

Smt. Rukhamanbai

Vs

Shivram and Others

Civil Appeals Nos. 285-289 of 1969

(D.A. Desai, A.D. Koshal, R.B. Misra JJ)

03.09.1981

JUDGMENT

DESAI, J. –

1. In the wake of agrarian reforms initiated by the Bombay Tenancy and Agricultural Lands Act, 1948 (Tenancy Act for short) an amendment of far reaching and revolutionary character was introduced in 1956 so as to eliminate every intermediary between the tiller of the soil and the State. The title of the landlord to the land passes immediately to the tenant on the tillers' day and there is a completed purchase or sale thereof as between the landlord and the tenant. The title of the land which was vested originally in the landlord passes to the tenant on the tillers' day or the alternative period prescribed in that behalf. This title is defeasible only in the event of the tenant failing to appear or making a statement that he is not willing to purchase the land or committing default in payment of the price thereof as determined by the Agricultural Lands Tribunal (see Sri Ram Ram Narain Medhi v. State of Bombay [1959 Supp 1 SCR 489 at 518 : AIR 1959 SC 459 : 1959 SCJ 679]).

2. Section 32 provided that on April 1, 1957 styled the tillers' day, a tenant of agricultural land covered by the Tenancy Act would become the owner of the land held by him if other conditions specified in the section were fulfilled. A forum styled Agricultural Lands Tribunal was set up and a procedure was prescribed in the Act to determine the price payable by such tenant to the erstwhile landlord on becoming owner of the land held by him. Accordingly five tenants of five different pieces of agricultural land made five separate applications on August 27, 1962 against a common landlord, the appellant herein, before the Agricultural Lands Tribunal (ALT for short), Raver, under Section 32-G of the Tenancy Act for determining the price of land held by each of them as tenant. The landlord appeared in each proceeding and contested the right of the tenant to purchase the land, inter alia, contending that under a deed of settlement dated May 22, 1930, she acquired a right only usufruct of land involved in the dispute and thus she is a limited owner and the settlement imposes certain disability on her precluding her from dealing with the property which would indicate that she could not have leased out the land thereby creating an encumbrance which would be impermissible under the deed of settlement and consequently the tenant of each piece of land could not be said to be lawfully cultivating the land so as to become the deemed tenant under Section 4 of the Tenancy Act. It was also contended that the applicant (respondent herein) before ALT was not a tenant within the meaning of the Tenancy Act and therefore he could not have become the owner of the land on the tillers' day. Alternatively, it was contended that the minor children of the landlord who being the limited owner, had acquired a vested right in the land involved in the dispute under the deed of settlement and therefore as the landlords were minors the date of compulsory purchase in the case of such minor landlords would be postponed under Section 32-F and therefore the ALT

had no jurisdiction to determine the price under Section 32-G.

3. The ALT held that the appellant was the landlord and the tenant in each case was a deemed tenant under Section 4 of the Tenancy Act and on April 1, 1957 by the operation of law he became the owner thereof. It was also held that the ALT was under a statutory obligation to determine the price under Section 32-G. The ALT accordingly proceeded to determine the price in each case.

4. Five separate appeals were preferred by the appellant-landlord in each case to the Collector of Jalgaon. The Collector held that the present appellant-landlord had a limited interest in the land and thus as her interest fell short of ownership, she could not be regarded as landlord within the meaning of the expression in the Tenancy Act. Consequently, the Collector held that the tenant in each could not be deemed to be a tenant within the meaning of the expression in the Tenancy Act. It was accordingly held that the tenant in each case did not become the deemed purchaser under Section 32 and therefore the ALT had no jurisdiction to determine the price. The Collector allowed all the five appeals and dismissed the five applications preferred by the tenant in each case.

