

**Uma Shanker and anr. Vs. the State and ors.**

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**Court :** Rajasthan

**Decided On :** Sep-06-1980

**Reported in :** 1980WLN(UC)372

**Judge :** K.D. Sharma, Acting C.J. and; Kanta Bhatnagar, J.

**Appeal No. :** D.B. Special Appeal No. 213 of 1980

**Appellant :** Uma Shanker and anr.

**Respondent :** The State and ors.

**Disposition :** Appeal dismissed

**Judgement :**

K.D. Sharma, Acting C.J.

1. This is a special appeal filed by Uma Shankar and Bijai Shanker sons of Shri Prayag Chand Purohit under Clause 18 of the Rajasthan High Court Ordinance against the order of a learned Single Judge of this Court in S.B. Civil Writ Petition No 1631 of 1970, by which the appellants were not held Khatedar tenants of the land in dispute and a writ of prohibition was not issued restraining the respondents from dispossessing the appellants from the disputed land.

2. The relevant facts giving rise to this special appeal may be briefly stated as follows: Kunwar Jagjeet Singh son of Rao Devi Singh of village Pugal was

recorded as Khatedar tenant of 409 Bighas and 9 Biswas of land comprised in Khasra No 292 of Village Bariyoneala in Tehsil Bikaner in the revenue records from October 15, 19(sic)5 and thereafter, Kunwar Jagjeet Singh sold a (sic) to the appellants vide registered sale deed dated September 13, 1958. his Khatedari rights in 75 Bighas of land out of the said land. After the sale the appellants got their names substituted as Khatedar tenants in place of the name of Kunwar Jagjeet Singh in the revenue record vide mutation order dated August 11, 1959. The appellants were shown as Khatedar tenants in Jamabandi of Smt. Year 2015 to Smt. Year 2017. Later on, the Rajasthan Tenancy Act was amended and Section 15A was introduced therein in the year 1958, which barred accrual of Khatedari rights in Rajasthan Canal Area and divested Khatedari tenants of their Khatedari rights in the said area without providing any compensation. The appellants therefore, contended that Section 15A was liable to be struck down, because it violated the provisions of Article 31(2) of the Constitution of India. The appellants further alleged that they have been in continuous possession of the land in dispute after it was sold away to them by Kunwar Jagjeet Singh. The Rajasthan Canal Project Colonisation authorities, however, declined to treat the appellant a Khatedar tenants of the land in dispute and prevented them from cultivating their land. The appellants, therefore, having no other alternative but to invoke extraordinary jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India filed a writ petition in this Court. The writ petition was heard by a Single Judge of this Court. Before the learned Single Judge the appellants gave on their contention that Section 15A of the Rajasthan Tenancy Act should be declared unconstitutional. They, however, sought declaration that they may be declared Khatedar tenant of the land in dispute and the respondents may be restrained from causing any interference with their right to cultivate their land and from ousting them from it.

3 On behalf of the State of Rajasthan, a reply was filed to the writ petition in which it was stated that Rao Devi Singh, father of Jagjeet Singh was a Jagirdar in Bikaner District holding about 42 villages in his Jagir. Rao Devi Singh had four sons, his mother and grand-mother, who were granted land by him in village Bariyonwala for their maintenance. Jagjeet Singh was in possession of 941 Bighas and 7 Biswas of culturable waste land known as 'Banjar' in v(sic)acular. The Jagir

of Rao Devi Singh was resumed with effect from August 1, 1954 and the land in possession of Jagjeet Singh was resumed with effect from July 1, 1958 and thereafter Jagjeet Singh got payment of compensation Upon resumption of the Jagir, the Jagir land vested in the State Government and, therefore, the sale of the dispute land by Kunwar Jagjeet Singh in favour of the appellants after the resumption of his Jagir land was not a valid sale in the eye of law and the appellants could not acquire any right in the land in dispute by way of registered sale-deed dated September 13, 1958. It was further alleged on behalf of the State of Rajasthan that Jagjeet Singh was a 'Chhut Bhaiya' to whom the land in dispute was granted for maintenance from parent Jagir of his father Rao Devi Singh and, therefore, he was not a Khatedar tenant thereof, In (sic) shell, the contentions advanced on behalf of the State were that the appellants did not acquire Khatedari rights in the land in dispute and so they were not entitled to any relief.

4. The learned Single Judge of this Court, after bearing the parties and upon perusal of the record, came to the conclusion that the appellants could not establish that their predecessor-in-title, namely, Kunwar Jagjeet Singh was a Khatedar tenant of the land in question and that the appellants were entitled to reliefs claimed in their writ petition. He accordingly dismissed the writ petition with no order as to costs.

