

Mani Subba Rao and Another

Vs

Ganeshappa

Civil Appeal No. 1590 of 1971

(Y. V. Chandrachud, D. A. Desai, R. S. Pathak JJ)

22.03.1978

JUDGMENT

CHANDRACHUD, C.J. -

1. The appellants filed a proceeding before the Tehsildar against the respondent for recovery of rent and obtained an order in that behalf in 1956. That order was confirmed by the Assistant Commissioner and the Deputy Commissioner. Thereupon, the appellants filed a suit for evicting the respondent under Section 15 read with Section 29 of the Mysore Tenancy Act of 1952. In that suit, an order of eviction was passed by the Tehsildar against the respondent and on August 6, 1958 the appellants obtained actual possession of the suit lands from the respondent in execution of the order passed by the Tehsildar. Respondent's appeal against the order of eviction was dismissed by the Assistant Commissioner but in a further appeal, the Deputy Commissioner set aside the order of eviction. The appellants thereupon filed a revision application before the Mysore Revenue Tribunal, a Full Bench of which by a judgment dated February 24, 1960 allowed the revision petition and confirmed the decree of eviction passed by the Tehsildar.

2. The respondent thereafter filed a Writ Petition under Article 227 of the Constitution in the Mysore High Court, being C.P. No. 607 of 1960. On October 2, 1962, which was during the pendency of the Writ Petition, the Mysore Land Reforms Act, 10 of 1962, came into force. Section 23(2) of that Act provides, to the extent material, that notwithstanding anything contained in any enactment or provision of law repealed by Section 142 of the Act, any proceeding pending on the appointed day or instituted on or before that day in pursuance of any such repealed enactment or law before any Court, officer or authority for eviction of a tenant on the ground of default of payment of rent, "such court, officer or authority shall not order eviction of the tenant", if the tenant pays to the landlord the arrears of rent together with costs of the proceedings as decided by such court, officer or authority within such period as it may fix. In view of this provision and following the judgment of this Court in C.A. 618 of 1962, dated March 1, 1965 (Ambanna Sahu Shinde (dead) by his legal representative Smt. Akkubai v. Appaji Krishnaji Kulkarni) the High Court by its judgment dated December 14, 1970 allowed the Writ Petition and remanded the matter to the Tehsildar for taking appropriate action under Section 23(2). This appeal by special leave is directed against the order of remanded passed by the High Court.

3. Mr. Chitale who appears on behalf of the appellants has raised an interesting question arising out of the interpretation of Sections 22 and 23 of the Mysore Act of 1962. He contends that the benefit conferred on the tenant by Section 23(2) is available only to such tenants as have committed only two consecutive defaults and not more; and since in the instant case, the respondent had committed four defaults. Section 23(2) is not attracted and the respondent cannot claim the benefit of that

provision. Were this contention raised before the High Court, it would have been possible for the High Court to examine its validity which would have obviated a remand. The order of remand passed by the High Court if founded on the assumption, which was not challenged, that on its language and true interpretation. Section 23(2) was clearly attracted and that all the High Court had to do was to remand the matter to the Tehsildar for quantification of the rent as contemplated by the section. Not only was the contention now raised by Mr. Chitale not raised before the High Court, but we find that the contention does not find any place either in the Special Leave Petition or in the statement of case filed on behalf of the appellant. In these circumstances we do not see any justification for permitting the learned counsel to raise the point.

4. Following the judgment in C.A. 618 of 1965, to which we have already referred, we confirm the judgment of the High Court and dismiss the appeal with costs.

5. Since the matter has been pending for a long time, we direct that the Tehsildar shall dispose of the proceeding for quantification of rent and the passing of consequential order expeditiously. We hope that the Tehsildar will be able to dispose of the matter within six months.

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