



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No.713/2005

1. Anandi Lal S/o Shri Tara Chand, aged about 76 years, R/o Village Hanuwant Kheda, Tehsil Chhabara, District Baran
2. Radhey Shyam S/o Devi Lal, aged about years, R/o Village Hanuwant Kheda, Tehsil Chhabara, District Baran

-----Petitioner

Versus

1. Shri Dalip Prajapat, Tehsildar, Tehsil Chhabara, District Baran (Raj.)
2. Shri Nand Kishor Rajora, Sub Divisional Officer, Chhabara, District Baran (Raj.)
3. The Settlement Officer, Kota Ex-officio, Revenue Appellate Authority.
4. The Sub Divisional Officer, Chhabra, District Baran.
5. Girdhari S/o Mohan, R/o Chhabra, District Baran (deceased)
5/1 Mathuralal S/o Girdhari, aged about 48 years, R/o Moti Colony. Dist. Baran (Raj.)
5/2 Hazari Lal S/o Girdhari, aged about 45 years. R/o Moti Colony, Dist. Baran (Raj.)
5/3 Ghisi Bai D/o Girdhari, aged about 43 years. R/o Moti Colony, Dist. Baran (Raj.)
5/4 Badam Bai D/o Girdhari, aged about 41 years. R/o Moti Colony, Distt. Baran (Raj.)
5/5 Yashoda Bai D/o Girdhari, aged about 38 years, R/o Moti Colony, Dist. Baran (Raj.)

-----Respondent

For Petitioner(s) : Mr.Narendra Pareek, Adv.
For Respondent(s) : Mr.Surendra Sharma, Adv.
Mr.Neeraj Batra, Govt. Adv.

HON'BLE MR. JUSTICE AVNEESH JHINGAN

Order

RESERVED ON	:: :: ::	21/01/2025
PRONOUNCED ON	:: :: ::	03/02/2025

1. This petition is filed seeking quashing of orders dated 20.05.1997, 07.11.1998, 18.03.1999 and 27.10.2004 dismissing the suit, appeals and review respectively.



2. The brief facts are that the petitioner No.1—Anandi Lal and Devi Lal: father of petitioner No.2—Radhey Shyam purchased land comprising of khasra Nos.90 measuring 13 bigha 2 biswas, khasra No.261 measuring 1 bigha 2 biswas, khasra No.299 measuring 5 biswa, khasra No.378 measuring 1 bigha 13 biswas, khasra No.391 measuring 5 bighas, khasra No.124 measuring 8 bighas 18 biswas and khasra No.230 measuring 17 bighas 13 biswas in all 47 bighas 13 biswas situated in Village Hanuwant Kheda (hereinafter 'land') vide registered sale deed dated 06.07.1965. The land was purchased from Mohana Son of Sukha (hereinafter referred to as 'seller') belonging to Scheduled Caste (for brevity 'SC'). The petitioner No.1 claimed to be in cultivating possession of the land. The petition filed under Section 175 of the Rajasthan Tenancy Act, 1955 (for short 'the Act of 1955') seeking ejectment of petitioners for legal transfer or sub letting was dismissed on 19.09.1978 being not maintainable. The application filed under Section 183B of the Act of 1955 by son of seller for summary ejectment of the trespasser of the land held by a member of SC/ST category was allowed by the Sub-Divisional Officer (for short 'SDO') vide order dated 22.01.1983. The Revenue Appellate Authority ('RAA') on 02.08.1986 set aside the order of the SDO and held that the petitioner No.1 was in adverse possession of the land for over twelve years. The revision filed against order of RAA was



dismissed on 24.09.1993. The petitioners filed suit for declaring the petitioners to be khatedar of the land. The suit was dismissed on 20.05.1997. It was held that in revenue record the land was recorded in the name of son of the seller.

The sale of land in the year 1965 was against the provision of Section 42(b) of the Act of 1955 and the petitioners had no right to claim khatedari of the land. The dismissal order was upheld by the RAA and by the Board of Revenue (hereafter 'the Board') vide orders dated 07.11.1998 and 18.03.1999 respectively. The review filed by the petitioners was dismissed by the Board on 27.10.2004. Hence, the present writ petition.

3. Learned counsel for the petitioners submitted that in case the petitioners belonged to SC category the application filed under Section 175 of the Act of 1955 should have been allowed but it was dismissed as not maintainable. The contention is that the findings recorded in ejectment proceedings under Section 183B of the Act of 1955 that petitioner was in adverse possession of land having attained finality, the suit should have been decreed on principle of res-judicata.

4. As per contra, there was no adverse possession. The petitioners were claiming possession of the land being a



purchaser but the sale was in violation of Section 42 of the Act of 1955.

5. The issue involved in the present case is whether the khatedari rights on the basis of adverse possession can be claimed over the land belonging to SC/ST category, purchased in violation of Section 42 of the Act of 1955 ?

The issue is no longer *res-integra* and has been decided by the Division Bench of this Court in **Sita Ram Vs. Board of Revenue** reported in **[2012 SCC OnLine Raj 2502]**. It was held that the person purchasing the land in contravention of Section 42 of the Act of 1955 cannot acquire khatedari rights by the adverse possession.

