Jagan Alias Jagannath Umaji

Vs

Gokuldas Hiralal Tewari

Civil Appeal No. 668 (N) of 1971

(M. M. Dutt, M. H. Kania JJ)

28.10.1987

JUDGMENT

KANIA, J. –

1. This is an appeal by special leave against the judgment of a learned Single Judge of the Bombay High Court.

2. The facts necessary for the disposal of the appeal can be shortly stated. The respondent before us, who was the petitioner before the Bombay High Court, is the owner of three agricultural lands described in the judgment appealed against, situated at Talkhed, Taluk Malkapur, District Buldana in the Vidarbha area of Maharashtra. Originally, these fields belonged to one Hiralal who died in 1916. Hiralal started the construction of a dharamshala and a temple in 1912 in the said lands which construction was completed by the respondent's mother during the minority of the respondent. The respondents's mother also constructed another dharamshala on a separate piece of land. The facts on record show that Umaji, the father of the appellant, was appointed a pujari by the then landlord to worship the idols in the aforesaid temple and to look after the management of the dharamshalas on behalf of the landlord. Under an agreement with the landlord, the aforesaid three agricultural lands were cultivated by Umaji but instead of being paid in cash for the services rendered by him to the landlord in the form of looking after the management of the property and worshipping in the temple, Umaji was allowed to cultivate the said fields and to take the crops. The appellant is the son of Umaji and records show that, after the death of Umaji, he was given the same work as Umaji on the same terms and conditions. On February 12, 1963, the appellant was served with a notice calling upon him to hand over the belongings of the temple as well as the immovable property to the respondent. The respondent then filed a suit for possession of the aforesaid lands in which the appellant took a defence that he was a tenant of these lands and protected under the relevant legislation against eviction. The issue whether the appellant was the tenant of the said lands was framed and referred to the Tahsildar for decision.

3. The aforesaid issue was decided in the first instance by the Naib Tahsildar. Before him the appellant contended that he was a deemed tenant as understood under Section 6 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (hereinafter referred to as 'the Vidarbha Tenancy Act'). It was contended by the appellant that he was in lawful cultivation of the said agricultural lands and should be declared to be a tenant. The respondent, on the other hand, reiterated his claim that the appellant was not a tenant. The Naib Tahsildar passed an order on November 30, 1965 holding that the appellant was the tenant in respect of the said lands because he was lawfully cultivating the said lands which belonged to the respondent. Against this order the respondent herein filed an appeal. The Sub-Divisional Officer, who decided the appeal, set aside the

order of Naib Tahsildar and remanded the matter for fresh inquiry on several issues including the issue as to how the appellant herein came to be in possession of the said lands. The appellant then filed a revision application before the Maharashtra Revenue Tribunal against this decision. The Revenue Tribunal set aside the order of the Sub-Divisional Officer and resorted the order of the Naib Tahsildar. The Tribunal took notice of the admission of the respondent that the appellant herein was cultivating the said lands lawfully and on this basis came to the conclusion that the appellant herein was the tenant of the said lands. This conclusion of the Tribunal was challenged by the respondent herein before the Bombay High Court.

4. The learned Judge, who disposed of the special civil application or writ petition noted that it was not in dispute that the appellant was cultivating the said lands but he was doing so and appropriating the crop in lieu of payment of services which he rendered to the landlord as the pujari worshipping the gods in the said temple and looking after the management of the dharamshalas. Instead of being paid in cash for those services, the appellant was allowed to cultivate the fields and take the crops thereof. The learned Judge came to the conclusion that, on these facts, the lawful cultivation of the fields by the appellant was referable to a particular contract which alone must govern the relationship between the parties. That contract constituted or created a relationship of employer and employee. It was held that the appellant herein was an employee of the respondent in his capacity as a pujari and person looking after the management of the dharamshalas. On these facts, the learned Judge came to the conclusion that the appellant herein was not entitled to claim the rights of a deemed tenant, and held that the decision to the contrary arrived at by the Tribunal was erroneous and liable to be set aside. The learned Judge allowed the writ petition and quashed the order made by the Tribunal and the revenue authorities and held that the appellant had failed to prove that he was a tenant of the said agricultural lands. It is this conclusion of the learned Judge which is challenged in this appeal.

