

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

S.B. Civil Second Appeal No. 175 / 2015

Samast Musalman Luhan through representatives:-

1. Khalil Khan s/o Nabi Bux
2. Zahoor Ahmad S/o Rehmat Khan
3. Rajuddin S/o Shamsuddin
4. Babu Khan S/o Noora

All [1 to 4] are by caste Muslim Luhan R/o Qaruli Tehsil Qaroli
Distt. Qaroli (Raj.)

-----Appellant

Versus

1. Yadav Vati Gau Shala through Shree Shiv Nath Singh Jadaun
r/o Qaroli president Yadav Vati Gau Shala Qaroli Tehsil Qaroli Distt.
Qaroli (Raj.)
2. Tehsildar Tehsil Qaroli (Raj.)

-----Respondent

For Appellant(s) : Mr. Moinuddin Adv.

For Respondent(s) : Mr. Suresh Pareek Sr. Adv. with
Mr. N.C. Sharma Adv.

HON'BLE MR. JUSTICE JAINENDRA KUMAR RANKA

Judgment

Judgment Reserved on : 09/02/2017

Judgment Pronounced on : 31/03.2017

1. By way of the instant second appeal, the plaintiffs have assailed concurrent finding returned against them by the Courts below in a suit for declaration and injunction against the defendant. In the suit, the plaintiffs sought to declare that the plaintiffs had a customary right to keep dead bodies before burial in the burial ground (Kabristan), read Namaj and perform the

rituals of "Vaju" over the land comprising in Khasra No.4613 Rakba 5 Bigha, Khasra No.4614 Rakba 1 Bigha and Khasra No.4615 Rakba 1 Bigha 3 Biswa; Consequential injunction was also sought.

2. Learned counsel for the appellant-plaintiffs vehemently contended that the judgment and decree passed by the Courts below are illegal and perverse and both the Courts below committed a grave error in holding that the plaintiffs were unable to establish any customary rights as claimed whereas the plaintiffs by way of submitting documentary and oral evidence, has proved such rights.

3. Per-contra, learned counsel for the respondent controverting the Appellant's contentions, submitted that the land comprised in Khasra number mentioned hereinabove were under the khatedari and possession of the respondent-society which was well proved by the revenue records submitted in the Courts below. Counsel also contended that the plaintiffs did not claim such rights in the above mentioned land in earlier suit presented by them which reveals that the claim in the suit was an afterthought, sham and bogus.

4. I have heard learned counsel for the parties and perused the material on record and have given my thoughtful consideration to the rival submissions.

5. It is an admitted position that in an earlier suit No. 84/1987 titled as **(Samast Luhan Vs. Yadav Vati Gau Shala)** decided on 26.11.1997, the plaintiffs right with respect to burial of dead

bodies was recognized with respect to Khasra No.4648 and 4616 and the same was affirmed in Regular First Appeal No.2/1998 by judgment dt.28.08.1999 which was further affirmed by dismissal of the Civil Second Appeal No.46/2002.

6. Both the Courts have concluded that apart from such Khasra No.4648 & 4616, the plaintiffs had no such right as claimed in suit with respect to Khasra No.4613, 4614 & 4615. Both the Courts, noting and appreciating the earlier judgment and decrees and on scanning the entire documentary and oral evidence led by both the parties have concluded that the plaintiffs had no such right to claim with respect to the said land.

7. These findings are pure finding of facts in which no perversity or illegality could be pointed out. The Courts below after a comprehensive analysis of the pleadings and evidence have returned concurrent finding against the plaintiff which does not give rise to any substantial question of law.

8. Consequently, the present second appeal being devoid of merit, is hereby dismissed.

(JAINENDRA KUMAR RANKA)J.

S.Kumawat

Jr. P.A.