



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**



S.B. Civil Writ Petition No. 18952/2022

1. Arjun Ram S/o Shri Heera Ram, Aged About 45 Years, Resident Of Gothdi, Tehsil Makrana, District Nagaur, Rajasthan.
2. Parma Ram S/o Shri Purkha Ram, S/o Shri Chokha Ram, Aged About 48 Years, Resident Of Gothdi, Tehsil Makrana, District Nagaur, Rajasthan.
3. Magaa Ram S/o Shri Chokha Ram, Aged About 78 Years, Resident Of Gothdi, Tehsil Makrana, District Nagaur, Rajasthan.
4. Mohan Ram S/o Shri Chokha Ram, Aged About 75 Years, Resident Of Gothdi, Tehsil Makrana, District Nagaur, Rajasthan.

----Petitioners

Versus

1. Lichhman Ram S/o Shri Ramkaran, Resident Of Gothdi, Tehsil Makrana, District Nagaur, Rajasthan.
2. Bhau Ram S/o Shri Ramkaran, Resident Of Gothdi, Tehsil Makrana, District Nagaur, Rajasthan.
3. Chimana Ram S/o Shri Ramkaran, Resident Of Gothdi, Tehsil Makrana, District Nagaur, Rajasthan.
4. Dhapu Devi W/o Shri Ramkaran, Resident Of Gothdi, Tehsil Makrana, District Nagaur, Rajasthan.
5. Lichhman Ram S/o Shri Heera Ram, Resident Of Gothdi, Tehsil Makrana, District Nagaur, Rajasthan.
6. Chaina Devi W/o Shri Purkha Ram S/o Shri Chokha Ram, Resident Of Gothdi, Tehsil Makrana, District Nagaur, Rajasthan.
7. Sri Ram S/o Shri Mehram S/o Purkha Ram, Resident Of Gothdi, Tehsil Makrana, District Nagaur, Rajasthan.
8. Chaina Ram S/o Mehram S/o Purkha Ram, S/o Chokha Ram, Resident Of Gothdi, Tehsil Makrana, District Nagaur, Rajasthan.
9. Lodi Devi W/o Mehram S/o Purkha Ram, S/o Chokha Ram, Resident Of Gothdi, Tehsil Makrana, District Nagaur, Rajasthan.
10. Sukharam S/o Shri Purkha Ram S/o Shri Chokha Ram,





Resident Of Gothdi, Tehsil Makrana, District Nagaur,
Rajasthan.

11. Rameshwari D/o Shri Purkha Ram S/o Shri Chokha Ram,
Resident Of Gothdi, Tehsil Makrana, District Nagaur,
Rajasthan.
12. Supyar D/o Shri Purkha Ram S/o Shri Chokha Ram,
Resident Of Gothdi, Tehsil Makrana, District Nagaur,
Rajasthan.
13. Harji Ram S/o Shri Chokha Ram, Resident Of Gothdi,
Tehsil Makrana, District Nagaur, Rajasthan.
14. State Of Rajasthan, Through The Tehsildar, Tehsil
Makrana, District Nagaur, Rajasthan.

-----Respondents

Connected With

S.B. Civil Writ Petition No. 18888/2022

Harji Ram S/o Shri Chokha Ram, Aged About 72 Years, Gothdi,
Tehsil Makrana, District Nagaur, Rajasthan.

-----Petitioner

Versus

1. Lichhman Ram S/o Shri Ramkaran, Gothdi, Tehsil
Makrana, District Nagaur, Rajasthan.
2. Bhau Ram S/o Shri Ramkaran, Gothdi, Tehsil Makrana,
District Nagaur, Rajasthan.
3. Chimana Ram S/o Shri Ramkaran, Gothdi, Tehsil
Makrana, District Nagaur, Rajasthan.
4. Dhapu Devi W/o Shri Ramkaran, Gothdi, Tehsil Makrana,
District Nagaur, Rajasthan.
5. Lichhman Ram S/o Shri Heera Ram, Gothdi, Tehsil
Makrana, District Nagaur, Rajasthan.
6. Arjun Ram S/o Shri Heera Ram, Gothdi, Tehsil Makrana,
District Nagaur, Rajasthan.
7. Chaina Devi W/o Shri Purkha Ram S/o Shri Chokha Ram,
Gothdi, Tehsil Makrana, District Nagaur, Rajasthan.
8. Parma Ram S/o Shri Purkha Ram S/o Shri Chokha Ram,
Gothdi, Tehsil Makrana, District Nagaur, Rajasthan.
9. Sri Ram S/o Shri Mehram S/o Shri Purkha Ram, S/o Shri
Chokha Ram, Gothdi, Tehsil Makrana, District Nagaur,





Rajasthan.