5. The contention of Mr. Aggarwala, learned counsel for the appellant, is that his client was admittedly in lawful possession of the lands in question and was cultivating the same at the relevant time. In view of this, it must be held that he was a deemed tenant of the said lands under the provisions of Section 6 of the Vidarbha Tenancy Act and the respondent was not entitled to evict him. It was submitted by him that the learned Judge of the High Court who disposed of the special leave application was in error when he proceeded on the footing that the appellant was not the tenant of the said lands as the right to cultivate the lands and appropriate the produce was given to him and his father earlier as the pujari of the aforesaid temple and for looking after the management of the dharamshalas and the said lands. It was urged by him that even if the appellant could be said to be a servant of the respondent, he was admittedly in lawful personal cultivation of the said lands and was not paid in cash or kind but by way of a crop share, the crop share being equivalent to the entire crop. The respondent has not chosen to appear before us.

6. In order to examine the correctness of the aforesaid contentions of Mr. Aggarwala, we may, at this stage, take note of the relevant provisions of the Vidarbha Tenancy Act. The term 'tenant' is defined in sub-section (32) of Section 2 of that Act as follows :

> (32) 'tenant means a person who holds land on lease and includes -
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> (a) a person who is deemed to be a tenant under Section 6, 7 or 8,
>
> (b) a person who is a protected lessee or occupancy tenant, and the word 'landlord' shall be construed accordingly.

7. Under sub-section (17) of Section 2, land, inter alia, means, land which is used or capable of being used for agricultural purposes and includes the sites of farm building appurtenant to such land. Sub-section (1) of Section 6 which is the material provision before us runs as follows :

> 6. Persons deemed to be tenants. - (1) 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 -
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> (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
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> (c) a mortgagee in possession.

Section 41 of the Vidarbha Tenancy Act deals with the right of a tenant of purchase land held by him as a tenant. Under the provisions of that Act, a tenant other than an occupancy tenant, shall be entitled to purchase from the landlord the land by him as a tenant and cultivated by him personally except where the landlord belongs to any category specified in sub-section (2). Section 46 of the Vidarbha Tenancy Act, inter alia, provides that with effect on and from the first day of April, 1961, the ownership of all lands held by tenants which they are entitled to purchase from their landlords under the provisions of Chapter III of the Vidarbha Tenancy Act shall stand transferred to and vested in such tenants.

8. As far as the case before us is concerned as we have already pointed out that the appellant was admittedly cultivating the lands in question and was not a member of the landlord's family nor was he a hired labourer. The landlord did not belong to any of the classes specified in sub-section (2) of Section 41. The aforesaid cultivation was clearly lawful because the respondent to whom the lands belonged had permitted him to do so. It is true that the record shows that this right to cultivate the land and appropriate the produce was given to the appellant because of the services he was performing as a pujari of the aforesaid temple of the respondent and as he was looking after the dharamshalas. By reason of these facts, it might be said that he was cultivating the said lands as a servant of the respondent, but he was not being paid any wages in cash or kind but by way of a crop share, the share being the entire crop. In these circumstances, he must be held to be a deemed tenant of the said lands under the provisions of Section 6 of the Vidarbha Tenancy Act. The fact of his cultivating the land as a servant of the respondent would make no difference because he was being paid for his services by way of a crop share and hence was not covered by the provisions of clause (b) of sub-section (1) of Section 6. The learned Judge of the High Court was in error in coming to the conclusion that, merely because the appellant was a servant of the respondent, he could not be held to be a tenant in respect of the said lands. The learned Judge altogether failed to notice that although the appellant was a servant, he was not given wages payable either in cash or kind but by way of a crop share and hence not covered by the exception carved out by clause (b) and sub-section (1) of Section 6. From the observations made by the learned Judge, it appears that he proceeded on the wrong footing that in order to be a deemed tenant, a person must show that his lawful cultivation owes its origin to some sort of tenancy. In fact, the whole aim of Section 6 is to confer deemed tenancy upon persons who are not already tenants of the land in question. We may point out that this conclusion finds some support from the decision of this Court in Dahya Lal v. Rasul Mohammed Abdul Rahim [(1963) 3 SCR 1, 6-7 : AIR 1964 SC 1320] decided by a Bench of five learned Judges

of this Court. In that case the provision which came up for consideration was Section 4 of the Bombay Tenancy and Agricultural Lands Act, 1948, the material portion of which runs as follows :

> A person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not.....

It was held that this Act encompassed with its beneficent provisions not only tenants who held land for purpose of cultivation under contracts from the land owners but persons who are deemed to be the tenants.

9. In the result, the appeal is allowed. The impugned judgment and order of the High Court are set aside and the order of Naib Tahsildar, confirmed by Revenue Tribunal, is restored.

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

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