

Amar Singh and Others

Vs

Rana Balbahadur Singh

Civil Appeal No. 354 of 1965

(CJI P. B. Gajendragadkar, K.N. Wanchoo, J.C. Shah, S. M. Sikri, V. Ramaswami-I JJ)

27.01.1966

JUDGMENT

SHAH, J. -

In 1936 certain home farm land in Mouza Belam Bujurg, Paragana Burwaha, of the estate of the respondent were leased for cultivation to one Mangtya by Court of Wards which was in management of the estate. The Court of Wards released the estate on June 14, 1951. The respondent thereafter terminated the tenancy and instituted a suit in the Court of Civil Judge, Class II, Burwaha, against Mangtya for a decree in ejectment and for mesne profits. The Trial Court decreed the suit for possession and awarded mesne profits at the rate of Rs. 300/- per annum from the date of decree till delivery of possession. The decree passed by the Trial Court was confirmed in appeal by the District Court, Nimar, and the High Court of Madhya Pradesh. Sons of Mangtya, who died after the judgment of this High Court have preferred this appeal with special leave.

The land in dispute is ryotwari land and Mangtya was a ryotwari sub-lessee of the land. It was contended before the High Court in Rao Nihalkaran v. Ramchandra & Others (L.P.A. No. 14 of 1961 decided on Sept. 24, 1962.) that even though a ryotwari sub-lessee of land in the Madhya Bharat region may ordinarily acquire under s. 185(1)(ii)(b) on the commencement of the Code the status of an occupancy tenant, the tenant Mangtya was disentitled to that status since at the commencement of the tenancy the respondent was subject to a disability of the character set out in s. 168(2). The High Court upheld the plea of the respondent; they held that the expression "holds the land from a Bhumiswami who belongs to any one or more of the classes" predicates two conditions - that the land is held by a tenant under a Bhumiswami, and that at the commencement of the tenancy the landlord who subsequently acquired the status of a Bhumiswami belonged to any one or more of the classes mentioned in sub-s. (2) of s. 168 of the Code.

The only question which falls to be determined in this appeal is whether under s. 185(3) of the Madhya Pradesh Land Revenue Code the tenant Mangtya was disqualified from claiming the status of an occupancy tenant. By s. 157 of the Code there was to be in the State of Madhya Pradesh a single class of tenure holders of land held from the State to be known as Bhumiswami. The respondent may be by virtue of s. 158(b) deemed to be a Bhumiswami. The rights of Bhumiswami under the Code are heritable, but in the matter of transfer inter vivos they are subject to restrictions prescribed by ss. 165 & 168. Land comprised in the holding of a Bhumiswami may not by virtue of s. 168(1) be transferred by way of a lease, except in the conditions mentioned in sub-ss. (2) & (3) of s. 168. A Bhumiswami subject to one or more of the disabilities mentioned in sub-s. (2) may grant a lease of his holding. It has to be noticed that the provisions which create the tenure of a Bhumiswami and the restrictions thereon are prospective. We have held in Appeal No. 365 of 1965 -

Rao Nihalkaran v. Ramgopal ((1966) 3 S.C.R. 427) - that a person whose tenancy rights were determined before the commencement of the Code will be invested with the status of an occupancy tenant provided he holds land of nature described in sub-s. (1) of s. 185. But upon this rule is engrafted an exception by sub-s. (3) of s. 185 that nothing in sub-s. (1) shall apply to a person who at the commencement of the Code holds the land from a disabled Bhumiswami.

At the commencement of the Code the respondent acquired the tenure of a Bhumiswami under s. 158(b) of the Code, but it cannot be said that the respondent "belongs to any one or more of the classes mentioned in sub-section (2) of section 168". For the exemption from the operation of s. 185(1) it had to be established that the respondent at the commencement of the Code "belongs" to the disabled class. He undoubtedly did belong to the disabled class when the lease was granted, but not at the commencement of the Code, and what is decisive for the operation of the exemption under sub-s. (3) is the status of Bhumiswami at the commencement of the Code. By s. 168(2) the prohibition against a Bhumiswami against transfer by way of lease of the land comprised in hid holding is inoperative, where the Bhumiswami is subject to any one of the disabilities mentioned in cls. (1) to (ix) of sub-s. (2). That provision is undoubtedly prospective. The Legislature has by sub-s. (3) of s. 185 prohibited the acquisition of occupancy tenancy rights by a tenant of a Bhumiswami who was when the Code came into force subject to any disabilities mentioned in s. 168 (2). It is clear from the terms of sub-s. (2) of s. 168 proviso 2 that a lease made by a Bhumiswami who is subject to a disability remains valid only during the disability and one year after the determination of that disability, by death or otherwise. Therefore a lease created by a Bhumiswami, even if he was at the date when he created the lease subject to a disability would become invalid on the termination of the disability and a period of one year thereafter. By a sub-s. (4) of s. 168 it is provided that a lease granted in pursuance of sub-ss. (2) or (3) shall be held on such terms and conditions as may be agreed upon between the lessee and the Bhumiswami and it is further provided by sub-s. (5) that on the coming into force of the Code where any land is held on lease from a Bhumiswami who belongs to any one or more of the classes mentioned in sub-s. (2) such lease shall, on the coming into force of the Code, be deemed to be a lease granted in pursuance of sub-s. (2). The lease granted by a person who on the commencement of the Code acquires the status of a Bhumiswami is therefore deemed to be a lease granted in pursuance of sub-s. (2) of s. 168, if the Bhumiswami "belongs" to the class mentioned in sub-s. (2). Reading s. 185(3) with s. 168 (2) and s. 168 (5) it is clear that to attract exclusion from the operation of s. 185 (1) the Bhumiswami must, at the commencement of the Code, be subject to disability mentioned in sub-s. (2) of s. 168. What is determinative is not the existence of disability at the date of the grant of the lease before the commencement of the Code, but the disability of the Bhumiswami at the commencement of the Code.

On the date on which the Code was brought into force, the respondent was not a Bhumiswami belonging to any one or more of the classes mentioned in sub-s. (2) of s. 168, and the exception provided by s. 185 (3) will not apply. It is true that the respondent was a minor at the time when the lease was granted by the Court of Wards. But he ceased to be a minor in 1951. By virtue of s. 185(1) the tenant, notwithstanding the institution of the suit, became an occupancy tenant of the land when the Code was brought into operation and the mere fact that the respondent was a minor at the date of lease did not prevent the statutory acquisition of the status of an occupancy tenant by Mangtya under s. 185(1).

The appeal must therefore be allowed and the decree passed by the High Court set aside. The suit filed by the respondent will stand dismissed. There will be no order as to costs throughout.

Appeal allowed.

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