

Patel Narsi Ladhu

Vs

Bhatt Chimanlal Ratanji and Others

Civil Appeals Nos. 707 of 1976 and 1299 to 1302 of 1977

(V. R. Krishna Iyer, Jaswant Singh, V. D. Tulzapurkar JJ)

20.03.1978

JUDGMENT

KRISHNA IYER, J. –

1. These appeals can be disposed of by a common order which we propose to pass in Civil Appeal 707 of 1976, a principal appeal in which the matter has been fully discussed by the High Court.
2. We need not set out the facts elaborately nor need we discuss the issues at length since we are disposed to agree with the High Court on all the findings it has recorded and our final order deals really with the absence of a finding of the High Court on a certain aspect of the case.
3. The Haveli Mandir, Limbdi, was the owner of lands which are the subject-matter of the present proceedings. The said lands were owned in Barkhali right by the Mandir; that these were owned by the Mandir and not by the private individuals who laid claims to them, was established by the adjudication of the Charity Commissioner in this behalf. However, possession of the lands had been transferred under sale deeds executed by one of the three brothers who claimed private ownership of the lands in question, namely, Bhalachandra. The Charity Commissioner directed the trustees appointed under the Bombay Public Trust Act, 1950, to bring a suit and recover possession of the trust property in the hands of the alienees who happened to be the defendants/appellants. The defendants/appellants raised various question including adverse possession by their predecessor, Bhalachandra. They also raised a question that under the Saurashtra Barkhali Abolition Act, 1951, occupancy certificate had been issued to their predecessor, Bhalachandra and that in any event by virtue of that certificate they were entitled to continue in possession as holders of occupancy right. The trial Court upheld the plea of adverse possession and dismissed the suit. Of course, it negatived the plea based on the Saurashtra Barkhali Abolition Act. By the time the trustees took up the matter in appeal, the major issue was adverse possession, with the result that the plea under the occupancy certificate put forward as an alternative defence did not figure prominently or at all at the appellate stage. The appellate Court upheld the plea of adverse possession and non-suited the plaintiffs. In the High Court in second appeal the whole question was reassessed and the plea of adverse possession was negatived. We are fully satisfied that the finding of the High Court on this question is correct. We are also satisfied that the finding of title in favour of the Haveli Mandir by the Charity Commissioner cannot be challenged by the defendants/appellants since it binds their predecessor, Bhalachandra.
4. Even so, the High Court did not go into the question as to whether any rights enured to the defendants under the occupancy certificate obtained by Bhalachandra which presumably was alienated in favour of the defendants/appellants. Probably this question was not debated prominently

before the High Court and went by default. Having heard counsel on both sides, we think that this point merits consideration. While was express on opinion whatever on the soundness or otherwise of the plea based upon occupancy certificate issued under Section 7(3) of the Act, it becomes necessary to decide what impact this certificate will have on the relief of possession claimed by the plaintiffs/respondents. We think that the justice of the case demands that the High Court should go into this question and record a finding thereon and thereupon dispose of the appeal. We, therefore, set aside the decree for possession passed by the High Court but while confirming all the findings recorded by it, direct it to go into the limited plea based on the occupancy certificate issued under Section 7(3) of the Barkhali Abolition Act, 1951 and its effect upon the relief of possession claimed by the plaintiffs. The main aspect of the question turning on the provisions of the Act may have to be investigated and pronounced upon. After deciding this issue the High Court will dispose of the appeal. The parties will bear their costs in this Court.

5. We accordingly allow the appeal and remand the case for fresh disposal according to law as indicated above. This judgment will govern the disposal of the other appeals also where the points raised are identical. The security deposit will be allowed to be withdrawn by the appellant.

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