

Nathu Prasad

Vs

Ranchhod Prasad and Others

Civil Appeal No. 2111 of 1966

(J. C. Shah, V. Ramaswami-I, A.N. Grover JJ)

06.10.1969

JUDGMENT

SHAH, J. -

1. Of Khasra Nos. 33 and 34 of Maheshwar, District Khargone, Madhya Pradesh, Nathu Prasad - hereinafter called 'the plaintiff' - is the recorded pattedar tenant. On May 20, 1955, he granted a sub-lease of the land, for a period of five years to Ranchhod Prasad and Onkar Prasad - hereinafter collectively called 'the defendants'. On June 30, 1960, the plaintiff commenced an action in the Court of the Civil Judge, Maheshwar, against the defendants claiming that the sub-lease being in contravention of Section 73 of the Madhya Bharat Land Revenue and Tenancy Act, 77 of 1950 the defendants were trespassers in the land. The defendants contended that the lease was valid, and since the plaintiff had received consideration, he was estopped from setting up the plea of invalidity of the lease. The Trial Court decreed the action, holding that the defendants were trespassers and could not acquire Bhumiswami rights claimed by them. The District Court agreed with the Trial Court. In second appeal the High Court of Madhya Pradesh allowed the appeal and dismissed the plaintiff's action. In the view of the High Court the defendants had acquired rights as occupancy tenants under Section 185(1)(ii)(b) of the Madhya Pradesh Land Revenue Code. In so holding the High Court relied upon the judgment of the Madhya Pradesh High Court in Rao Nihalkaran v. Ramchandra. With special leave, the plaintiff has appealed to this Court.

2. Section 73 of the Revenue Administration and Ryotwari Land Revenue and Tenancy Act, Samvat 2007 (Act No. 66 of 1950) Provides :

"No Pakka tenant shall sub-let for any period whatsoever any land comprised in his holdings except in the cases provided for in Section 74.

#Explanation : - X X X X X X.###

Section 74 deals with sub-letting by disabled persons. Since the plaintiff is not a disabled person, the section need not be read. Section 75 provides :

"A sub-lease of the whole or any part of the holding of a Pakka tenant effected properly and legally prior to the commencement of this Act shall terminate after the expiry of the period of sub-lease or 4 years after the commencement of this Act, whichever period is less."

Section 76 provides :

"(1) If the sub-lessee does not hand over possession of the land sub-let to him after the sub-lease ceases to be in force under Sections 74 and 75 to the lessor or his legal heir x x x x, he shall be deemed to be a trespasser and shall be liable to ejection in accordance with the provisions of this Act.

#(2) X X X X X X X."##

Section 78 provides :

"(1) Any person who in contravention of the provisions of this Act, obtains possession of any land by virtue of a bequest, gift sale, mortgage or sub-lease, or of any agreement purporting to be a bequest, gift sale, mortgage or sub-lease shall be deemed to be a trespasser and shall be liable to ejection in accordance with the provisions of Section 58.

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3. The Madhya Bharat Legislature enacted the Madhya Bharat Ryotwari Sub-lessee protection Act, 1955 (Act 29 of 1955). The Act came into force on October 19, 1955. The Act was enacted to provide for stay of proceedings under Section 76(1) for the ejection of sub-lessees of ryotwari land after the termination of sub-leases according to Section 75 of the Madhya Bharat Land Revenue and Tenancy Act, Samvat 2007. "Ryotwari sub-lessee" was defined in clause (b) of Section 2 as meaning "a person to whom a Pakka tenant of any Ryotwari land has sub-let on sub-lease any part of his Ryotwari land". Section 3 of Act 29 of 1955 provides :

"Notwithstanding anything contained in Section 76 the Madhya Bharat Land Revenue and Tenancy Act, Samvat 2007, during the continuance of this Act but subject to the provisions contained in Section 4 below, no Ryotwari sub-lessee other than a sub-lessee under Section 74 of the Madhya Bharat Land Revenue and Tenancy Act, Samvat 2007, and a sub-lessee deemed to be a trespasser under Section 78 of the said Land Revenue and Tenancy Act, shall be ejected from his land."