10. Chaina Ram S/o Mehram S/o Purkha Ram S/o Chokha Ram, Gothdi, Tehsil Makrana, District Nagaur, Rajasthan.
11. Lodi Devi W/o Mehram S/o Purkha Ram S/o Chokha Ram, Gothdi, Tehsil Makrana, District Nagaur, Rajasthan.
12. Sukharam S/o Shri Purkha Ram S/o Shri Chokha Ram, Gothdi, Tehsil Makrana, District Nagaur, Rajasthan.
13. Rameshwari D/o Shri Purkha Ram S/o Shri Chokha Ram, Gothdi, Tehsil Makrana, District Nagaur, Rajasthan.
14. Supyar D/o Shri Purkha Ram S/o Shri Chokha Ram, Gothdi, Tehsil Makrana, District Nagaur, Rajasthan.
15. Magaa Ram S/o Shri Chokha Ram, Gothdi, Tehsil Makrana, District Nagaur, Rajasthan.
16. Mohan Ram S/o Shri Chokha Ram, Gothdi, Tehsil Makrana, District Nagaur, Rajasthan.
17. State Of Rajasthan, Through The Tehsildar, Tehsil Makrana, District Nagaur, Rajasthan.

-----Respondents

For Petitioner(s) : Ms. Saroj Patel.
Ms. Nandipna Gehlot.
For Respondent(s) : Ms. Sweta Purohit.

HON'BLE MR. JUSTICE SANJEET PUROHIT

Order

Reportable

13/03/2026

1. Present writ petitions have been filed challenging the orders dated 30.03.2021 (Annex.10) whereby petitioners' application filed under Order 1 Rule 10(2) CPC for impleading khatedar of khasra no. 161 as a party was rejected by learned Sub-Divisional Officer ("SDO"), Makrana, Nagaur so also order dated 20.09.2022





(Annex.12) passed by Board of Revenue, Ajmer ("BOR") rejecting revision petitioner of the petitioner.

As a matter of fact, petitioners in both the petitions are party to same proceedings and have challenged same orders by these two petitions. For the sake of convenience, facts of S.B. Civil Writ Petition No. 18952/2022 are taken into consideration for deciding both the writ petitions.

2. While elucidating the factual matrix of the present case, learned counsel for petitioner stated that an application under Section 251-A of the Rajasthan Tenancy Act, 1955 ("Act of 1955") was preferred by Respondent Nos. 1 to 4 seeking grant of a new way through khatedari land of petitioners i.e. Khasra No. 162. Learned SDO, vide order dated 08.10.2013, allowed said application and granted new way to Respondent Nos. 1 to 4 from khasra No. 162, which resulted in dividing land of Khasra No. 162 into two parts.

2.1 Petitioners preferred an appeal before the Revenue Appellate Authority ("RAA"), Nagaur, wherein learned RAA vide order dated 21.12.2016 by setting aside order dated 08.10.2013, remanded the matter back to the Sub-Divisional Officer.

2.2 Challenging the said order, respondents preferred revision petition. Learned BOR, vide order dated 19.07.2017 (Annex. 6), affirmed the order dated 21.12.2016 and issued specific directions that while deciding the application filed under Section 251-A of the LR Act, efforts should be made to ensure that the land of Khasra No. 162 is not divided into two parts, the path should be useful for all neighbouring landholders, and that a new path should be





approved only in the event of non-availability of any alternative path.

2.3 In the proceedings, after remand, petitioner filed an application seeking to implead khatedar of Khasra No. 161 as party respondent, stating therein that for the purpose of ascertaining availability of the alternate way, which is available alongwith Khasra No. 161, presence of khatedar tenant of Khasra No. 161 is necessary. However, said application was rejected by the learned SDO vide order dated 30.03.2021 (Annex. 10), on the ground that applicant had not sought a way through Khasra No. 161 nor any way from Khasra No. 161 is recorded in the revenue record. It is further observed that as per the site inspection report dated 12.03.2021 (Annex.7), shortest and nearest way does not pass through Khasra No. 161, thus, khatedar tenant of khasra No. 161 is not necessary party. On such grounds, the application for impleadment was rejected.

