

(2007) 07 RAJ CK 0094

In the Rajasthan High Court

Case No : Civil Writ Petition No. 113 of 2003

Guru Govind Singh Gurudwara Singh Sabha Samiti

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 09-07-2007

Acts Referred:

Rajasthan Tenancy Act, 1955 — Section 183

Citation : (2007) 3 WLN 274

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Judgement

Prakash Tatia, J.—Heard learned Counsel for the parties.

2. According to the petitioner, the Electricity Board even did not required the land dt. 22.11.2002 by which the Board of Revenue dismissed the appeal preferred by the petitioner and allowed the private respondents/defendants? appeal and decreed the counter claim of the defendants and declared the defendants as khatedar tenant of the land in dispute.

3. Brief facts of the case are that the plaintiff/petitioner filed a suit u/s 183 of the Rajasthan Tenancy Act claiming that the land in question is the land of Gurudwara and Mandir and the land is recorded so in the revenue record particularly, in jamabandi of Samwat Year 2048. The plaintiff pleaded that Moti Singh S/o Mansha Singh was looking after the land of Gurudwara and Temple. After the death of Moti Singh, the land was given to defendant Manmohan Singh so that the land can be cultivated. Said Manmohan Singh, since gave threat that he will alienate the land in question and thereby denied the title of the plaintiff, therefore, the plaintiff/petitioner filed the suit for eviction of the defendant.

4. In reply to the plaintiff?s case, the respondent/defendant in written statement submitted that the land was allotted to the defendant by the order of Assistant Collector, Sri Karanpur dt. 13.05.1966. It is stated that a letter No. 830 dt. 04.06.1966 was also issued by the Assistant Collector, Srikanpur to Tehsildar,

Padampur informing him that the land has been allotted to the defendant. The defendant submitted that since last more than 12 years prior to the filing of suit, the defendant is in possession of suit property. Various issues were framed and as stated above, all the three courts below observed that originally, the land was recorded in the name of Gurudwara Singh Sabha but in view of Exhibit-D/6A dt. 04.06.1966, the land was recorded in the name of defendant and, therefore, the defendant became khatedar tenant.

5. However, the trial Court specifically held that since the allotment letter was not produced by the defendant and because of non-availability of the document, it cannot be held that any allotment was made in favour of the defendant, therefore, decided the issue No. 6 against the defendant and consequently, dismissed the counter claim of the defendant. Meaning thereby, the trial Court dismissed the counter claim as well as the suit by judgment and decree dt. 15.04.2000.

6. The plaintiff and defendant preferred separate appeals before the Revenue Appellate Authority, Sri Ganganagar camp Raisinghnagar. The Revenue Appellate Authority was of the view that the defendant cannot be termed to be a trespasser over the land in dispute and without cancellation of his allotment for which reference is pending, the plaintiff cannot get decree u/s 183 of the Tenancy Act on the ground of encroachment over the land of the khatedar tenant. The first appellate Court was also of the view that the land was recorded in the name of Gurudwara and Temple and, therefore, the trial Court rightly dismissed the counter claim of the defendant.

7. Both the parties aggrieved against the judgment and decree of the first appellate Court preferred further appeals before the Board of Revenue. The Board of Revenue allowed the appeal of the defendant and decreed the counter claim of the defendant and declared the defendant to be khatedar tenant of the land and dismissed the appeal of the plaintiff.

8. Hence, this writ petition by the petitioner/plaintiff to challenge the judgments and decrees of the three Courts below.

9. Learned Counsel for the petitioner vehemently submitted that the Board of Revenue committed serious error of law in decreeing the suit of the respondents and further committed error of law by not setting aside the judgments and decrees of two Courts below by which the two Courts below refused to pass the decree in favour of the petitioner. According to learned Counsel for the petitioner, when there is an entry in the name of one person in the revenue record then that entry can be changed only by lawful order. In this case, all the three Courts concurrently held that originally land was belonging to Gurudwara and Temple. Not only this, but even the defendant also admitted this fact that originally land was that of Gurudwara and Temple. In that situation, the whole burden was upon the defendant to prove how he became khatedar tenant of the land in dispute? The defendant came with a positive case that the land was allotted to him on

13.05.1966 by the order of Assistant Collector or was allotted by the State. The Board of Revenue ignored the fact which was noticed by two Courts below that the defendant failed to produce any order of allotment of the land in question.

10. Learned Counsel for the petitioner vehemently submitted that the alleged communication dt. 04.06.1966 (Ex.D/6A) is nothing but a communication which had no legal foundation. That communication itself was considered by the Board of Revenue as an order giving khatedari rights to the defendant. Learned Counsel for the petitioner also pointed out that the Board of Revenue misread the communication dt. 04.06.1966 (Ex.D/6A) as well as all other documents. It is submitted that the defendant could not produce any allotment order in his favour before three Courts and when this was the specific ground taken by the petitioner/plaintiff, in this writ petition, the defendant produced Sanad stating that Annex. 2(R/2) is the Sanad issued in favour of the defendant for the land in dispute. According to learned Counsel for the petitioner, the document marked as Annex. 2 (by respondents) was issued in the year 1991 and was for Khasra No. 55 whereas the khasra in dispute is Murabba No. 2. In view of the above reasons, it is clear that the Board of Revenue without reading the document Ex. D/6A or by misreading the said document and the other evidence, decreed the counter claim.

