Dr. Tarakprasad Rajaram

Vs

Vest Ukara (dead) by Lrs. and others

Civil Appeal No. 786 of 1976

(K. N. Singh, S. R. Pandian JJ)

18.09.1990

JUDGMENT

SINGH J

1.This appeal is directed again st the judgment and order of the High Court of Gujarat dismissing the appellant's writ petition made under Art. 227 of the Constitution of India challenging the validity of the order of the Revenue Courts n dismissing' the appellant's suit , for eviction of respondents.

2. Briefly, the facts giving rise to this appeal are : the respondents are tenants of agricultural land which had been let out to them by the appellant's predecessors-in-title. The appellant made applications on behalf of minor Ashok Kumar for the eviction of the respondents on the ground that the agricultural land in dispute was bona fide required by the landlord for his personal cultivation. The appellant pleaded that the land in dispute had been bequeathed to him by his maternal grand-mother under a Will and as such he was the landlord of the disputed land entitled to maintain the applications for eviction of the respondents u/ S. 29 read with S. 31 A of the Bombay Tenancy and Agricultural Lands Act 1948 (hereinafter referred to as the Act) as applicable to the State of Gujarat. The tenants raised a preliminary objection to the maintainability of the suit on the ground that the appellant being a transferee of the land from his maternal grand-mother was not entitled to maintain the suit as a landlord u/ S. 31A of the ' Act, inasmuch as he had not inherited the property from his ancestors. The Mamlatdar upheld the preliminary objection and dismissed the eviction suit. On appeal the District Deputy Collector upheld the order of the Mamlatdar. The appellant preferred revision application before the Gujarat Revenue Tribunal at Ahmedabad but the same too was dismissed upholding the tenants' objection. The appellant thereafter filed a writ petition under Art. 227 of the Constitution before the High Court challenging the correctness of the view taken by the Revenue Courts. The High Court by its order dated 12-1-1976 dismissed the writ petition on the finding that the view taken by the Revenue Courts in upholding the tenants' objection to the maintainability of the eviction suit was correct. The appellant has preferred this appeal against the aforesaid order of the High Court.

3. There is no dispute that u/S.31A of the Act a landlord has a right to determine tenancy of agricultural land and to evict the tenant on fulfilling the conditions prescribed therein. The conditions prescribed are that if the landlord has no other land of his own and if he has not been cultivating personally any other land, he is entitled to take possession of the land let out to a tenant to the extent of permissible ceiling area. If the land cultivated by the landlord personally is less than

the ceiling area he is entitled to take possession of so much area of land as would be sufficient to make up the area in his possession to the extent of ceiling area, further the income by the cultivation of the land of which he is entitled to take possession should be the principal source of income for his maintenance. These conditions as laid down in cls. (a), (b) and (c) of S. 31 A of the Act must be satisfied for making an application for the eviction of a tenant from agricultural land. In addition to these conditions, cl. (d) further prescribes additional conditions which must also be fulfilled by the landlord. S. 31 A(d) as amended by the Gujarat Act No. XVI of 1960 reads as under:

> "31 A: The right of a landlord to terminate a tenancy for cultivating the 'land personally u/ S. 31 shall be subject to the following conditions:
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> (a) to (c).....
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> (d) The land leased stands in the record of rights or in any public record or similar revenue record on the Ist day of January, 1952 and thereafter during the period between the said date and the appointed day in the name of the landlord himself, or of any of his ancestors (but not of any person from whom title is derived, whether by assignment or Court sale or otherwise) or if the landlord is a member of a joint family, in the name of a member of such family."
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> The above provision primarily requires that the name of the person applying for the eviction of the tenant or of his ancestors should be recorded as landlord in the record of right son 1-1-1952 and he should further be recorded as landlord on the appointed day, namely, 15-6-1955. Both these conditions are required to be fulfilled before a suit or an application is maintainable by a landlord for the eviction of the tenant. If either of the two conditions are not satisfied, the application for eviction of the tenant will not be maintainable. The provision of cl. (d) further provides that even if the landlord's name is not recorded, but if the name of his ancestor is recorded similarly if the landlord is a member of joint family, the name of any member is recorded the application would be maintainable. This provision indicates the legislative intent that a person succeeding to the property from his ancestor is entitled to maintain the application for eviction of a tenant provided he fulfils other conditions. But a person who may have obtained right to the agricultural land by assignment, transfer, or by auction sale or in any similar mode, is not included within the expression of 'landlord' entitling him to evict the tenant. Cl. (d) of S.31A of the Act as it stood before its amendment by the Gujarat Act XVI of 1960 reads as follows:
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> "The land leased stands in the record of rights or in any public record or similar revenue record on the 1 st day of January 1952 and thereafter during the period between the said date and the appointed day in the name of the landlord himself, or of -any of his ancestors, or if the landlord is a member of a joint family, in the name of a member of such family."
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> The above provision before its amendment was interpreted by the Bombay High Court in Waman Ganesh Joshi v. Ganu Guna Khapre (1959) 61 Bom LR 1267. The High Court placing reliance on Khaliluila Hasmiya v. Yesu, 59 Bom LR 201: (AIR 1957 Bom 200) held that the term 'landlord' according to cl. (d) of S. 3 1 A of the Act included any person from or through whom he may have derived his title to the land, and therefore for proper compliance of the conditions mentioned in cl. (d) of S.

