Mohan Lal

Vs

Mohun Ram

Civil Appeal No. 2212 of 1966

(J. M. Shelat, G. K. Mitter JJ)

07.04.1970

JUDGMENT

SHELAT J.

1. This appeal, by special leave, concerns a piece of land measuring 27 Bighas and 17 Biswas, situate in village Chethla, District Mahasu in Himachal Pradesh. The land stood in the names of one Kubja and Subda, the minor daughters of Smt. Radhu, as the owners thereof. It can no longer be disputed that Radhu, as the guardian of her minor daughters, had leased the land to the respondent for a term of five years. The period of the lease expired in Rabi 1960. The said Subda died; in the result Kubja became the sole owner of the said land. On December 6, 1960, Radhu, as the guardian of the minor Kubja, sold the said land to the appellant for Rs. 4,000. In March, 1961, the respondent, clamming to be still the tenant, applied for the proprietary rights of the landholders in the said land under Section 11(1) of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, XV of 1954 (hereinafter referred to as the Act).

2. The application of the respondent was resisted by both Kubja and the appellant on the grounds that the respondent was never the tenant of the said land but had taken forcible possession thereof, that he had thereafter relinquished its possession in a Panchayat and further that as the appellants was a minor, having no other means of livelihood except the said land, he was entitled to the protection of sub-section (2) of Section 11.

3. The compensation officer under the Act dismissed the respondent's application holding that Radhu, as the guardian of her minor daughters, has leased the said to the respondent for a period of five years, but that the lease expired in 1960 and thereupon the respondent had relinquished possession. Consequently, he was in March, 1961, no longer a tenant who could apply under Section 11(1). He also held that the appellant was a minor without any other means of livelihood except the land in question, and therefore, was in any event entitled to the protection provided under Section 11(2). The District Judge, in the appeal filed by the respondent, held that the respondent had not relinquished possession not had he ceased to be the tenant of the land in spite of the expiry of the lease period. He also held that the trees and the buildings standing on the said land would not be covered under the proceedings under Section 11(1), the first because they did not constitute land under the Act and the second because the tenant did not wish to include the buildings in his said application. The District Judge, however, omitted to decided the question as to whether the respondent was a minor without any other means of livelihood and thereof, entitled to the protection under Section 11(2). He, nevertheless, set aside the order of the compensation officer and allowed the appeal awarding proprietary rights in the land to the respondent save in respect of the trees and the buildings. The appellant filed a second appeal before the learned Judicial Commissioner who

remanded the case to the District Judge direction his to give his finding in the question left undecided by him, namely, the question as to the applicability of Section 11(2). On such remand the District Judge gave his finding to the effect that except for the land in question the appellant-minor had no other means of livelihood, and therefore, during his minority the respondent-tenant was not entitled to acquire the proprietary rights in the said land. He also got a plan prepared of the buildings and the lands appertaining thereto which would be excluded from the purview of the application.

4. On the matter again coming up before the Judicial Commissioner, the Judicial Commissioner found that (1) the respondent was inducted on the land as a tenant by Radhu, (2) that the respondent had not relinquished possession on expiry of the period of five years under the said lease and (3) that he did nots cease to be the tenant even on expiry of the said period by reason of Sections 48 to 55 and 62 of the Act. Observing that the real point of controversy before him, therefore, was as regards the applicability of Section 11(2), he held that though the statutory right of a minor son to be maintained by his father under Section 20 of the Hindu Adoptions and Maintenance Act, 78 of 1956, cannot invariably and in all cases by regarded as a means of livelihood of a minor, it could be taken into account on the facts and circumstances of the present case. These facts, according to him were : (1) the fact that the appellant was residing with and was being maintained by his father, (2) the admission made by the father that he had acquired other lands by purchasing them and had thus augmented the ancestral property held by him, (3) the price of Rs. 4,000 for the land in question was in fact paid by him and (4) it comprised of Rs. 2,000 advanced earlier and the balance of Rs. 2,000 paid by him at the time of the execution of the sale. Basing his conclusion on these facts, the Judicial Commissioner held that the appellant could not be said to be a minor, who had no means of livelihood except the land in question, that therefore, Section 11(2) did not apply and the respondent-tenant was entitled under Section 11(1) to acquire the proprietary rights in the land excluding the buildings and the trees standing thereon.