11. Learned Counsel for the petitioner also pointed out that the Board of Revenue also committed error of law in holding that the land in question was resumed. It is submitted that as per Section 10 of Rajasthan Land Reforms (Resumption of Jagir) Act, 1952. On resumption, khatedari rights accrues in favour of the person cultivating himself as khudkast. It is pointed out by learned Counsel for the petitioner that the land was recorded as khudkast throughout the period, therefore, the defendant could not have acquired any khatedari right by virtue of his cultivation which in fact was not there.

12. Learned Counsel for the respondents tried to submit that since 1966, the defendant was in possession of the property in dispute and the respondents produced the communication dt. 4.6.1966 by which a lawful authority conveyed to its subordinate that the land in question has been allotted to the defendant on permanent basis. Learned Counsel for the respondent vehemently submitted that in fact, the plaintiff created evidence and that is the jamabandi of Samwat Year 2048 wherein the plaintiff's name was wrongly recorded. It is submitted that the plaintiff failed to produce any jamabandi prior to Samwat Year 2048 and, therefore, adverse inference has been drawn against the plaintiff. It is also submitted that the plaintiff failed to show any reason for non-production of jamabandi of the previous years. In that situation, mere any entry of Samwat Year 2048 cannot be a basis to declare the plaintiff as khatedar tenant. It is also submitted that the suit for eviction of the trespasser can be filed only by a khatedar tenant and when the Board of Revenue held that the plaintiff failed to prove himself to be khatedar tenant, then a suit u/s 183 of the Tenancy Act was not maintainable.

13. The respondents' contentions are that on resumption of jagir, the land vest in the State Government or khatedari right may accrue to khudkast, the person who is in cultivatory possession. It is submitted that in some identical matters, writ petitions were filed and the actual cultivators got khatedari rights. In the case of the respondents since the khatedari rights were granted by the revenue authorities by accepting their claim, then there was no necessity of filing writ petition by the respondent but the case of the respondent is covered by the judgment given in other cases. It is also submitted that when the land stands resumed though of another Gurudwara itself, this Court in one of the judgments held that the person in actual cultivatory possession acquired the right when the State Government resumed under the above Act.

14. I considered the submissions of learned Counsel for the parties and perused the facts of the case.

15. It will be worthwhile to mention here that the two Courts below while deciding the issue No. 6 clearly held that the defendant did not produce his allotment letter for the land in question. Mere communication dt. 04.06.1966 (Ex.D/6A) was not sufficient for declaring the defendant as khatedar tenant. The Board of Revenue ignoring the fact that the plea of adverse inference sought to be raised by the defendant before this Court against the plaintiff is also equally applicable to the defendant also as defendant also did not produce the copies of jamabandi which he also could have produced. It is not in dispute that none of the parties produced the copies of jamabandi prior to Samwat Year 2048.

16. Under the provisions of the Tenancy Act, there is a presumption attached to the entry made in the revenue record and in the jamabandi produced by the plaintiff of Samwat Year 2048, name of plaintiff is duly entered, then to controvert the document i.e. jambandi of Samwat Year 2048, the defendant should have produced the copies of the entries in his name in the revenue record prior to Samwat Year 2048. The document can be produced by any of the party but not produced by any of the party, then the Court may be slow in drawing adverse inference and may decide the case on the basis of evidence available on the record. The grant of khatedari tenancy right on the basis of Ex. D/6A cannot be justified because of the further reasons that the Board of Revenue failed to appreciate the fact that there is no corroborative evidence to said communication which is said to have been issued in the year 1966 and as stated by learned Counsel for the parties, there is no supporting entries in the revenue record and if there are any entries in the revenue record after letter dt. 04.06.1966, then those have not been produced by the defendant.

17. It may also be relevant to mention here that in the present controversy, both the parties were plaintiff because of the reason that the suit was filed by the plaintiff/petitioner and then the counter claim was filed by the defendant, then also, mere dismissal of the suit of the plaintiff could not have resulted in grant of decree in counter claim of the defendant. Be it as it may be, in view of the fact that there were documentary evidence available on the record and the Board of

Revenue has misread the documentary evidence, therefore, the judgment and decree passed by the Board of Revenue dt. 22.11.2002 cannot be sustained because of the reason that caused foundational error for grant of decree in counter claim of the defendant. If the defendant cannot be granted decree in his counter claim, then the revenue entries of Samwat Year 2048 clearly shows that the plaintiff was recorded as khatedar tenant and then, the plaintiff's suit u/s 183 could not have been dismissed on the ground that the plaintiff was not recorded as khatedar tenant of the land in dispute prior to filing of the suit. In view of the above, the Board of Revenue may decide the appeals afresh by keeping in mind that only Ex. D/6 dt. 04.06.1966 alone is not sufficient for declaring the defendant to be khatedar tenant of the land in dispute. The Board of Revenue may examine whether there is reasonable reason to draw inference in favour of the plaintiff for khatedari right on the basis of jamabandi produced by the plaintiff and in view of other evidence or there is other corroborative evidence to prove khatedari rights of the defendant.

18. In view of the above reasons, this writ petition is allowed, the order of the Board of Revenue dt. 22.11.2002 is set aside and the matter is remanded to the Board of Revenue for deciding both the second appeals afresh after considering the documentary evidence afresh.

19. Both the parties are directed to appear before the Board of Revenue on 20.09.2007.

20. Copy of order be sent to the Board of Revenue forthwith.