

Vijaykumar Suganchand Jain and Others

Vs

Pannalal Jaydeo Agarwal and Another

Civil Appeal No. 121 of 1984

(Ranganath Misra, K. N. Singh JJ)

13.10.1987

JUDGMENT

RANGANATH MISRA, J. –

1. This appeal by special leave is at the instance of the tenant who claimed the benefit of Sections 4 and 4-A of the Bombay Tenancy and Agricultural Lands Act, 1948, when a suit for eviction was laid by respondent 1 in the civil court. As required by the statute, the civil court made a reference to the competent authority for determining the tenability of the claim. The appellants who are heirs of the original defendant maintained that their father had come into possession in 1968 and had been cultivating the land said to be 5 acres in extent and on his death, the appellants have stepped in. Respondent 1 took the stand that the appellants and their predecessor were not in lawful cultivation of the property and, therefore, the benefit of Section 4 of the Act was not admissible. The revenue authorities upheld the defence plea and the High Court had also accepted the same. The tenant is, therefore, in appeal before this Court.

2. We have heard learned counsel for the parties and have considered the facts and ratio of the judgment of this Court in Dahya Lal v. Rasul Mohammed Abdul Rahim ((1963) 3 SCR 1 : AIR 1964 SC 1320). We are of the view that the stand taken by the appellants and their predecessor has not been properly appreciated and perhaps if the matter goes on remand, a different view could be taken. The suit itself instituted in 1973 is still pending and if we direct remand it would take many more years to close. Taking the special facts into consideration, the interpretation given by this Court to the provision of Section 4 of the Act and taking a broad view of the matter, instead of directing remand we think it appropriate to dispose of the appeal by holding that for the ends of justice the appellants should have a declaration of tenancy over one acre of land out of the disputed property. When we decided this way, the respondents' counsel agreed to furnish a sketch map delineating the one acre of land. We accordingly direct that the appellants shall be taken to be tenants of this one acre of land as shown in the sketch and kept on record and in regard to the remaining four acres, the appellants shall have no interest.

3. The original plaintiff in the title suit has not appeared though impleaded in the proceedings and respondent 1 who is said to be a partner has been contesting the claim. This judgment of ours shall be binding on all parties and we direct that the pending suit of 1973 be disposed of in terms of this judgment of ours. A copy of this judgment shall be transmitted to the trial court forthwith so that the suit can be disposed of within four weeks from today.

4. Admittedly, the possession of the property is with the appellants. The trial court where the original suit is pending shall ensure that the tenants part with the four acres of land in which their

interest is negated by our judgment in favour of the landlord and in case of their failure to deliver possession thereof within two weeks of disposal of the suit by the trial court, the landlord shall be put in possession through court. The appeal is partly allowed and there would be no order for costs.

5. The special leave petition connected with Civil Appeal No. 121 of 1984 which has been disposed of today is dismissed as infructuous in view of the decision in the appeal. The CMP is also dismissed, as the appeal itself has now been disposed of.

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