Section 3 clearly grants protection during the continuance of the Act to sub-lessees. But sub-lessees under section 74 of the Madhya Bharat Land Revenue and Tenancy Act and a sub-lessee deemed to be a trespasser under Section 78 of that Act is outside that protection.

4. The Madhya Pradesh Land Revenue Code (Act 20 of 1959), was enacted by the State Legislature and was brought into force in the whole of the state of Madhya Pradesh. By that Code, Act 29 of 1955, was repealed. The expression "tenant" was defined in section 2(y) as meaning "a person holding land from a Bhumiswami as an occupancy tenant under Chapter XIV". Section 185, in so far as it is relevant, provides :

"(1) Every person who at the coming into force of this Code holds -

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(ii) In the Madhya Bharat region -

(a) any Inam land as a tenant, or as a sub-tenant or as an ordinary tenant; or

#Explanation : - X X X X X X##

(b) any land as ryotwari sub-lessee as defined in the Madhya Bharat Ryotwari Sub-lessee Protection Act, 1955 (29 of 1955); or

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shall be called an occupancy tenant and shall have all the rights and be subject to all the liabilities conferred or imposed upon an occupancy tenant by or under this Code."

By Section 185 of the Madhya Pradesh Land Revenue Code a person who is holding land as a ryotwari sub-lessee under Act 29 of 1955 is deemed to be an occupancy tenant and is entitled to all the rights and is subject to all the liabilities conferred or imposed upon an occupancy tenant by or under the Madhya Pradesh Land Revenue Code.

5. A inducted as a sub-lessee, but who by express provision contained in section 73, read with Section 78 of Act 66 of 1950 in declared a trespasser, does not acquire the status of an occupancy tenant under Section 185(1)(ii)(b) of the Madhya Pradesh Land Revenue Code. Act 29 of 1955 conferred protection only upon a ryotwari sub-lessee, and a ryotwari sub-lessee was defined in that Act as meaning a person in whose favour the land was settled. A person, the lease in whose favour was declared void by virtue of Act 66 of 1950, could not claim the status of a sub-lessee. That is so enacted in section 3 which excluded from the protection granted by Act 29 of 1955, amongst others, a sub-lessee deemed to be a trespasser under Section 78 of Act 66 of 1950. A person inducted as a sub-lessee contrary to the provisions of Section 73 of Act 66 of 1950 did not therefore acquire any right under a contract of sub-letting, and his possession was not protected under Act 29 of 1955. Such a person is not a ryotwari sub-lessee as defined in the Madhya Bharat Ryotwari Sub-lessee Protection act, 29 of 1955, and it is only on "Ryotwari sub-lessee" as defined in that Act that the right of occupancy tenant is conferred by Section 185(1)(ii)(b) of the Madhya Pradesh Land Revenue Code.

6. Krishnan, J., regarded himself bound by the following observation made by a Division Bench of the Madhya Pradesh High Court in Rao Nihal Karan's case (Supra) :

"By Section 3 of this Act (Act 29 of 1955), a bar was created to the ejection of these sub-lessees whose continuance had become precarious under the existing law. The bar was to operate during the continuance of that Act which was for a definite duration notwithstanding anything contained in Sections 76 and 78 of the Madhya Bharat Land Revenue and Tenancy Act barring exceptions contained in Section 74 of that Act."

The observation that protection was given to sub-lessees, notwithstanding anything contained in Section 78 was apparently made through oversight, it is contrary to the express provisions of the Act.

7. The High Court was, in our judgment, in error in holding that the defendants had acquired the status of occupancy tenants by virtue of Section 185(1)(ii)(b) of the Madhya Pradesh Land Revenue Code (Act 20 of 1959).

8. The appeal is allowed. The order passed by the High Court is set aside and the decree passed by the District Court is restored. The will be no order as to costs in this Court and in the High Court.

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