Rahimatulla Rahiman Sarguru

Vs

Bapu Hari Mane and Another

Civil Appeal No. 59 of 1969

(R. S. Sarkaria, O. Chinnappa Reddy JJ)

29.01.1979

JUDGMENT

CHINNAPPA REDDY, J. –

1. Bapu Hari Mane, the respondent herein, was a tenant of the land in Survey No. 1436 of the extent of 3 acres 31 gunthas. On April 15, 1958, he purported to execute a deed of surrender in favour of the landlord, the appellant herein. On April 16, 1958, the 4 landlord applied to the Mamlatdar and on October 15, 1959, the Mamlatdar sanctioned the surrender. By an order dated June 1, 1959, the Mamlatdar directed delivery of possession of the land to the landlord. Possession of the land was accordingly purported to be delivered to the landlord on September 1, 1959. On May 10, 1965, the landlord sold the land to a third party. On May 21, 1965, the tenant filed an application under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948, for a declaration that he was the tenant of the appellant of the land in question. He alleged that the landlord took from him in writing a Razinama, assuring him that his possession of the land would not be disturbed. He never gave up possession of the suit land and continued to be a tenant of the land. This application was opposed by the landlord. It was alleged on behalf of the landlord that the tenant had given the Razinama out of his own free will and that possession was also delivered on May 10, 1965, from which date he was continuously in possession. The Aval Karkun by an order dated August 25, 1965, allowed the application and declared the respondent as a tenant of the suit land. He accepted the case of the tenant that notwithstanding the purported surrender, possession of the land continued with him all through. He also accepted the evidence relating to the payment of rent by the tenant. The landlord preferred an appeal to the Special Deputy Collector who by his order dated January 22, 1966, set aside the order of the Aval Karkun and declared that the respondent was not the tenant of the land. The Special Deputy Collector was of the view that the possession of the respondent was not as a tenant but as a purchaser. He relied upon the evidence relating to the existence of an agreement between the parties for sale of the property and the payment of earnest money. The tenant preferred a revision to the Maharashtra Revenue Tribunal under Section 76 of the Bombay Tenancy and Agricultural Lands Act, 1948. The Tribunal set aside the order of the Special Deputy Collector and restored that of the Aval Karkun. The Tribunal held that after the surrender there was a fresh tenancy and that Bapu Mane continued in possession throughout. The Tribunal held that the Special Deputy Collector committed an error of law in holding that the possession of Bapu Mane was as a purchaser and not as a tenant when that was not the case of the landlord either in the written statement or in the evidence. The landlord, thereupon filed a writ petition in the High Court. It was dismissed in limine. The present appeal has been filed by the landlord after obtaining special leave under Article 136 of the Constitution.

2. Shri Lalit, learned counsel for the appellant submitted that the Maharashtra Revenue Tribunal

acted entirely without jurisdiction in setting aside the order of the Special Deputy Collector on a reappraisal of the evidence. He submitted that the Revenue Tribunal was bound by the finding of fact arrived at by the Special Deputy Collector.

3. Section 76 of the Bombay Tenancy and Agricultural Lands Act, 1948, provides for a revision to the Maharashtra Revenue Tribunal against an order of the Collector on the following grounds -

(a) that the order of the Collector was contrary to law;

(b) that the Collector failed to determine some material issue of law; or,

(c) that there was a substantial defect in following the procedure provided by this Act, which has resulted in the miscarriage of justice.

4. The powers of revision entrusted to the Maharashtra Revenue Tribunal under Section 76 of the Bombay Tenancy and Agricultural Lands Act, 1948, are practically identical with the second appellate powers of the High Court under Section 100, Civil Procedure Code before it was amended by Act 104 of 1976. We do not have the slightest doubt that the Special Deputy Collector had acted contrary to law as the finding that the respondent was in possession not as a tenant but as a purchaser was not based either on the pleading or on the evidence of the appellant-landlord. The case of the appellant in his written statement as well as in his evidence was that he himself was in possession of the land from September 1, 1959, a case which was negatived by all the Tribunals. Shri Lalit drew our attention to the admission of the tenant in his cross-examination that there was an agreement between the parties for sale of the land and that the respondent had also paid earnest money. It is one thing to say that the tenant who was in possession of the it is quite a different thing to say that possession of the land was pursuant to an agreement of sale. The Special Deputy Collector, in our opinion misdirected himself in not appreciating the distinction. We are, therefore, unable to say that the Maharashtra Revenue Tribunal acted without jurisdiction in interfering with the order of the Special Deputy Collector. In the result the appeal is dismissed with costs.

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