

**(1987) 07 RAJ CK 0049**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 371 of 1977**

Smt. Mohan Kanwar Ranawat

APPELLANT

Vs

Board of Revenue

RESPONDENT

**Date of Decision :** 30-07-1987

**Acts Referred:**

Rajasthan Tenancy Act, 1955 — Section 30DD, 33B(a)

**Citation :** (1988) 1 RLW 26 : (1989) 2 WLN 412

**Hon'ble Judges :** Milap Chand Jain, J;J.S. Verma, J

**Bench :** Division Bench

**Final Decision :** Dismissed

## Judgement

Milap Chandra, J.—This writ petition has been filed challenging the judgment of the respondents Nos. 1 to 3 dated 31-12-1971, (Annexure-3), (Annexure 4) and 6-10-1976 (Annexure-5) respectively by which the transfers of the agricultural land made by the petitioner No. 1 in favour of the petitioner Nos. 2, 3, 4 & 5 were not recognised u/s 30-DD, Rajasthan Tenancy Act (here in after to be called as "the Act") and the separate share of late Mohan Kanwar Jagtawatji, mother of the petitioner No. ? was also not recognised while calculating the extent of ceiling area u/s 30-C of the Act. The facts of the case giving rise to this writ petition may be summarised thus.

2. Baisingh, husband of the petitioner No. 1, had Khatedari land measuring 1347 Bighas, 9 Biswas, more specifically described in Schedule "A" of (be writ petition. He died on 13-2-1958. In November 1971, proceedings u/s 30-C of the Act and Rules 9 and 10, Rajasthan Tenancy (Fixation of Ceiling on Land) (Government) Rules, 1963 (here in after to be called as "the Rules"; for the determination of the ceiling area were taken against the petitioner No. 1 by the respondent No. 3. The petitioner No. 1 filed objections stating that several Bighas of land had been transferred to various purchasers and the co-widow of late Raisingh, Mohan Kanwar Jagtawat, had also equal share in the land left by the deceased. The transfers made in favour of the petitioners Nos. 3 to 5 and separate share of Mst.

Mohan Kanwar Jagtawat were not recognised by the respondent No. 3 vide his judgment Annexure-3). The petitioner No. 1 filed appeal before the Revenue Appellate Authority, Udaipur. It was dismissed by him by his judgment, Annexure-4. Thereafter, revision was filed before the Board of Revenue, Ajmer and it was also dismissed by its judgment, Annexure-5.

3. It has been contended by the learned Counsel for the petitioners that late Raisingh died leaving behind two widows, namely, Mohan Kanwar Ranawat" (Petitioner No. 1) and Mohan Kanwar Jagtawat who left will, Annexure-1, in favour of the petitioner No. 2, mutations were effected in the name of Mohan Kanwar only as the names of both the widows were the same, both the widows were entitled to equal shares in the property left by their husband and as such each was entitled to retain 30 standard acres. He further contended that the respondents No. 1 to 3 seriously erred to hold that the expression "of this Act" appearing in Explanation No. 11 of Section 30-DD of the Act meant the Rajasthan Tenancy Act 1955 and not the Rajasthan Tenancy (Second Amendment) Act, 1970 (Act No XV of 1970) here in after called the (Amendment Act). He also contended that the petitioners Nos. 3 & 4 were living in Rajasthan when the said Amendment Act came into force and, therefore, the transfer made in their favour sought (sic ought) to have been recognised by the respondents No. 1 to 3. He lastly contended that these authorities seriously erred in not recognising the transfer made in favour of the petitioner No. 5 on the ground that he was not major on the date of the transfer.

4. The learned Additional Government Advocate duly supported the judgment, Annexures-3, 4 and 5. He contended that there is no error apparent on the record in any of these judgments and they are not contrary to law.

5. The first question for consideration in this writ petition is whether the co-widow, Mohan Kanwar Jagtawat, was also entitled to 30 standard acres of land separately. It is well settled law that two or more widow succeed as co-heirs to the estate of their deceased husband and take as joint tenants with rights of survivorship and equal beneficial enjoyment vide Article 43(4), Hindu Law by Mulla Both the widows together formed a family as defined in Section 33B(a) of the Act and not two families. As such both of them together were entitled to retain 30 standard acres of land and not 60 acres of land. It is very much doubtful that late Raisingh left Mohan Kanwar Jagtawatji also as his widow. The respondents No. 1 and 2 have observed in their judgments that Mohan Kanwar Jagtawatji did not file any appeal or revision against the judgment of the respondent No. 3. It is also clear from the mutation orders, Annexures-2A, 2B and 2C that the agricultural fields left by late Raisingh were mutated in the name of only Mohan Kanwar and not in the names of both of them. A photo-stat copy of the Will alleged to have been executed by Mohan Kanwar Jagtawatji has been attached with the writ petition as Annexure-1. It is clear from it that it is not a registered document. It is not disputed that its probate was also not obtained. Affidavits of the two attesting witnesses have also not been enclosed with the

writ petition. It cannot therefore, be said that will. Annexure-1, was executed by Mohan Kanwar Jagtawatji. There is no other material on record to show that late Raisingh left Mohan Kanwar Jagtawatji also his widow besides Mohan Kanwar Racawat.

