

# RAJASTHAN HIGH COURT

Harji Ram

Vs.

Dhronacharya

Civ. S. A. No. 3 of 1979

(Shiv Kumar Sharma, J.)

05.12.2005

## JUDGEMENT

**Shiv Kumar Sharma, J.**

1. This is defendant's second appeal against the judgment and decree dated March 9, 1978 of the learned District Judge Jhunjhunu reversing the judgment and decree dated November 12, 1976 of the learned Munsif Jhunjhunu. The parties shall be hereinafter referred in the manner as they were arranged in the suit.
2. Briefly stated the facts giving rise to this appeal are that on August 20, 1956 the plaintiffs instituted suit for declaration and permanent injunction against the defendants with the prayer to declare that Johad land bearing Khasra No. 196 admeasuring 41 big has situated in village Bheaderwas, was utilized by them from the time of their ancestors for the purpose of grazing the cattle and only the plaintiffs had the right to graze their cattle in the said land and the defendants be restrained by permanent injunction from making interference and grazing their cattle in the said land.
3. Initially civil Court was of the view that only revenue Court had jurisdiction to decide the suit but revenue Court decided otherwise therefore the matter was referred to the High Court from where on December 14, 1974 the matter was sent to the Court of Munsif Jhunjhunu with a direction to decide the suit.
4. The defendants contested the suit and pleaded that the land in dispute was recorded as Johad land and from time immemorial the land was being used for grazing cattle of the village. The plaintiffs were never in possession of the suit land and the possession

was handed over to the Gram Panchayat for regulating and control of the pasture land under Section 88(1) of the Panchayat Act. It was also pleaded that if any receipt was obtained by plaintiff the same was in collusion with Thikana staff. After resumption of the Jagir, Gram Panchayat has jurisdiction to restrain plaintiffs from encroaching upon the pasture land. The defendants therefore prayed for dismissal of the suit.

5. As many as five issues were framed on the basis of the pleadings of the parties. Both the parties thereafter adduced oral and documentary evidence. Learned trial Court vide judgment and decree dated November 12, 1976 dismissed the suit holding that the suit land was neither owned nor possessed by the plaintiffs. The documents Ex.1 to 5 produced by the plaintiffs were disbelieved. Learned District Judge Jhujhunu, however decided the civil regular first appeal in favor of the plaintiffs vide judgment and decree dated December 9, 1978 granting the reliefs sought by the plaintiffs. The defendants in the instant second appeal have assailed the findings of the learned first appellate Court.

6. This appeal raises following substantial questions of law that were formulated on April 9, 1979:-

"(i) Whether in the facts and circumstances of the case, the plaintiffs were admitted as tenants of the disputed land and had acquired khatedari rights on the enforcement of the Rajasthan Tenancy Act?

(ii) Whether the plaintiffs having failed to prove that the land was let out to them by Thikana Bisau for cultivation, are entitled to a decree for declaration that they have the exclusive right of grazing their cattle on the land to the exclusion of the appellants and the other villagers?

(iii) Whether the land in dispute was a pasture land within the meaning of Section 5(28) of the Rajasthan Tenancy Act and no khatedari rights could accrue to the plaintiffs by virtue of the provisions of Section 16 of the Rajasthan Tenancy Act ?

(iv) Whether any permission granted by Thikana Bisau to the plaintiffs for grazing their cattle over the disputed land ceased and determined on the resumption of the jagir by virtue of provisions of Section 22 (1)(b) of the said Act?

7. I have heard the rival submissions and weighed the material on record.

8. Learned first appellate Court in its judgment held that the plaintiffs were not entitled to plead their ownership and adverse possession against the State of Rajasthan. It was also held that since suit land was given on annual rent to the plaintiffs for grazing the cattle by Thikana Bisau and the plaintiffs have been continuously grazing their cattle and the defendants have failed to prove that the said land was not a pasture land, in such a situation the defendants have no right to graze their cattle over the said land. A close look at the findings arrived at by the learned first appellate Court reveals that right of the plaintiffs to graze their cattle on the suit land has been protected. Although in the body of judgement point relating to khatedari right was considered but in the concluding para it has not been declared that the plaintiffs were the tenants of the said land. The defendants have been restrained from grazing their cattle on the land because they failed to establish that the suit land was pasture land.

9. 'Pasture land' has been defined in Section 5 (28) of the Rajasthan Tenancy Act, 1955 thus –

"'Pasture land' shall mean land used for the grazing of the cattle of a village or villagers or recorded in settlement records as such at the commencement of this Act or thereafter reserved as such in accordance with rules framed by the State Government."

(Emphasis supplied)

10. District Collector Jhunjhunu, pursuant to the directions of this Court submitted detailed report on September 28, 2005 according to which the land in question was entered in the revenue record from Svt. 2009 to 2062 as 'Johad and Gochar land' and nobody had been given khatedari rights over the said land under Rajasthan Tenancy Act 1955. The land has been used for the purpose of grazing the cattle of the village and nobody is in possession over the said land.

11. Since the defendant could not establish from the evidence that the suit land was not pasture land, the learned first appellate Court declared the rights of the plaintiffs to graze their cattle. It is only the State Government that can reserve the pasture land in accordance with the relevant rules.

12. In my opinion the questions formulated at the time of admission of this appeal can

only be answered by a revenue Court. Even learned first appellate Court was conscious of this fact, therefore, despite detailed discussions on these issues, it only granted relief in regard to civil rights of the plaintiffs to graze their cattle on the suit land.

13. For these reasons the appeal being devoid of merit stands dismissed without any order as to costs. I, however, make it clear that the observations made by the learned District Judge shall not come in the way of State Government in protecting the rights of parties under the relevant laws.

Appeal dismissed.