2.3 Challenging the same, petitioners preferred revision petition and learned BOR, vide order dated 20.09.2022 (Annex. 12), dismissed revision petition on the ground that since applicant had not sought any way through khasra No. 161, khatedar tenant of Khasra No. 161 cannot be impleaded as party in the pending proceedings.

2.4 Challenging said orders dated 30.03.2021 and 20.09.2022, present writ petition is filed.

3. Learned counsel for the petitioner argued that as a matter of fact, learned BOR vide order dated 21.12.2016 has issued specific directions to ascertain availability of alternate way so as to ensure





that land of Khasra No. 162 shall not be divided in two parts. It is further stated that since an alternate way is available, which is running alongwith land of Khasra No. 161, thus presence of khatedar tenant of Khasra No. 161 is necessary for effective and complete adjudication of dispute.

3.1 It is contended that adjudication under Order I Rule 10 CPC is not confined merely to the question as to whether the applicant has a direct interest in the suit property, but also extends to examining whether the rights of a person are likely to be affected in the event he is not impleaded as a party.

3.2 Learned counsel for the petitioner also contended that learned Sub-Divisional Officer failed to consider that impleadment of the khatedar of khasra No. 161 as a necessary party is indispensable, as his rights are likely to be directly affected and his presence is essential for a proper and comprehensive adjudication.

4. Per contra, learned counsel for respondent submitted that learned authorities is below have rightly concluded that khatedar tenant of Khasra No. 161 was not necessary party, as no way has been sought through khasra No. 161. It was further contended that said application has been filed with sole intention of delaying the proceedings and unnecessarily prolonging the litigation.

4.1 It is further submitted that orders passed by learned SDO (Annex.10) and learned BOR (Annex.12) are well reasoned and warrants no interference from this Court.

5. Heard learned counsel for the parties and perused the material available on record.





6. On consideration of the peculiar facts of the case, more specifically directions contained in the remand order dated 21.12.2016, this Court finds that the reasons recorded for rejecting application filed under Order I Rule 10(2) CPC are perverse and erroneous. One of the reasons recorded in the order impugned is that since the applicant had not sought a way through khasra No. 161, therefore, khatedar tenant of said khasra are not necessary party. This Court is of clear opinion that by virtue of clear and unambiguous language employed in Section 251-A, the convenience / preference of the applicant is not the sole criteria for grant of way under said provision. Expression "necessity" as contemplated under Section 251-A(1)(b)(i) of the Act of 1955 is to be construed as absolute necessity and not mere convenience/preference.

6.1 This Hon'ble High Court in ***Bagh Singh v State of Rajasthan; D.B. Civil Special Appeal (Writ) No.11/2016*** held that necessity specified in Section 251-A must be 'absolute necessity' and not mere convenience or preference of a party. The relevant paragraph is reproduced herein below:

*"As per Section 251 A of the Act of 1955, while granting way it is also required to be kept in mind that **it must be a necessity which is "absolute necessity" and not for mere convenience.** In the instant matter, it is not in dispute that an alternative way is not only available, but is being used by the appellant-petitioner regularly, as such, the claim made is nothing but a convenience and at least not an "absolute necessity"."*

6.2 In view of the same, this Court finds that under Section 251-A, authority is required to undertake a comprehensive and





comparative evaluation of all feasible alternative routes before arriving at a conclusion. It is immaterial whether petitioner has specifically sought a way through a particular khasra or not. Merely because an applicant has requested for a particular way running through a land of particular Khasra, does not suffice the scope of adjudication up to said land alone. The competent authority is required to ascertain availability of the alternate way which may passed through the land of different Khasras. Therefore, the mere fact that petitioner did not claim a way through khasra No. 161 could not have been a determinative factor for rejecting the said application.

7. Moreover, learned SDO, while rejecting petitioner's application, has placed reliance upon site inspection report, dated 12.03.2021 (Annex. 7). However, a bare perusal of the said inspection report reveals that two alternative access routes have been shown therein, one of which passes alongwith khasra No. 161. This Court finds that once the inspection report itself indicates the possibility of an alternative route along with and through khasra No. 161, khatedar of said khasra is a necessary party for complete adjudication of the issue. Failure to implead the concerned khatedar, would render decision-making process incomplete, as any determination in his absence may not result in an effective or comprehensive adjudication.