6. The second question for consideration is about the recognition of the transfers made in favour of the petitioner Nos. 3 & 4. It is stated in the judgment, Annexure-5 that the petitioners Nos. 3 and 4 were the residents of Mandsore (Madhya Pradesh) when the fields were transferred to them. It is also mentioned in it that the voter list of 1971 was only filed to show that they were resident of Rajasthan and no voter list prior to 1971 was filed. It is stated in para No. 9(f) of the writ petition that the petitioners No. 3 & 4 were living in Rajasthan since the date of their transfer and, therefore, were residents of Rajasthan when the Amendment Act (No XV of 1970) came into force. It is not stated in it that they were residents of Rajasthan when the Rajasthan Tenancy Act, 1955 came into force. It is correct that Section 30-DD was inserted in the Rajasthan Tenancy Act, 1955 by the Amendment Act. By it, transfer of land not exceeding 30 standard acres made before 31st December, 1969 in favour of an agriculturist domiciled in Rajasthan has been recognised. The explanation II of Section 30-DD of the Act defines "domiciled in Rajasthan" as under:

II. - The expression "domiciled in Rajasthan" in this section shall mean a person who permanently resides in Rajasthan since before, the commencement of this Act.

7. The real controversy is about the meaning of the expression "this Act" in Explanation II of Section 30-DD quoted above. According to learned Counsel for the appellants, Section 30-DD being inserted in the Rajasthan Tenancy Act, 1955 by amendment, the expression "this Act" means the Amendment Act and not the principal Act so that it is the date of commencement of the Amendment Act and not the principal Act, on which the person should have been "domiciled in Rajasthan" to fall within" the meaning of that expression defined in Explanation II. The question is whether this contention can be upheld. In our opinion, there is an obvious fallacy in this argument. The expression "this Act" used in Explanation II of Section 30-DD must mean the principal Act or the Rajasthan Tenancy Act, 1955 for the obvious reasons that the Act referred is that Act of which Section 30-DD including Explanation II is a part. The expression "this Act" can be reference only to the Act of which the provisions using this expression forms a part and not of any other Act including the Amendment Act which inserted this provision in the principal Act. This is also clear from the fact that Section 30-DD including Explanation II therein cannot be treated as a part of the Amendment Act by which this provision has been introduced in the principal Act in as much as the Amendment Act are those which are expressly indicated therein including that which provides for the insertion of Section 30-DD into the principal Act. It is therefore, clear (that the expression this Act used in Explanation I of Section 30-DD of the Rajasthan Tenancy Act, 1955 means the Rajasthan Tenancy Act, 1955

of which it is a part and not the Amendment Act (No. 15 of 1970) by which Section 30-DD has been inserted in the Rajasthan Tenancy Act, 1955, since it is admittedly not a part of the Amendment Act.

8. For taking benefit under the provisions of Section 30DD, the petitioners Nos. 3 & 5 were required to prove that they were were residing in Rajasthan since year, 1955 and admittedly they had failed to do so. The respondents Nos. 1 to 3 rightly did not recognise the transfers of land made in their favour.

9. The third question for consideration is about the recognition of the transfer of land made in favour of the petitioner No. 5. This transfer was not recognised on the ground that he was minor at the time of transfer. The mutation Annexure, 2-A, relates to this transfer. Its column No. 11 shows that the petitioner No. 5 was in the guardianship of his father Laxman Singh at time of the transfer. It is clear from the provisions of Section 30-DD (i) that transfrs to land not exceeding 30 standard acres made before December, 1969 in favour of an agriculturist domiciled in Rajasthan and who has attained the age of matuity on or before the date of transfer could be recognised. As stated above, the petitioner No 5 did not attain the age of maturity on the date of the transfer of the land in his favour. As such the respondents No. 1 to 3 rightly did not recognise the land transferred to him. Thus there is no force in the writ petition.

10. In the result, the writ petition is dismissed with costs.