

Ramkhilawandhar and Others

Vs

Gajodharprasad (Dead) By Lrs. and Others

Civil Appeal No. 667 of 1971

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

31.01.1985

JUDGMENT

O. CHINNAPPA REEDY, J. -

1. The simple question for decision in this appeal is whether a reversioner who had succeeded to an estate on the death of a female limited owner could claim possession of land as "home-farm land" under the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, notwithstanding the fact that such land was not in his physical possession non the specified date. The limited proprietor Godavaribai died in 1950 and before her death, in 1939, she created occupancy tenancy rights in favour of Buchuwa and Ramadhar in respect of 4 acres and 36.21 acres of land respectively. An extent of 13 acres remained with her and on her death in 1950, the land came into the possession of her husband, Gajadhar Prasad. Subsequent to the death of Godavaribai, in 1951 the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated lands) Act, 1950 came into force. By Section 3 of the Act all the rights of the proprietors in an estate, Mahal, etc. came to be vested in the State. Section 4(1) explained the consequences of such vesting while Section 4(2) provided as follows :

Notwithstanding anything contained in sub-section (1) the proprietor shall continue to retain the possession of his homestead, home-farm land, and in the Central Provinces also of land brought under cultivation by him after the agricultural year 1948-49 but before the date of vesting.

'Home-farm' land was defined by Section 2(g) of the Act as follows :

(i) Land recorded as Sir and Khudkasht in the name of a proprietor in the annual papers for the year 1948-49; and

(ii) Land acquired by a proprietor by surrender from tenants after the year 1948-49 till the date of vesting.

A reading of sub-section (2) of Section 4 with the definition of 'home-farm land' shows that while all rights of the proprietor vest in the State Government on the specified date, the proprietor shall continue to retain the possession of his home-farmland. In other words, notwithstanding the vesting of all his rights in the State Government, the proprietor may continue to retain the possession of his home-farm land. The necessary implication is that the proprietor is in possession of the land on the date of vesting. If he is in physical possession of the land on the date of vesting, he may continue to retain the possession of such home-farm land. In the present case, admittedly the plaintiffs were not

in possession of the lands in dispute on the date of vesting and, therefore, their suit must necessarily fail. The submission of Shri P. U. Mehta, learned counsel, was that it was enough for the plaintiff to establish that the lands were home-farm lands within the meaning of Section 2(g) of the Act and that it was not necessary to prove that they were also in his physical possession on the date of vesting. It was sufficient if they were entitled to possession whether they were in actual physical possession or not. We do not agree with the submission of Shri P. U. Mehta. In our view, the language of sub-section (2) of Section 4 contemplates the proprietor's physical possession of the home-farm land if he is to retain such possession. What is preserved by Section 4(2) is his right to remain in possession if he is already in possession, but not his right to recover possession if he is not in physical possession. The question has already been settled so far as this Court is concerned by the decision in Haji Sk. Subhan v. Madhoro (1962 Supp 1 SCR 123 : AIR 1962 SC 1230 : (1962) 2 SCJ 575). In Haji Sk. Subhan v. Madhoro (1962 Supp 1 SCR 123 : AIR 1962 SC 1230 : (1962) 2 SCJ 575) after referring to the provisions of Section 3, it was observed there :

In accordance with the provisions of this section, the proprietary rights in an estate, mahal, alienated village or alienated land in the area specified in the notification vesting in a proprietor of such estate, etc., were to pass from such proprietor and vest in the State for purposes of the State free from all encumbrances. These provisions themselves were sufficient to divest the proprietor of such estate, etc., of his proprietary right. The consequences of such vesting are further specified in Section 4. In view of sub-section (2) of Section 3, no right could be acquired over the land which had vested in the State except by succession or under a grant or contract in writing made or entered into by or on behalf of the State.

Thereafter reference was made to various provisions of the Act and dealing with sub-section 2 of Section 4, the learned Judges observed :

Sub-section (2) of Section 4 of the Act provides that the proprietor can continue to retain possession of home-farm land after the vesting of his proprietary right in the State. The respondent cannot take advantage of this provision even if the land in suit be held to be home-farm. He was not in possession of the land in suit on the date of vesting and no question of continuing to retain possession arose.

Later again it was observed :

It is also significant to notice that in sub-section (2), the land answering the description of 'home-farm' is described differently. Only that land comes within the expression 'home-farm' which had been under the personal cultivation of the proprietor on the date of vesting and which had been similarly under cultivation in the agricultural year 1949-50, and which he is entitled to retain even on the termination of his proprietary tenure under any instrument having the force of law and applicable to that tenure. Personal cultivation of the proprietor at two relevant dates was the main criterion.

The question raised in the appeal has to be answered against the appellants and the appeal is, therefore, dismissed. But in the circumstances, there will be no order as to costs.

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