

(2018) 05 RAJ CK 0116

In the Rajasthan High Court

Case No : Spl. Appl. Writ No. 622, 620 of 2012

State of Rajasthan @APPELLANT@Hash Mohan Ram, Mani Ram

Date of Decision : 10-05-2018

Acts Referred:

Rajasthan Tenancy Act, 1955 — Section 15A, 232

Citation : (2018) 05 RAJ CK 0116

Hon'ble Judges : GOPAL KRISHAN VYAS, J; RAMCHANDRA SINGH JHALA, J

Bench : Division Bench

Advocate : AR Godara, JL Purohit, Rajeev Purohit

Final Decision : Dismissed

Judgement

Gopal Krishan Vyas

Both these special appeals are arising out of the judgment passed by the learned Single Judge in SBCWP No.2234/1994 decided on

10.5.2005 and SBCWP NO.2296/1995 decided on 10.5.2005.

As per the facts of the case, a suit was decided by the learned Addl. Collector, Kolayat for partition and giving separate possession of 60

bighas of land out of ancestral land existing in favour of one Ram Karan elder brother of petitioners. Sh. Ram Karan accepted in his written

statement before the learned Addl. Collector, Kolayat that land in question is ancestral property and also agreed for grant of decree for separate

possession of 60 bighas of land. The Addl. Collector, Kolayat passed the judgment dated 23.1.1989 whereby the suit was decreed and

respondents/petitioners were granted gair khatedari rights with regard to their share in the land in question situated in Khasra No.175, 176, 187 and

188. The Dy. Commissioner, Colonization made a reference vide order dated 1.9.1993 to the Board of Revenue Ajmer with regard to gair khatedari

rights granted to the respondents-petitioners on the ground that while granting khatedari rights vide judgments dated 23.1.1989, the Assistant

Collector, Kolayat acted in contravention of the provisions of Section 15A of the Rajasthan Tenancy Act, 1955, which provides that gair khatedari

rights can be granted only to those persons who had been recorded as in possession of the land prior to Samwat year 2012 and also to those

persons who are not so recorded, but established their continuous possession over the land.

According to the appellants, the respondents-petitioners were neither in possession of the land in question prior to Samwat year 2012 nor established

continuous possession over the land. The reference so made by the Dy. Commissioner, Colonization was accepted by the learned Board of

Revenue, Ajmer by its judgment dated 30.11.1993 holding that the land was recorded in the name of original Khatedars from whom the respondents-

petitioners came into possession of the land on the basis of some agreement or understanding, therefore, grant of Khatedari rights runs contrary to the

provisions of Section 15A of the Act of 1955. The learned Board of Revenue while accepting the reference, set aside the judgment dated

23.1.1989 passed by the Assistant Collector, Kolayat.

Being aggrieved by the judgment dated 30.11.1993 the respondents-petitioners preferred a review petition before the Board of Revenue but

the same was dismissed vide judgment dated 17.3.1994.

Being aggrieved and dissatisfied with the order dated 30.11.1993 and 17.3.1994 passed by the learned Board of Revenue, the respondents-

petitioners preferred writ petition before this Court alleging therein that the Board of Revenue Ajmer erred by holding that the gair khatedari

rights were erroneously granted to the respondents-petitioners as land was recorded in the name of original khatedar from whom respondents-

petitioners had come into possession of the land on the basis of some agreement or understanding.

The learned Single Judge while considering the factual aspect of the matter quashed the judgment dated 30.11.1993 passed by the learned Board of

Revenue Ajmer upon reference made by the Dy. Commissioner, Colonization, Bikaner and the judgment dated 17.3.1994 passed by the learned Board

of Revenue Ajmer in the review petition was also quashed and restored the

judgment of Assistant Commissioner, Colonization, dated 23.11.1989.Â Â

Â In these appeals, the State of Rajasthan has challenged the judgment dated 120.5.2005 passed in both the writ petitions on various grounds.Â

Â Learned counsel for the appellants vehemently argued that there is clear cut finding in the order of reference that respondents-petitioners were not

in continuous possession over the land nor it is established by them that they are in continuous possession over the land in question, therefore, there

was no occasion for the learned Single Judge to quash the order passed by the learned Board of Revenue upon reference under Section 232 of the

Tenancy Act.Â

Â Per contra, learned counsel appearing for the respondents submits that there is complete fallacy in the argument of the learned counsel for the

appellants that respondents-petitioners were not in possession of the land, more so, it is a case in which Khatedari rights were granted to the

respondents-petitioners in view of the judgment dated 23.1.1989 which is passed in a suit for declaration in which the share of the respondents-

petitioners in ancestral land was granted to the respondents-petitioners.Â It is also argued that one Ram Karan, elder brother of the respondents-

petitioners being the eldest member of the family who was recorded Khatedar as a consequence of survey taken up by the government in the Samwat

Year 2012 and suit was filed by the respondents-petitioners for declaration of their rights in the ancestral property in which the order dated 23.1.1989

was passed, therefore, it was not a case in which reference was to be made under Section 232 of Rajasthan Tenancy Act.

Â The learned Single Judge after taking into consideration entire facts of the case held that reference made by the Dy. Commissioner deserves to be

quashed.Â

Â After hearing learned counsel for the parties, we have perused theÂ judgment impugned.Â There is no disputeÂ with regard to the fact that

name of RamÂ Karan,Â eldest brother of respondents-petitioners was recorded asÂ Khatedar of Khasra No.175, 176, 187 and 1988 and his name

was entered as a consequence of survey taken up by the government in Samwat Year 2012. The respondents-petitioners being share holder of the

ancestral property claimed their right by way of filing suit in which decree was passed on 23.1.1989, therefore, obviously, it is a case in which gair

khatedari rights were granted in the suit of declaration in which it was established that family of Ram Karan and respondents-petitioners were in possession of the land in question from the Samwat Year 2012. Therefore, we are of the opinion that it is apparent from the facts that the respondents-petitioners were granted gair khatedari rights as a consequence of declaration of their share in their ancestral land. The gair khatedari rights at the relevant time were already existing in favour of the elder brother of respondents-petitioners, therefore, it is obvious that whatever right created in favour of the respondents-petitioners by order dated 23.1.1989 were pre-existing rights.

Â In view of the above, it is obvious that Board of Revenue apparently committed an error of law while deciding the reference that grant of Khatedari rights to the respondents-petitioners as a consequence of declaration of their share in ancestral land in compliance of judgment in the suit, is in contravention of the provisions of the Act. Â

Â In view of the above, there is no force in both these special appeals filed by the State of Rajasthan. Â Hence, both the special appeals are hereby dismissed. Â