A

DEEPA

v.

STATE OF RAJASTHAN AND ORS.

DECEMBER 15, 1995

B

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Tenancy & Land Laws—Rajasthan Land Reforms and Resumption of Jagirs Act, 1952—Section 10—Khatedar tenant—Name of appellant recorded as cultivator—Land could not be regarded as khudkasht of jagirdar.

C

The respondent sought eviction of the appellant by invoking section 177 of the Rajasthan Tenancy Act, 1955, on the ground that the latter had become liable for ejectment because of using the land contrary to the purpose for which it was leased. The suit was dismissed on the ground that

D **the land being part of jagir, the respondent had no *locus standi* to file the suit, as jagir stood abolished by the force of the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952. That order passed in 1963 was confirmed by the Board of Revenue on 19.1.1978. The respondent filed an application u/s 82 of the Rajasthan Land Revenue Act for making a reference to the Board of Revenue to recommend making of entry in the**

E **record of rights relating to the self same land in favour of an Idol, the respondent being its Pujari. The application was allowed. The Board of Revenue did not accept the plea of *res judicata* raised by the appellant and held that the appellant's right was not heritable and transferable. The High Court also dismissed appellant's appeal. Hence this appeal under**

F **Art. 136 of the Constitution.**

The appellant contended that respondent himself having accepted the appellant as tenant in the first proceeding, a stand different from that could not be taken in the present proceeding; that Khasra Girdawari showed that the name of the appellant had been recorded as cultivator

G **because of which the land could not be regarded as Khudkasht of the jagirdar which would make section 10 of the Jagirs Act inoperative, and so, the respondent's name could not be recorded as Khatedar tenant; that the veiw taken by the authorities was not correct also because of the provisions in Chapter III-A of the Tenancy Act under which even a sub-**

H **tenant of khudkasht land becomes a khatedar tenant on the required**

procedure being followed, which must be deemed to have been satisfied because of what has been recorded in the khasra Girdawari. A

The respondent submitted that though the land was shown in the khasra Girdawari under appellant's cultivation, that was not as a tenant but as an employee of the respondent. B

Allowing the appeal, this Court

HELD : The respondent himself having accepted the appellant as a tenant when proceeding under Rajasthan Tenancy Act, 1955 was initiated against him, had lost that right when the respondent agitated the matter again under section 82 of the Rajasthan Land Revenue Act, 1956. It was the appellant who had to be accepted as a tenant and a khatedar tenant at that and so, the revenue record could not have been corrected to show the respondent as the khatedar tenant. [781-G, 783-D] C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5523 of 1995. D

From the Judgment and Order dated 19.9.94 of the Rajasthan High Court in D.B.C.W.P. No. 6735 of 1992.

B.D. Sharma for the Appellants. E

K.S. Bhati for the Respondents.

The Judgment of the Court was delivered by

HANSARIA, J. The appellant, who was once accepted by respondent No. 5-Ram Chandra (hereinafter the respondent), as a tenant when proceeding under Rajasthan Tenancy Act, 1955 (Tenancy Act) was initiated against him, has lost that right when the respondent agitated the matter again under section 82 of the Rajasthan Land Revenue Act, 1956. Shortly put, this is the grievance of the appellant, and the same is well founded as it would appear from what is being stated later. F G

2. In the first proceeding, the respondent had sought eviction of the appellant by invoking section 177 of the Tenancy Act on the ground that the latter had become liable for ejectment because of using the land contrary to the purpose for which it was leased. The respondent lost that H

A suit on the ground that the land being part of jagir he had no *locus standi* to file the suit, as jagir stood abolished by the force of the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 (Jagir Act). That order was passed on 30.6.1963 and was confirmed even by the Board of Revenue on 19.1.1978.

B 3. In 1987 the respondent filed an application before the Collector under section 82 of the Rajasthan Land Revenue Act for making a reference to the Board of Revenue to recommend making of entry in the record of rights relating to the self-same land in favour of Idol Shri Charbhujaji - the respondent being its Pujari. The appellant contended, *inter alia,* that C the matter could not be re-opened in view of the earlier proceeding and, in any case, he having become a khatedar tenant under provisions of the Tenancy Act, the record of rights could not be corrected to show the respondent as a khatedar tenant. The Board of Revenue did not accept the plea of *res judicata* and having taken a view that the appellant's right was not heritable and transferable, granted prayer of the respondent. On the D High Court being approached by the appellant, he did not get any relief, *inter alia,* because he had not filed Khasra Girdawari relating to Sambat 2012 (1957 A.D.) by which year Tenancy Act had come into force. Hence this appeal under Art. 136 of the Constitution.

E 4. Shri Sharma, appearing for the appellant, contended, and rightly, that respondent himself having accepted the appellant as tenant in the first proceeding, a stand different from that could not be taken in the present proceeding. He then urged that Khasra Girdawari, which has now been but on record, clearly shows that the name of the appellant had been recorded F as cultivator by Sambat 2012, because of which the land could not be regarded as Khudkasht of the jagirdar which would make section 10 of the Jagirs Act inoperative, and so, the respondent's name could not be recorded as khatedar tenant. As to this submission, the learned counsel for this respondent submitted that though the land was shown in the Khasra Girdawari under appellant's cultivation, that was not as a tenant but as an G employee of the respondent. This stand is untenable because from the impugned judgment of the Board of Revenue in the present proceeding it appears that the case of this respondent was that Deepa's father had been given the land for cultivation on "Panti Basis", that is, on share basis, which would clearly show that the land was tenanted to Deepa's father and in lieu H of cash he was to pay in kind.

5. Shri Sharma's further contention is that the view taken by the authorities is not correct also because of the provisions in Chapter III-A of the Tenancy Act, under which even a sub-tenant of khudkasht land becomes a khatedar tenant on the required procedure being followed, which must be deemed to have been satisfied because of what has been recorded in the Khasra Girdawari. Now, if a person becomes a Khatedar tenant, then by the force of section 9 of the Jagirs Act, his right becomes heritable and fully transferable; and so, the contrary view taken by the authorities is not correct. Still another weapon in the armoury of Shri Sharma is that under section 13 of the Marwar Tenancy Act, 1949, (regarding the applicability of which Shri Medh has some objection) the interest of a tenant is heritable but is not transferable otherwise than in accordance with the provisions of that Act.

6. We are satisfied (even if what has been stated in section 13 of the Marwar Tenancy Act is kept out of consideration) that it is the appellant who has to be accepted as a tenant and a khatedar tenant at that; and so, the revenue records could not have been corrected to show the respondent as the khatedar tenant.

7. The appeal is, therefore, allowed with cost by declaring the appellant as the Khatedar tenant of the land in question.

R.A. Appeal allowed.