5. Aggrieved by this order the appellants have preferred this special appeal. We have carefully gone through the record and heard Mr. M L. Shrimali, learned Counsel for the appellants, and Mr. D.S. Shishodia, Government Advocate, and has entered caveat on behalf of the State of Rajasthan and the other respondents and desired to be heard at the stage of admission. The main contention put forward before us by Mr. M.L. Shrimali is that Kunwar Jagjeet Singh was a Khatedar tenant of the land in dispute and the appellants acquired Khatedar rights in the land after the Khatedari rights therein were sold away to them by Jagjeet Singh by way of registered sale-deed dated September 13, 1958. In support of his above contention, Mr. M.L. Shrimali, invited our attention to the entries made in Misal Bandobasht of Samvat Year 2007 which reveal that in column No. 5 relating to Khatedar's name, Kunwar Jagjeet Singh was recorded as Khatedar and in column No. 6 he was shown as Khud Kabiz Mi. M.L. Shrimali further relied upon

mutation order passed in favour of the appellants on August 11, 1958 by which the appellants were subsided as Khatedar tenants of the land in dispute in place of Kunwar Jagjeet Singh Khatedar. Mr. D.S. Shishodia, on the other hand, strenuously urged before us that in column No. 18 of the Misal Bandobasht for Samvat year 2007, a note is appended to the off (sic) that Kunwar Jagjeet Singh is exempted from payment of Lagan' being a 'Chhut Bhaiya' According to his submission, this entry in column No. 18 of the Misal Bandobasht for Samvat Year 2007 clearly shows that Kunwar Jagjeet Singh held the land in dispute as a 'Chhut Bhaiya', because it was granted to him for maintenance from the parent Jagir as he was admittedly one of the sons of Devi Singh. Mr. Shishodia, Government Advocate, further concluded that Kunwar Jagjeet Singh could not be legally recorded as Khatedar of this 'Banjar' culturable wasteland, because under Section 24 of the Bikaner State Tenancy Act, 1945, a Khatedar was a tenant who had right of the cultivation and to continuous possession, of the land which he or his ancestors had cleared and brought under cultivation as long as he regularly paid his rent. According to Mr. D.S. Shishodia the land was shown as 'Banjar', i.e. culturable waste land in Misal Bandobasht of Samvat year 2007 and the payment of the Lagan was exempted on account of Kunwar Jagjeet Singh being a 'Chhut Bhaiya' and so Jagjeet Singh could not be treated as Khatedar tenant under Section 24 of the Bikaner State Tenancy Act, 1945 because neither he nor his ancestors had cleared and brought the land in dispute under cultivation.

6. We have given our anxious consideration to the rival contentions. In our opinion, the entries made in Misal Bandobasht for Samvat year 2007 do not establish that Kunwar Jagjeet Singh was a Khatedar tenant of the disputed land. The reason is that the land was shown in the said Misal Bandobasht as 'Banjar' land, i.e. culturable waste land at that time. There is no entry that Kunwar Jagjeet Singh or his ancestors had cleared and brought this land in cultivation. Khatedari rights could not accrue in 'Banjar' land as is evident from Section 24 of the Bikaner State Tenancy Act, 1945. Besides, Kunwar Jagjeet Singh was exempted from making payment of the 'Lagan' being a 'Chhut Bhaiya'. A Chhut Bhaiya, was defined in Section 3(31) of the Bikaner State Land Revenue Act (Act IV of 1945) as follows:

'Chhutbhai' includes all such persons to whom a village or any portion of a village or land is granted for maintenance from the parent Jagir.

Hence, the learned Single Judge of this Court committed no error in holding that the entries made in Misal Bandobasht for Samvat Year 2007 do not establish that Kunwar Jagjeet Singh was a Khatedar tenant and that from these entries it may be safely inferred that the land was granted to him for maintenance from the parent Jagir by Hs father Devi Singh Jagirdar. It will not be out of place to mention that Khatedar is defined in Section 1(13) of the Bikaner State Tenancy Act, 1945 (Act 11 of 1945) as follows:

'Khatedar' includes all such persons who cultivate State land on payment of dues as rent but it does not include lessees and temporary cultivators;

Kunwar Jagjeet Singh was not cultivating the said land on payment of dues as rent. There is no mention in the Misal Bandobasht of Samvat Year 2007 hat Kunwar Jagjeet Singh had cultivated the land in dispute on payment of dues as rent. As stated earlier, the land was shown as a culturable wasted land belonging to the Jagirdar, Devi Singh, father of Kunwar Jagjeet Singh. Consequently, we are of the view that Jagjeet Singh was not a Khatedar tenant of the land under controversy. It is not disputed before us that the disputed land held by Kunwar Jagjeet Singh was resumed with effect from July 1, 1958 before he sold away this land to the appellants vide registered sale deed dated September 13, 1958. Hence, at the time when he executed the sale deed favour of the appellants, the disputed land (sic) already vested in the State and he had no rights therein which could be transferred to the appellant by way of sale. In this view of the matter, no interference with the order of the learned Single Judge of this Court is called for on any reasonable grounds.

7. The Special Appeal filed by Uma Shankar and Vijay Shanker appellants has, therefore no force and is hereby dismissed summarily.