

Subhanrao V. Patankar and Another

Vs

Masu Daji Pote and Others

Civil Appeal No. 807 (N) Of 1980

(P. N. Bhagwati, P. S. Pathak JJ)

31.03.1980

ORDER

BHAGWATI., J. –

1. We are not impressed by the argument of Dr. Chitale that on the release of the land in question from the management of the Court the tenancy of the person who was inducted on the land by the Administrator appointed by the Court, came to an end on the ground that the Administrator had only limited power to grant tenancy of the land. On this view, we would have ordinarily dismissed the appeal, but Dr. Chitale, appearing on behalf of the appellants, urged before us that the 1st respondent was only a sub-tenant of the land and by reason of Section 27 of the Bombay Tenancy and Agricultural Lands Act, 1948, the sub-tenancy was illegal and hence the 1st respondent was not entitled to protection from eviction. Mrs. Wad, appearing on behalf of the 1st respondent, raised an objection that this contention had not been taken by the appellant at any stage in the proceedings and it was for the first time in the Court that it was being put forward on behalf of the appellants and we should not, therefore, permit the appellant to rely upon it. Now it is true that this contention was not at any time taken by the appellants and that it was sought to be raised for the first time before us but we think that since it seeks to give effect to a statutory prohibition enacted in Section 27 against creation of sub-tenancy by a tenant, we would not be justified in not allowing it to be raised even though at a later stage of the proceedings. But at the same time, fairness and justice demand that an opportunity should be given to the 1st respondent to meet this contention which has been raised for the first time on behalf of the appellants.

2. We, therefore, allow the appeal, set aside the order passed by the High Court as also the order passed by the Revenue Tribunal and send the matter back to the Revenue Tribunal so that the Revenue Tribunal may decide this contention based on the applicability of section 27 after giving an opportunity to the 1st respondent to file his reply to this contention and affording an opportunity to the parties to lead such further evidence as they think fit and proper. The Revenue Tribunal will not go into the question whether the tenancy had come to an end on the release of the land from the management as the decision of that question is upheld by us but it will confine itself only to the question of the applicability and effect of section 27 in case it is found that the 1st respondent was a sub-tenant. Since the case is an old one, we would direct the Revenue Tribunal to dispose it of at an early date.

3. We are told that the 1st respondent is in possession of the land and we therefore direct the pending the disposal of the case by the Revenue Tribunal, his possession shall not be disturbed.

4. There will be no order as to costs of the appeal.

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