

Chandrakant Madhavrav Dhaibar and Another

Vs

Patel Parshottamdas Shamalbhai and Others

Civil Appeal No. 689 of 1970

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

04.09.1970

JUDGMENT

HEGDE, J. -

1. The appellants are father and son, the second appellant being a son of the 1st appellant. They own some lands in Baroda in Gujarat State. It is said that those lands were owned by a Hindu joint family consisting of the 1st appellant and his four sons. The suit lands formed part of the lands owned by that family. The suit lands were in possession of the respondents as tenants. Under Section 32 (1) of the Bombay Tenancy and Agricultural Lands Act, 1948 (which will hereinafter be referred to as the Act), the suit lands were deemed to have been purchased by the tenants on April 1, 1957. It is said that the father and the sons divided their lands in Baroda on March 12, 1958 and 1/5th share of those lands was given to the second appellant. The suit lands formed part of the lands allotted to the second appellant. At the time of the partition the second appellant was a minor. When the Mamlatdar took steps to fix the value of the suit lands for the purpose of fixing compensation due to the landlord, the second appellant objected to the same on the ground that the suit lands cannot be deemed to have been purchased by the respondents in view of Section 32 F (1) (a) of the Act. The Mamlatdar rejected that contention by in appeal the District District Deputy Collector reversed the decision of the Mamlatdar accepting the contention of the appellants that the suit lands came within the scope of Section 32 F (1) (a). He remanded the case to the Mamlatdar to find out whether the share given to the appellant was a proper share. On a further appeal to the tribunal, the order of the District Deputy Collector was reversed and the decision of the Mamlatdar restored. Thereafter the appellants moved the High Court of Gujarat under Article 226 of the Constitution but the same was dismissed. Hence this appeal by special leave.

2. Section 32 F(1) (a) of the Act reads :

(a) where the landlord is a minor, or a widow, or a person subject to any mental or physical disability - the tenant shall have the right to purchase such land under Section 32 within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy under Section 31 :

Provided that where a person of such category is a member of joint family, the provisions of this sub-section shall not apply if at least one member of the joint family if outside the categories mentioned in this sub-section unless before the 31st date of March, 1958, the share of such person in the joint family, has been separated by metes and bounds and the Mamlatdar on inquiry is satisfied that the share of such person in the land is separated having regard to the ares, assessment, classification

and value of the land, in the same proportion as the share of that person in the entire joint family property, and not in a large proportion."

3. The Mamlatdar came to the conclusion that the partition alleged did not come within the scope of Section 32 F (1) (a) of the Act as it was only a partial partition in view of the fact that the members had not divided the house that they had a Boroda as well as their lands in Kadu in Poona District. The appellate authority opined that a partial partition also comes within the scope of Section 32 F (1) (a) and hence it set aside the order of the Mamlatdar and remanded the case back to him for determining whether the second appellant had been given a proper share in the family properties which question the Mamlatdar did not go into earlier in view of this conclusion that a partial partition does not come within the scope of Section 32 F (1) (a). In the further appeal the tribunal agreeing with the Mamlatdar opined that in order to have the benefit of Section 32 F (1) (a), the entire family properties must have been partitioned. The same view commended itself to the High Court.

4. In this Court it was urged on behalf of the appellants that on the facts of the present case, no question of partial partition arises; the lands referred to in Section 32 F (1) (a) do not include any house; further the lands in Kadu did not belong to the family of the 1st appellant and his sons but to a larger family consisting of the 1st appellant and his cousins. It was also urged that the landlord in this case is the smaller family consisting of the 1st appellant and his sons and not the larger family consisting of the 1st appellant and his cousins.

5. These contentions are challenged on behalf of the respondents.

6. It is not necessary for us to go into these contentions in this appeal. The tribunal, the final fact finding authority has come to the conclusion that on the admitted facts the share given to the second appellant, having regard to the area, assessment, classification and value of the lands is not in the same proportions as his share in the entire joint family property. It was admitted before the tribunal that at the time of the partition the 1st appellants' wife (second appellants's mother) was alive. It was further admitted that under law, she was entitled to a 1/6th share in the suit lands. Admittedly she was not given any share. The proper share to which the second appellant was entitled in the lands owned by the 1st appellant and his sons in 1/6th and not 1/5th. But in fact he was given 1/5th share in the same. That being so, the second appellant is not entitled to the benefit of Section 32 F (1) (a). A somewhat half-hearted attempt was made in this Court to show that the wife of the 1st appellant had renounced her share. This contention is opposed to the admission made before the tribunal. Therefore it cannot be accepted.

7. In the result this appeal fails and the same is dismissed with costs.

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