5. Section 11 reads as follows :

> "(1) Notwithstanding any law, custom or contract to the contrary a tenant other than a sub-tenant shall, on application made to the compensation officer at any time after the commencement of this Act, be entitled to acquire, on payment of compensation, the right, title and interest of the landowner in the land of the tenancy held by him under the landowner -
>
> #x x x x##
>
> (2) Nothing contained in sub-section (1) shall apply to a landlord, if he has no other means of livelihood, and is a minor X X In the case of a minor, sub-section (1) shall not apply during minority x x."

6. Counsel for the appellant did not contest the finding of the Judicial Commissioner that the respondent was inducted not the land as a tenant, and that though the lease period expired in 1960 he was still a tenant until he was evicted by a decree of a Court or had abandoned or otherwise relinquished the tenancy. That being so, there can be doubt that the respondent was entitled to maintain the application under Section 11(1). The only question, therefore, which he pressed before us was that the Judicial Commissioner was in error in holding that the obligation of a father to maintain his minor son under the Hindu Adoptions and maintenance Act can be regarded as a means of livelihood of such a son other than the land in question as contemplated by Section 11(2).

7. Reading the judgment of the Judicial Commissioner as a whole, it is clear that that was not what the Judicial Commissioner held. What he held was that the expression "means of livelihood" in Section 11(2) had not been used in any artificial sense but in its ordinary meaning, that the said expression would mean resources of livelihood, that in ascertaining such recourses each case would depend on its own facts and circumstances, that the statutory right of a minor to be maintained by his father cannot invariably and always be regarded as a means of livelihood of the minor, but that there may be facts on which such a right may be taken into consideration while deciding the question whether protection under sub-section (2) can be invoked. The Judicial Commissioner then considered the aforesaid four facts and came to the conclusion that this was not a case where the appellant-minor could be said to be without any means of livelihood other than the land in question.

8. It is not necessary on the facts of the present case to decided whether the statutory right of maintenance of a minor can or cannot be treated as a means of livelihood. There are facts in this case which clearly show that even after the proprietary rights of the minor in the land in question are acquired by the tenant there would be other means of livelihood left with the appellant. The first and the most obvious one is that there are standing on the land two houses, the proprietary rights in which are not sought to be acquired by the respondent. The plan got prepared by the District Judge shows the two houses together with the portions of land appertaining thereto which would still remain with the appellant. The evidence of the appellant's father was that the whole of the land together with the trees and the two houses standing thereon was acquired by him for the appellant for Rs. 4,000 only. By 1964 when he gave his evidence, the value of the two houses alone was between Rs. 7,000 to Rs. 8,000. The father's evidence further shows that he got land measuring 25 to 30 Bighas on the death of his father, that he had since then purchased several other pieces of land, thus increasing the extent of the ancestral property held by him. Over and above these lands, he had planted a number of apple and other fruit bearing trees. The property held by him thus was, on his own admission, ancestral property in which the appellant has an interest as a coparcener in a Hindu joint family. It is thus manifest that the land in question is not the only means of the appellant's livelihood and even when he is deprived of the proprietary rights therein there would be other properties, even besides the said two houses and the trees, in which he has an interest. Therefore, the conclusion reached by the Judicial Commissioner that the protection under Section 11(2) could not be availed of by the appellant is correct without any regard being had to his right of maintenance under the Hindu Adoptions and Maintenance Act.

9. The appeal, therefore, fails and is dismissed with costs.

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