

Parappa

Vs

Siddappa Basappa Somankop

Civil Appeal No. 114 (N) of 1974

(O. Chinnappa Reddy, R. B. Misra JJ)

25.01.1985

JUDGMENT

O. CHINNAPPA REDDY, J. -

1. One Parappa died leaving behind him two wives Basawa and Basavannewa and an adopted son also named Parappa. Basavannewa died in the year 1933-34 while Basawa died on May 22, 1959. When Basawa was alive, Parappa, the adopted son, had executed a deed of maintenance dated July 30, 1927 in her favour giving her certain land to be enjoyed by her during her lifetime. She inducted the defendant as her tenant. After the death of Basawa, the plaintiff, Parappa called upon the defendant to deliver possession of the land and on his refusal to do so instituted the suit out of which the present appeal arises. The suit was resisted by the defendant on the ground that he was a tenant and that he was not liable to be evicted under the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948. The plea of the defendant was accepted by all the three courts below and the plaintiff has come up in appeal to this Court under Article 136 of the Constitution. The submission of Shri R. B. Datar, learned counsel for the appellant was that under the provisions of Bombay Tenancy and Agricultural Lands Act, 1948, a widow was deemed to cultivate the land personally, even if such land was cultivated through tenants and therefor, a person who was inducted as a tenant by a widow could acquire no rights under the Act so as to defeat the claims of the person succeeding the widow to the land. Having considered the several provisions of the Act, we find no force in this submission. Section 2(6) of the Act defines the expression "to cultivate personally". Explanation 1 to Section 2(6) on which reliance is placed by the learned counsel for the appellant states :

A widow or a minor, or a person who is subject to physical or mental disability, or a serving member of the armed forces shall be deemed to cultivate the land personally if such land is cultivated by servants, or by hired labour, or through tenants

"Tenant" is defined by Section 2(18) as follows :

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;

and the word "landlord" shall be construed accordingly.

Section 4 prescribes the persons who may be deemed to be tenants as follows -

(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 family, or

(c) a mortgagee in possession.

Section 31 vested the landlord with the right to terminate the tenancy of any land if the landlord bona fide required the land for personal cultivation or for any non-agricultural purpose. This he could do by giving notice to the tenant and making an application for possession as provided in sub-section (2) of Section 31 to the Mamlatdar. The notice was required to be given on or before December 31, 1956 and the application was required to be given on or before March 31, 1957. Where, however, the landlord was a minor or a widow or a person subject to mental or physical disability, the notice required to be given under Section 31 could be given, - (i) by the minor within one year from the date on which he attained majority; (ii) by the successor-in-title of widow within one year from the date on which her interest in the land ceased to exist; (iii) within one year from the date on which mental or physical disability ceased to exist; and (iv) within one year from the date on which a serving member of the armed forces ceased to be a serving member. While Section 31 provided that a landlord should make an application before March 31, 1957 if he required the land for personal cultivation, Section 32 provided that after first April, 1957, every tenant should be deemed to have purchased from his landlord, free from all encumbrances subsisting thereon on the said day, the land held by him as tenant, if - (a) such tenant was a permanent tenant thereof and cultivated land personally; (b) such tenant was not a permanent tenant but cultivated the land leased personally; and (i) the landlord had not given notice of termination of this tenancy under Section 31; or (ii) notice had been given under Section 31, but the landlord had not applied to the Mamlatdar on or before March 31, 1957. Section 32-F provided that if landlord was a minor or a widow or a person subject to any mental or physical disability was a serving member of the armed forces, the tenant should have the right to purchase such land under Section 32 within one year from the expiry of the period during which such landlord was entitled to terminate the tenancy under Section 31.

2. The scheme of these provisions of the Act make it abundantly clear that while a widow could lease out the land and yet be considered to cultivate the land personally, her successor-in-title, if he desired to cultivate the land personally, had to take appropriate action under Section 31 by giving notice to the tenant and by filing an application to the Mamlatdar within one year from the date of the death of the widow. Admittedly that has not been done in the present case. No action as provided by Section 31 was taken at all. No notice intimating the tenant that the land was required for personal cultivation of the landlord was given to the tenant and no application was made to the Mamlatdar. The suit for possession was rightly dismissed by the court below. The appeal is accordingly dismissed with costs. If the plaintiff-landlord possesses any other rights under any other law for the time being, he is at liberty to pursue such remedy as he chooses to.

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