5. The tenant in each case preferred a revision petition under Section 76 of the Tenancy Act before the Maharashtra Revenue Tribunal. The Special Bench of the Maharashtra Revenue Tribunal by a common judgment allowed five revision petitions preferred by the tenants and set aside the order of the Collector and restored the order made by ALT holding that even though the landlord in these cases was a limited owner the instrument settling the property on the landlord did not prohibit the landlord from leasing the land and the lease was accordingly valid and therefore under Section 4, the tenant would be a deemed tenant within the meaning of the Tenancy Act and such deemed tenant would become the owner of the land held by him on the tillers' day.

6. The landlord approached the High Court under Article 227 of the Constitution. The Division Bench of the Bombay High Court by a common judgment disposed of the five special civil applications filed by the landlord. The High Court relying on the decision of this Court in *Dahya Lal v. Rasul Mohammed Abdul Rahim* [(1963) 3 SCR 1 : AIR 1964 SC 1320 : (1963) 2 SCJ 450] held that the deed of settlement did not prohibit the landlord from leasing the land and if the lease is created by such a limited owner not precluded from leasing the land, it would confer on the tenant of such landlord, the status of a deemed tenant under Section 4 and such a tenant would be deemed to have purchased the land held by him on tillers' day. The High Court negatived the contention that the children of the landlord had a vested interest in the land involved in the dispute during the lifetime of the landlord and the children being minors, the date of purchase would be postponed under Section 32-F. The High Court accordingly rejected the special civil applications but remanded the case to the Collector to give an opportunity to the landlord to agitate the contention about the quantum of price which contention was not dealt with by the Collector on merits.

7. The landlord by certificate under Article 133(1)(a) and (b) of the Constitution preferred these five appeals.

8. Expression "tenancy" has been defined in Section 2(17) of the Act to mean "relationship of landlord and tenant".

9. "Tenant" is defined in Section 2(18) as under :

"Tenant" means a person who holds land on lease and includes -

(a) a person who is deemed to be a tenant under Section 4;

(b) a person who is a protected tenant; and

(c) a person who is a permanent tenant;

10. Section 4 which is material for the present appeal reads as under :

A person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not -

(a) a member of the owner's family, or

(b) a servant on wages payable in cash or kind but not in crop share or a hired labourer cultivating the land under the personal supervision of the owner or any member of the owner's family, or

(c) a mortgagee in possession.

11. There are two explanations appended to this section which are not material for the present purpose. Section 32(1) which was introduced in 1956 provided that on April 1, 1957, called the tillers' day, every tenant, subject to the provisions of the next succeeding sections, be deemed to have purchased from his landlord, free of all encumbrances subsisting thereon on the said day, the land held by him as tenant if he satisfied the conditions set out in the section. Section 32-G provided that as soon as may be after the tillers' day, the ALT shall publish or cause to be published a public notice in the prescribed form in each village within the jurisdiction calling upon -

(a) all tenants who under Section 32 are deemed to have purchased the lands,

(b) all landlords of such lands, and

(c) all other persons interested therein

to appear before the ALT on the date specified in the notice. The ALT shall then proceed to record statement of the tenant whether he is or is not willing to purchase the land held by him as a tenant. If the tenant is willing to purchase, the Tribunal shall after giving an opportunity to the tenant and landlord and all the other persons interested in such land to be heard and after holding an enquiry, determine the purchase price of such land in accordance with the provisions of Section 32-H and sub-section (3) of Section 63-A. Section 32-F postpones the date of statutory purchase in the case where a landlord is a minor or a widow or a person subject to any mental or physical disability or a serving member of the armed forces to a date one year from the expiry of the period during which such landlord is entitled to terminate the tenancy under Section 31.

12. Having noticed the relevant provisions of the Act, it is necessary first to refer to the deed of settlement under which the landlord acquired land involved in this appeal. By the deed of settlement (Ex. 2-A) dated May 22, 1930 Devidas Devlal Seth, father and Sheo Parshad Devidas Seth, brother of the appellant-landlord settled on trust the properties more particularly described in the deed. At the time of settlement, appellant the beneficiary under the trust was a minor and the deed provided for the consequences to ensue on her attaining majority. The relevant portion of the deed of trust in

this behalf reads as under :

After the girl completes 21 years and while she is physically and mentally in good condition, the right of carrying on the vahivat (management) of the estate and of spending the income thereof is with her alone, during her lifetime. However, she had no right in any way either to purchase the aforesaid estate or to create in any way a charge (translation is disputed and is stated that "encumbrance" is the appropriate rendering) thereon; nor she has a right to dispose of the said estate under a will.

