the evidence led by the parties, the appellants-petitioners failed to establish that either the land originally belonged to Jeevan Khan and/or Jamal Khan and Alladeen Khan were having joint tenancy of the land in question and, therefore, apparently, the Board of Revenue in its judgment was justified in coming to the conclusion that merely on account of entries in Khasra Girdawari for Samvat year 2018-2020 and in Jamabandi for Samvat Year 2014-2017 ownership of the property cannot be claimed.

Hon'ble Supreme Court in the case of Jattu Ram (supra) and Jitendra Singh (supra) has laid down that entries in revenue record or Jamabandi is only for fiscal purpose i.e. payment of land revenue and no ownership is conferred on the basis of the entries.

Besides the above, vide Ex.A/9, the land in question for Samvat Year 2011-2013 has been shown in the name of Alladeen Khan, as to on account / on which event, the portion of land ad measuring 02 Bigha came to be recorded in the name of Jamal Khan has neither been averred nor has been established by the plaintiffs and, therefore, the plea raised based on the Jamabandi for Samvat Year

2014-2017 has rightly been declined by the Board of Revenue and upheld by the learned Single Judge.

Learned counsel for the appellants laid great emphasis on the fact that in Jamabandi for Samvat Year 2014-2017 (Annex.2 to the writ petition) while Alladeen Khan has been indicated as 'khudkast', Jamal Khan has been shown as tenant qua 02 Bigha of land and based on the said indication, it has been claimed that under Section 9 of the Act, 1952 the khatedari rights accrued in the said land to Jamal Khan being the tenant and, therefore, based on the said aspect, the Board of Revenue should not have interfered with the judgment of the lower courts and the learned Single Judge ought to have reversed the judgment of Board of Revenue on the said count.

The plea sought to be raised has, apparently, no basis whatsoever in the plaint. Once the claim made in the plaint is of joint tenancy/hereditary succession i.e. both brothers being equal, change sought of the said status, based on the revenue entries, i.e. to claim that Jamal Khan was a tenant of khudkast i.e. of Alladeen – his brother, on the face of it, cannot be countenanced.

The appellants were well aware of the revenue record and in case the status of Jamal Khan was that of 'tenant' and of 'khudkast' of Alladeen Khan, his brother, in the first instance, the said plea would have been raised in the plaint. The said aspect pertaining to the status merely based on the revenue entry has rightly been declined to be examined by Board of Revenue and upheld by the learned Single Judge.

Further a bare look at the Jamabandi for Samvat Year 2011-2013 corresponding to the year 1954-56 would reveal that the same nowhere contains the name of Jamal Khan and Alladeen Khan has been shown as 'khudkast' and in terms of provisions of Section 9 of the Act, 1952 once on the commencement of the Act i.e. 18/02/1952 only those, who were recorded as tenants in Jagir land would get khatedari rights. The introduction of name of Jamal Khan in subsequent Jamabandi for Samvat Year 2014-2017, corresponding to years 1957-1960, when the same did not exist at the time of commencement of the Act, would not confer any right on Jamal Khan even under the provisions of Section 9 of the Act, 1952 and on that count also, the plea raised has no substance.

In view of the above discussion, the appeal has no substance and the same is, therefore, dismissed.