

Narayan Bhimji Vadangale and another

Vs

Hukumchand Chunilal Thole and another

Civil Appeal No. 1903 of 1979

(M.M. Punchhi, G.N. Ray JJ)

06.12.1991

JUDGMENT

1. This appeal by special leave is directed against the judgment and order dated 12-1-1979 of the High Court of Bombay passed in Second Appeal No. 625 of 1975.

2. The appellants herein are heirs of the original judgment-debtor. The respondent herein is the decree-holder firm. The decreeholder firm as plaintiff filed a suit for recovery of a sum of money against the defendant judgment-debtor. The suit was decreed. In execution thereof some agricultural land of the judgment--debtor was attached and put to auction. The decree-holder firm with due permission of the Court emerged as the successful bidder at the auction. The auction was later confirmed by the Executing Court and a sale certificate was issued to the firm.

3. In the meantime, before the issuance of the sale certificate, the heirs of the judgmentdebtor moved an objection petition under S. 47 of the Code of Civil Procedure before the Executing Court on the ground that the auction sale was violative of S. 63 of the Bombay Tenancy and Agricultural Lands Act, 1948 inasmuch as the decree-holder firm was non-agriculturist. This objection found favour with the Executing Court and was affirmed in appeal but the same was reversed by the High Court. The High Court took the view that the firm being an inanimate person could neither be an agriculturist nor a non-agriculturist. For the view taken the High Court took in aid the definition of the word agriculturist' contained in S. 2(2) of the aforesaid Act which meant a person who Cultivates the land personally. Since the firm as such was held by the High Court to be incapable of personal cultivation, the auction sale was taken out of the purview of S. 63 of the Act resulting in the dismissal of the objection petition giving rise to the present appeal.

4. Now we are required to examine whether the view taken by the High Court in treating the firm as inanimate, incapable of personal cultivation of agricultural land is correct or otherwise. No elaboration is necessary to understand the legal composition of a firm and its personality which is a name given compendiously to a group of people who comprise its partners, and those people have naturally to be live persons. When we talk of a firm cultivating land we mean to convey that it is the partners of the firm who cultivate the land and in that sense the firm cultivates it personally. The firm may be inanimate but the partners comprising thereof are people in flesh and blood. On this analysis the basis of the judgment of the High Court gets knocked off. Whether the firm is agriculturist or non-agriculturist would depend upon the activities of its partners. It is worthwhile to mention here that in order to determine as to whether partners of the firm were agriculturists or not the Executing Court ventured to send to the revenue Court for trial an issue to that effect under S.

85-A of the said Act as required by law. The revenue Court returned the finding that both the partners of the firm were agriculturists but as members of a joint family their holding was reckoned as such and was beyond their ceiling limit. Relying on such finding the Executing Court sustained the objection. But it was obvious that under S. 63 of the said Act no person, including a Hindu joint family, could purchase area which would go to exceed the ceiling area to which he or it was entitled. It is undisputed that the auction sale has gone to swell the area of the joint family, members of which were the two partners comprising the firm, so as to exceed the ceiling area. This being the position it inevitably follows that the auction sale in favour of the respondents herein has to be declared as void under S. 63 of the Bombay Tenancy and Agricultural Lands Act, 1948. The objection is thus sustained, the judgment and order of the High Court is set aside and that of the Executing Court as confirmed by the first Appellate Court restored. In the circumstances of the case there shall be no order as to costs.

Appeal allowed.

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