13. The deed provides for the disposal of the estate on the death of beneficiary, the appellant giving 2/3rd of the estate to her male issues and 1/3rd to the female issues. In this behalf the recital in the deed is : that the children as many as will be alive at the time of her death are to get the estate according to the terms mentioned in the deed and if no child will be living the estate is to go to her grandchildren according to the terms in the deed. The direction was given that 2/3rd and 1/3rd share shall be given to the children who will be living at the time of her death and in the event that there is no child of a particular sex the whole estate was to go to the children of the other sex. There is also a provision about disposal of the estate in the event the appellant has no child of her own.

14. The contention which Mr. K.L. Sanghi, the learned counsel for the appellant put in the forefront was that the appellant being a limited owner under the deed of settlement was not entitled to lease the land and therefore respondents could not be said to be lawfully cultivating the land and therefore could not become deemed tenants under Section 4. Consequently, they could not have become deemed purchasers on the tillers' day. As a corollary it was contended that in any event as the children have a vested remainder in the estate the date of purchase would be postponed as provided in Section 32-F of the Act, and therefore ALT could not entertain an application under Section 32-G and proceed to determine the price on the footing that the tenant has become a deemed purchaser.

15. Under the deed of settlement appellant acquired a life interest and the reversion-remainder was in her children. During her lifetime she was entitled to enjoy the income of the property but she could not dispose of the property by will, gift or sale. She was also under a disability to encumber the estate and it was urged that lease is an encumbrance. The substantial question is whether a limited owner of agricultural land governed by the Tenancy Act during her lifetime was entitled to lease the land and if he or she did lease the land whether the tenant inducted by the holder of life estate could be said to be lawfully cultivating the land so as to acquire the status of a deemed tenant under Section 4 and as a corollary would become a deemed purchaser on the tillers' day. Section 4 has been extracted hereinbefore. It comprehends within its sweep any person lawfully cultivating any land belonging to another person. If land belongs to one person and another is lawfully cultivating it, unless such person falls under any of the excepted categories; he would acquire the status of a deemed tenant. The excepted categories are : (a) a member of the owner's family, or (b) a servant on wages payable in cash or kind but not in crop share of a hired labourer cultivating the land under the personal supervision of the owner or any member of the owner's family, or (c) a mortgagee in possession. It would thus appear that if the land belonging to one person is being lawfully cultivated by another person and that such other person is not a member of the owner's family or a servant on wages payable in cash or kind but not in crop share or a hired labourer or a mortgagee in possession then such cultivator lawfully cultivating the land would be deemed to be a tenant. The legal fiction of clothing a lawful cultivator of land belonging to other person has widened the traditional concept of expression "tenant" which would normally implied contractual relationship.

16. Under the deed of settlement appellant was given a life estate. She was the owner of the land during her lifetime with a limitation that she could not will, gift or sell the property or encumber the same. In view of these four limitations she is undoubtedly a limited owner. But this limited owner holding the life estate had been given the right to administer the estate after she attained majority. Administration of the estate would normally include leasing of the property except where a specific condition is prescribed precluding the administrator from leasing the property. There is no such limiting or restrictive condition prohibiting the appellant in the course of her management from leasing the land. The appellant beneficiary being a woman, the settlors must have thought that she may not be able to personally carry on agricultural operations and therefore when the settlors authorised her, on attaining majority, to administer the estate it would per se in the absence of a limiting or restricting condition to the contrary enable her to lease the land. Thus, if the appellant as beneficiary after attaining majority took over the administration and as part of the administration leased the land, the person so inducted by her on the land would be lawfully cultivating the land belonging to the appellant and being not in any of the excepted categories would be deemed to be a tenant. On a plain reading of the deed and the admitted position that she had leased the land to each of the respondents and keeping in view requirements of Section 4, the conclusion that the respondents would be deemed tenants under Section 4 of the Act is inescapable.