The relevant portion is quoted:-

“In Babu Singh v. State of Rajasthan, (1998 RRD 396), this Court has considered the question of acquisition of right by virtue of adverse possession on the land for more than 20 years, when the purchase had been made in contravention of the provisions of Section 42 of the Act. This court considering the decision in Khuman Mal v. Bheru, (1994 RBJ 50) in which it was observed by the Division Bench in the context of Section 42 of the Act, that the land cannot be permitted to be entered in the name of the persons, who are seeking khatedari rights on the basis of the adverse possession, as Section 42 of the Act prohibits transfer of land by khatedar tenant belonging to Scheduled Caste to a person, who does not belong to Scheduled Caste, observed that the prohibition is absolute. It has also been laid down by the Division Bench in Khuman Mal (supra) that when a person has purchased the land in contravention of the provisions of Section 42 of the Act, he cannot



acquire khatedari rights by adverse possession. Following is the discussion made in Babu Singh (supra):

“15. This Court had occasion to consider the question whether khatedari rights can be acquired by adverse possession even if the sale was in contravention of Sec.42 of the Tenancy Act in the case of Khuman Mal v. Bheru (1994 RBJ 50). In that case, it was observed by the Division Bench that Section 42 of the Rajasthan Tenancy Act prohibits transfer of land by khatedar tenant belonging to Scheduled Caste to a person who does not belong to Scheduled Caste and the prohibition in this Section is absolute, and that as the sale of land held by a member of Scheduled Caste cannot be transferred by way of sale, gift or bequest or even by decree of a competent court, the same cannot be allowed to be entered in the name of persons who are seeking khatedari rights on the basis of possession. It was further observed that under Section 88 a purchaser may acquire by adverse possession khatedari rights provided that the acquisition of khatedari is not specifically prohibited by law, which means that if a person, claiming to have acquired khatedari rights by contravention of any provisions of law prohibiting or invalidating the transaction which has occasioned such adverse possession or if any such provision of any State was thereby circumvented, will not acquire the khatedari rights. It is, thus, settled legal position that when a person has





purchased the land in contravention of the provisions of Sec.42 of the Tenancy Act, he cannot acquire khatedari rights by adverse possession.”



In view of the above legal proposition, since in the instant case, the sale transaction was between respondents-plaintiffs, members of Scheduled Tribe Category and appellant-defendant, member of non-scheduled tribe category, therefore, it was prohibited in view of Section 42(b) of the Tenancy Act and no right, title or interest could have been conferred upon the appellant by virtue of transaction in question. Thus, the Board of Revenue as well as the Single Bench have rightly held that the transaction in question was void by virtue of Section 42(b) of the Tenancy Act as the respondents-plaintiffs belong to scheduled tribe category and the appellant-defendant belongs to non-scheduled tribe category.”

6. The concurrent findings recorded by the three authorities that the land belonging to SC category was transferred to a person not belonging to SC/ST has not been challenged. Section 42 of the Act of 1955 stipulates that the sale, gift or bequest of khatedar tenant rights by a SC/ST to a person not member of the SC or ST, is void.

7. The principle of *res-judicata* shall not apply in present case. The issue in proceedings under Section 183B was of ejectment of the petitioner being trespassers on land belonging to SC/ST. The principle of *res-judicata* shall not apply to the findings recorded in proceeding having different subject matter. The Supreme Court in **Syed Mohd. Salie**



Labbai (Dead) by LRs and Others Vs. Mohd. Hanifa

(Dead) by LRs. And Others reported in **[(1976)4 SCC**

780] held :-



"7. In the light of these arguments of the parties and the history of the case, we would now proceed to decide the points in controversy in this case. We would first deal with the question of res – judicata. In support of this plea the defendants have relied on Exts. B-5 to B-9, B-12, B-16, B-28, B-30, B-31 and B-73 in support of their case that these judgments constitute and operate as res judicata and particularly judgments given in those suits which were brought in representative capacity under Order 1 Rule 8 of the Code of Civil Procedure. Before we analyse these judgments, it may be necessary to mention that before a plea of res judicata can be given effect, the following conditions must be proved:

- (1) that the litigating parties must be the same;
- (2) that the subject matter of the suit also must be identical;
- (3) that the matter must be finally decided between the parties; and
- (4) that the suit must be decided by a court of competent jurisdiction."

8. The another aspect is that issue is not whether the petitioner was having adverse possession of the land or not but can the petitioner claim khatedari rights of the land of SC on the basis of adverse possession.

9. The suit was rightly dismissed in view of provision of Section 42(b) of the Act of 1955 and in the light of decision in **Sita Ram** (supra) that the khatedari rights of a land



belonging to SC cannot be claimed on the basis of adverse possession.

10. There is no factual or legal error in the impugned orders.
The petition is dismissed.

(AVNEESH JHINGAN), J

Himanshu Soni/1
reserve

Reportable :-Yes