

Bhagwant Pundalik and Another

Vs

Kishan Ganpat Bharaskal and Others

Civil Appeals Nos. 1490 and 1721 of 1966

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

19.10.1970

JUDGMENT

SHAH, J. -

1. Badridas, son of Ramgopal, was the owner of fields Survey Nos. 2 and 9/2 of village Bhamberi, Taluk Akot, District Akola. On February 26, 1958, Badridas granted a lease for cultivation of the lands to two brothers Kishan and Manik. At the end of the agricultural year 1958-59 Badridas took possession of the lands from Kishan and Manik representing that he desired to cultivate the lands personally. Badridas cultivated the lands during the agricultural years 1959-60 and 1960-61 and thereafter on January 18, 1961, he granted a lease of the lands of four years to Bhagwant, son of Pundalik, Kishan and Manik then applied on June 30, 1961, under Section 36(1) of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, for an order restored them to possession alleging that their eviction from the lands was illegal. The Additional Tahsildar dismissed the application, but in appeal the order was reversed. In the view of the appellate authority Kishan and Manik were in 1958-59 tenants of the lands and they were evicted otherwise than in accordance with the law, and that they were entitled to be restored to possession under Section 36(1) of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958. In a petition by Bhagwant the Revenue Tribunal reversed the order of the appellate authority. The Tribunal held that since Kishan and Manik and given up possession of the lands voluntarily and had allowed Badridas to cultivate the lands for the following two years, they had no right to be reinstated into possession of the lands, especially after the lands were let out by Badridas to Bhagwant. Kishan and Manik then moved in the High Court of Bombay at Nagpur, two Special Civil Applications Nos. 746 and 747 of 1964, in respect of the two fields Survey Nos. 2 and 9/2 separately. The High Court set aside the order of the Revenue Tribunal and directed that an order for possession be made in favour of Kishan and Manik in respect of the two lands. With special leave, these appeals have been preferred by Bhagwant.

2. The Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, was brought into force on December 30, 1958. Section 20 provides :

"A tenant may terminate the tenancy at any time by surrendering his interest of a tenant in favour of the landlord :

Provided that such surrender shall be in writing and shall be verified before the Tahsildar in the prescribed manner."

Section 36 of the Act provides :

##(1) A tenant X X X entitled to possession of any land X X X under any of the provisions of this Act or as a result of eviction in contravention of sub-section (2) may apply in writing for such possession to the Tahsildar X X X(2) No landlord shall obtain possession of any land, X X X held by a tenant except under an order of the Tahsildar. Nor obtaining such order he shall make an application in the prescribed form and within a period of two years from the date on which the right to obtain possession of the land, X X X is deemed to have accrued to him :X X X X"##

3. For the agricultural year 1958-59 Kishan and Manik were tenants in respect of the lands in question. Badridas took possession of the lands at the end of that year. Granting that Kishan and Manik delivered the lands voluntarily, there could not under Section 20 of the Act be a valid surrender, unless the surrender was in writing and verified before the Tahsildar and in the prescribed manner. Possession obtained by Badridas was not lawful, for Badridas obtained possession of the land from the tenants without complying with the requirements of Section 20 and of sub-section (2) of Section 36. Sub-section (2) of Section 36 prohibits the landlord from obtaining possession of any land held by a tenant except under an order of the Tahsildar. Delivery of possession voluntarily by Kishan and Manik did not render the possession of Badridas valid. Under Section 36(1) a tenant who has been evicted in contravention of sub-section (2) may apply in writing to the Tahsildar for such possession.

4. Counsel for the appellant contended that Section 36(2) does not commence with the expression. "Notwithstanding any agreement, usage, decree or order of a court of law" as Section 19 of the Act does, and on that account it may reasonably be inferred that the Legislature intended that only those tenants shall be deemed entitled to possession within the meaning of Section 36(1) who were dispossessed by fraud, coercion or misrepresentation, and not tenant who had voluntarily parted with possession of the lands. We are unable to agree with that contention. Section 19 provides that notwithstanding any agreement, usage, decree or order of a court of law tenancy of any land held by a tenant shall not be terminated except in the cases specified therein. Thereby it was intended to make the provisions of Section 19 paramount. In Section 20 of the Act which deals with surrender it is expressly enacted that surrender shall be in writing and shall be verified in the prescribed manner. Surrender of tenancy which does not comply with the requirement of Section 20 is ineffective. Again, sub-section (2) of Section 36 imposes a disability upon the landlord from obtaining possession of any land occupied by a tenant except under an order of the Tahsildar. The terms of sub-section (2) of Section 36 are explicit they are not subject to any implication that possession obtained with the consent of the tenant, but without an order of the Tahsildar is valid.

5. In a recent judgment *Madhao, s/o Tatyasa Sonar v. The Maharashtra Revenue Tribunal and Others* (Special Civil Application No. 206 of 1967, decided on September 11/12, 1969), the High Court of Bombay held that Section 36(2) is plenary and controls Section 20 of the Act. In the present case there is no surrender of tenancy in writing and no verification of surrender by the Tahsildar. We need express no opinion on the question whether mere verification by the Tahsildar without an order of the Tahsildar authorising the landlord to obtain possession disentitles the tenant to claim possession under Section 36(1).

The appeals fail and are dismissed. Having regard to all the circumstances, however, we think, there should be no order as to costs in this Court.

Counsel for the appellant Bhagwant submitted that there are crops standing on the lands, and prayed that the appellant may be allowed to reap them. One month's time from the date of this judgment is

given to the appellant to deliver possession of the lands.

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