17. The view which we are taking, is borne out by the observations of this Court in *Dahyalal v. Rasul Mohammed Abdul Rahim* [(1963) 3 SCR 1 : AIR 1964 SC 1320 : (1963) 2 SCJ 450]. In that case the tenant was inducted on the land by a mortgagee in possession and the contention was that as the mortgagee in possession would not be deemed to be a tenant because he is in the excepted categories set out in Section 4, the tenant inducted by him could not acquire the status of a deemed tenant. After analysing the provisions of the Tenancy Act, this Court held that all persons other than those mentioned in clauses (a), (b) and (c) of Section 4 who lawfully cultivate land belonging to other persons whether or not their authority is derived directly from the owner of the land must be deemed tenants of the land. The exclusion of mortgagee in possession from the category of deemed tenant was explained on the ground of public policy in that to confer such status upon mortgagee in possession would be to invest him with rights inconsistent with his fiduciary character. However, the tenant inducted by a mortgagee in possession in discharge of his liability of prudent management cast by Section 76(a) of the Transfer of Property Act as also under the authority derived from the mortgagor would be lawfully cultivating the land. Accordingly the person inducted would be a deemed tenant who would be entitled to the protection of the Act even after the mortgage is redeemed. Once such a tenant enjoys the status of a deemed tenant and holds land in that capacity, on the tillers' day he would become the deemed purchaser.

18. A contention was raised that this court overlooked in *Dahyalal* case a vital point that a transferor cannot confer a better title on another than he himself possesses and that therefore in view of Section 76(a) of the Transfer of Property Act a mortgagee in possession cannot create an interest to endure beyond redemption of mortgage to bind the mortgagor. It was urged that if a mortgagee in possession is specifically excluded from acquiring status of a deemed tenant, ipso facto tenant inducted by him cannot acquire that status. The Court negated the contention. It would be advantageous in this context to refer to *Prabhu v. Ramdev* [(1966) 3 SCR 676 : AIR 1966 SC 1721] where this Court held that a tenant of a mortgagee in possession can invoke the benefit of subsequent tenancy legislation which provided that such a tenant could not be evicted except in the circumstances set out in that legislation. The mortgaged property in that case was land used for agricultural purposes and the mortgage was usufructuary mortgage. After redemption the original mortgagor sued for actual possession from tenant inducted by the erstwhile mortgagee alleging that on redemption of mortgage, the tenant has to surrender possession. In the meantime, Rajasthan

Tenancy Act of 1955 had been introduced and the tenant claimed protection against eviction under it. This Court after referring to *Mahabir Gope v. Harbans Narain Singh* [1952 SCR 775 : AIR 1952 SC 205] and *Harihar Prasad Singh v. Mst. of Munshi Nath Prasad* [1956 SCR 1 : AIR 1956 SC 305] held that rights of the tenants inducted by the mortgagee may conceivably be improved by virtue of statutory provisions which may meanwhile come into operation. Such a case would clearly be an exception to the general rule prescribed by the Transfer of Property Act that mortgagee in course of management cannot create an interest which would endure beyond the redemption of mortgage.