7.1 The Hon'ble Apex Court in ***Ramesh Hirachand Kundanmal v. Municipal Corpn. of Greater Bombay, (1992) 2 SCC 524*** held that a necessary party is one without whom no effective





order can be passed. Relevant paragraph is reproduced herein below:

"6. Sub-rule (2) of Rule 10 gives a wide discretion to the Court to meet every case of defect of parties and is not affected by the inaction of the plaintiff to bring the necessary parties on record. **The question of impleadment of a party has to be decided on the touchstone of Order 1 Rule 10 which provides that only a necessary or a proper party may be added. A necessary party is one without whom no order can be made effectively.** A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case."

7.2 In considered opinion of this court, impleadment of khatedars of khasra No. 161 becomes all the more necessary as learned BOR, vide remand order dated 19.07.2017 had issued specific directions that while deciding the application of section 251-A of the LR Act, efforts should be made to ensure that the land of Khasra No. 162 is not divided into two parts, the path should be useful for all neighbouring landholders, and that a new path should be approved only in the event of non-availability of any alternative path, thus, requiring comprehensive adjudication regarding availability of all possible alternate ways. Thus, this Court finds that learned SDO and learned BRO erred in not considering said important aspect of the matter.

8. This Court also finds that reasoning assigned by the learned SDO in rejecting the petitioner's application, to the effect that no way is passing through khasra No. 161 on record, is not tenable in





law. Section 251-A of the Act of 1955 contemplates the creation of new way where necessity so demands. By its very nature, such a way may not be pre-existing or reflected in revenue records, but the same cannot be a ground of not ascertaining the possibility of alternate way through said land. Therefore, said finding of absence of an existing path in revenue records cannot be a valid ground to reject petitioner's application.

9. This Hon'ble High Court in ***Kan Nath (Through his LRs) v Board of Revenue & Ors.; S.B. Civil Writ Petition No. 12318/2023*** held that, while deciding applications filed under Section 251-A of the Act of 1955, khatedars of the lands through which alternative access routes/ways may be determined are required to be impleaded as necessary parties. The relevant paragraph is reproduced herein below:

*"13. On the same footing, while affirming the finding recorded by the Revenue Appellate Authority, Pali, the Board of Revenue has also not recorded any finding. In the opinion of this Court, when the law provides for the shortest or nearest route to be provided, then as per the report of the Patwari dated 06.04.2021, since only 15 Biswas land is to be utilized for going to Khasra Nos.54 & 55 through Khasra No.56, then the Option No.2 should have been exercised and if Option No.2 was required to be exercised, **then the khatedar tenant of Khasra No.56 was a necessary party in the matter and was required to be impleaded as party respondents by the private respondents.***

*14. In view of the discussions made above, the writ petition merits acceptance and the same is allowed and the orders passed by the Revenue Appellate Authority, Pali dated 13.10.2022 and the Board of Revenue, Rajathan, Ajmer dated 31.07.2023 are quashed and set aside. However, it will be open for the private respondents to move a fresh application for providing the way for going to Khasra Nos.54 & 55, **after impleading the khatedar tenants of Khasra Nos.49 and 56 as party respondents.**"*





10. Therefore, this Court finds that learned SDO and learned BOR clearly erred in rejecting petitioner's application for impleadment of khatedar of khasra no. 161 filed under Order I Rule 10 CPC, warranting this Court's interference under Article 226 of the Constitution.

11. In view of the aforesaid reasons, present writ petitions are **allowed**. The orders impugned dated 30.03.2021 (Annex. 10) and 20.09.2022 (Annex. 12) are quashed and set aside. Petitioner's application for impleadment of khatedars of khasra no. 161 as party to the proceedings is, hereby, **allowed**. Since the matter is pending since 2013, learned SDO is directed to expedite the proceedings and decide the same preferably within period of 3 months from the date of passing of this order.

12. It is made clear that learned SDO shall decide the application filed under Section 251-A independently, in accordance with law, without being influenced by the observations made by this Court in present order, which are only confined to the impleadment application filed by the applicant.

12. Stay applications and all pending applications, if any, stand **disposed of**.

(SANJEET PUROHIT),J

87-88-sumer/-