31 A it is sufficient that either the name of the claimant or his predecessors-in-title stands in the record of rights during the required period. A Full Bench of the Gujarat High Court in Bhanushanker Ambalal v. Laxman Kala, (1960) 1 Guj LR 169: (AIR 1961 Guj 5) disagreed with the view taken by the Bombay High Court in Waman Ganesh Joshi's case (1959 (61) Bom LR 1267) (supra)The Full Bench held that the expression "in the name of landlord himself occurring in cl.(d) of S. 31 A must be read as the landlord individually and not any one claiming through him as a successor in interest, therefore a transferee from a landlord in whose name the land is shown to stand cannot fit "into the structure of the clause. The Full Bench judgment was rendered on 28-7-1960 prior to the amendment of the Section by the 'Gujarat Act XVI of 1960. After the amendment of section by Gujarat Act XVI of 1960, the Legislature made it clear that transferees and assignees from persons whose name may be appearing in the record of right during the relevant period were not to be treated as landlords for the purposes of the Section. The expression 'or otherwise' occurring in cl. (d) indicates that a person claiming title by ransfer, assignment, court sale or in anyother mode like gift, or will even from ancestor will not be a landlord for the purposes of the Section. The Legislature has clearly laid down that a person inheriting property from his ancestor would be landlord provided his ancestor's name appears in the record of right during the required period. But a person claiming title on the basis of transfer, assignment, auction sale or otherwise including gift or will from the predecessors-in-title even though he may be his ancestor, and his name may be recorded in the record of rights during the required period, will not be entitled to maintain a suit for eviction of a tenant. The Legislature placed this restriction in order to protect the interest of the tenants and to prevent avoidance of the restrictions placed by the ceiling laws. In the absence of any such provision a landlord could transfer land to his descendants by gift or will to evade the ceiling law and to evict tenants. U/ S. 3 1 A(d) such a beneficiary is not entitled to maintain a suit for the eviction of a tenant from the agricultural holding as he would not be a landlord within the meaning of the Section.

4. In Umraomiya Akbarmiya Malek v. Bhulabhai Mathurbhai Patel, (1965) 6 Guj LR 788 the petitioner therein made application for eviction of tenant claiming to be landlord on the basis of a gift made in his favour by his maternal grandfather who was recorded in the record of rights during the required period. The question arose whether the donee who had acquired the property under a gift made by his maternal grandfather was a landlord within the meaning of cl. (d) of S. 31 A. The High Court on an elaborate discussion held that the petitioner therein was not a landlord within the meaning of the Section. A Division Bench of the High Court of Gujarat in Special Civil Appeal No. I 12/63 decided on March 3, 1972 considered the question whether a person who obtained the property under a Will from his grandmother was a landlord under cl. (d) of S. 3 1 A of the Act, the Division Bench held that having regard to the context, the object and scheme of the enactment such a person was not a landlord within the meaning of cl. (d) of S. 3 [A. The Bench further held that the Legislature intended to restrict the right of landlord to obtain possession for bona fide cultivation purposes, and it did not intend to include the case of a landlord who derived title under a Will. We are in agreement with the view taken by the Division Bench. The learned single Judge of the High Court while rendering the impugned judgment followed the view taken by the aforesaid Division Bench. On this view, we find no legal infirmity in the impugned judgment of the High Court.

5. Learned counsel for the appellant referred to certain decisions of the Bombay High Court where contrary view had been taken. Since the interpretation of S. 3 1 A(d) of the Act as made by the

Gujarat High Court in the aforesaid decision has been the law for the last 25 years, and as that interpretation is justified having regard to the legislative history of the Section, we do not consider it necessary to deal with those decisions. The appeal fails and is accordingly dismissed, but there will be no order as to costs.

Appeal dismissed.

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