19. It was next contended that in any event the appellant having been given a life estate with the vested remainder in her children, she had no vested interest in the property during her lifetime but her interest would be contingent interest and therefore even during her lifetime, the children would be the owners and as they were minors the date of statutory purchase would be postponed under Section 32-F. Looking to the terms of the deed of settlement, subject to the limitations therein prescribed the appellant had a vested interest with a right to take over management on attaining majority and to deal with the property in her own way. Assuming without deciding that she had no right to will, gift, sell or encumber the property yet assuming she did deal with it in the manner prohibited it would nonetheless be binding during her lifetime. The property would devolve on the heirs named in the deed and the devolution would take place on her death. Therefore, upon a pure literal construction of deed coupled with intendment of the settlement it is difficult to accept Mr. Sanghi's submission that her interest in the property during her lifetime was contingent interest. This will further be borne out by the provision contained in Section 13 of the Transfer of Property Act inasmuch as she was given life or limited interest and the remainder to her children none of who was in existence at the time of transfer. Even if transfer is in favour of unborn person, at the date of transfer to be valid there has to be a prior interest created by the very transfer. This prior interest though limited would not be contingent but vested interest. In fact the interest of future born children would be contingent till the death of the appellant. The deed of settlement cannot be construed as a transfer in favour of unborn person, yet it settles property on trust and the unborn children, under trust, may be beneficiaries but they can claim interest only after the death of the appellant and no interest in her lifetime. Under the deed of settlement an interest is created in favour of the children of the appellant and the interest would take effect on the happening of specified uncertain event - uncertain as to time - namely, the death of the appellant, then till the death of the appellant the interest of the children would be contingent. It is nothing short of spes successions. Mr. Sanghi, however, referred to *Rajes Kanta Roy v. Santi Debi* [1957 SCR 77 : AIR 1957 SC 255] and urged that by a parity of reasoning we must hold that the interest of the appellant was a contingent interest. In that case one Ramani created an endowment in respect of some of his properties in favour of his family deity and appointed his three sons as shebait. After the death of one of his sons, widow of the deceased son instituted a suit against other members of the family for a declaration that she as an heir of her deceased husband, was entitled to function as shebait, in place of her husband. The suit ended in a consent decree recognising the right of the widow as a co-shebait. Subsequently the settlor Ramani and his two other sons filed a suit against widow of the pre-deceased son for a declaration that the consent decree was null and void. During the pendency of the suit the settlor Ramani executed a registered trust deed in respect of his entire property. The eldest son was appointed trustee to hold property under trust subject to certain powers and obligations. The second suit which was pending at the death of settlor Ramani ended in a consent decree. One of the terms of the consent decree was that widow of the pre-deceased son gave up her rights under the earlier consent decree by which she obtained status of co-shebait and she was paid Rs. 475 per month as allowance. Complaining of a default in the payment of allowance she filed an

application for execution to realise the arrears and she sought attachment and sale of certain properties. The eldest son filed an objection contending that under the settlement of trust his interest in the property was contingent till the debts are paid and as the precondition is not satisfied the contingent interest is not attachable. Negating this contention, it was held that the determination of the question as to whether any interest created by trust deed is vested or contingent has to be guided by the principles recognised under Section 19 and 21 of the Transfer of Property Act and the Indian Succession Act. After referring to certain English authorities and textbooks by writers it was held that the question is really one of intention to be gathered from a comprehensive view of all the terms of a document. After examining all the terms of the deed of trust, this Court held that even though the debts were not discharged the appellants, namely, the sons acquired a vested interest and not a contingent one.

20. Having examined the trust deed before us, we are satisfied that the appellant had the vested interest in the property during her lifetime and the children had only contingent interest during that period.

21. It was lastly contended that as the appellant was prohibited from creating an encumbrance on the property, she had no right to lease the property because in a certain way lease is also an encumbrance. Without going into the wider question whether the expression "encumbrance" in the context in which it is used would comprehend lease within its fold we would dispose of the contention on the short ground that the right to administer the property conferred on the appellant on her attaining majority inheres the right to lease the property. If it be so, it is futile to contend that restraint on the right to encumber would preclude her from leasing the land. The right to manage or administer an immovable property such as agricultural land as a prudent man, comprehends the right to lease, save where the contrary intention is indicated. It is equally well-recognised that a limited owner or a life estate holder in agricultural land, unless a clear intention to the contrary is expressed, would be entitled to lease the land during his or her lifetime. Reading the deed of settlement as a whole, we do not find any such contrary intention and, therefore, we must negative the contention.

22. Having examined all the contentions of Mr. Sanghi, we find no merit in any of them and therefore all these appeals fail and are dismissed with costs. Hearing fee in one set.

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