

Sahadu Bala Botre (Dead) by LR.s. and another

Vs

Namdeo Bapuji Kerala (Dead) by LR.s. and others

Civil Appeal no. 563 of 1972

(K. Ramaswamy, S. Saghir Ahmad JJ)

14.02.1996

### JUDGMENT

1. The only question in this appeal is whether the interpretation put up by the High Court on second proviso to Section 84A of the Bombay Tenancy and Agricultural Land Act, 1948 is correct? The appeal arises from the judgment dated June 17/18 1970 of Bombay High Court made in SCA No. 1133/64 (reported in AIR 1972 Bombay 25). The facts are not in dispute. The appellant had purchased along with another undivided interest in Survey No. 59 of a total extent of 106 acres situated in Sadavadi Village, Taluka Mawal in Pune District in which it is found as a fact that the respondent Namdeo Bapuji Kerala was the tenant. After unsuccessful attempt before Revenue Forums the appellant filed an application under Section 84A for validation of the sale deed which the appellant had. Though the Revenue Forums found that the appellant and the respondent Sahadu Bala Botre and Namdeo Bapuji Kerala were tenants in common, in Appeal No. 21/1957 by order dated February 28, 1958 it was held that Sahadu Bala Botre was not the tenant. That order had become final. Thereby the respondent became sole tenant of the land. The question then is : whether validation of the sale could be granted? Section 84A reads thus :

"84A. (1) A transfer of any land in contravention of Section 63 or 64 as it stood before the commencement of the Amending Act, 1955, made after the 28th day of December, 1948 (when the Bombay Tenancy and Agricultural Lands Act, 1948, came into force) and before the 15th day of June, 1955, shall not be declared to be invalid merely on the ground that such transfer was made in contravention of the said Sections if the transferee pays to the State Government a penalty equal to one per cent of the consideration or Rs. 100/- whichever is less :

Provided that, if such transfer is made by the landlord in favour of the tenant in actual possession, the penalty leviable in respect thereof shall be one rupee :

Provided further that if any such transfer is made by the landlord in favour of any person other than the tenant in actual possession, and such transfer is made either after the unlawful eviction of such tenant, or results in the eviction of the tenant in actual possession, then such transfer shall not be deemed to be validated (unless such tenant has failed to apply for the possession of the land under sub-section (1) of Section 29 within two years from the date of his eviction from the land).

(2) On payment of such penalty, the Mamlatdar shall issue a certificate to the transferee that such transfer is not invalid.

(3) Where the transferee fails to pay the penalty referred to in sub-section (1) within such period as may be prescribed, the transfer shall be declared by the Mamlatdar to be invalid and thereupon the provisions of sub-sections (2) to (5) of Section 84C shall apply."

We are concerned with the second proviso in this case. The main part of sub-section (1) postulates that a transfer of any land in contravention of Section 63 or 64 as it stood before the commencement of 1955 Amending Act, made after December 28, 1948 and before June 15, 1955, i.e. when the Amending Act was brought into force, shall not be declared to be invalid merely on the ground that such transfer was made in contravention of Section 63 or 64 provided that the transferee pays to the Government a penalty equal to 1% of the consideration or Rs. 100/- whichever is less. Nonetheless the second proviso seeks to protect interest of the cultivating tenant. It says that if such transfer is made by the landlord in favour of any person other than the tenant in actual possession, and such transfer is made either after unlawful eviction of such tenant, or results in the eviction of the tenant in actual possession, then such transfer shall not be deemed to be validated unless such tenant has failed to apply for possession of the land under sub-section (1) of Section 29 within two years from the date of his eviction from such land. The later clause dealing with Section 29 (a) does not apply to the facts of the case. If validation of the sale results in dispossession of the respondent tenant, it should not be made. Therefore, in view of the specific embargo created by the second proviso which is mandatory and beneficial to the tenant, the authorities below were well justified in refusing the grant of validation of the sale made in favour of the appellant.

2. The appeal is accordingly dismissed but in the circumstances without costs. Appeal dismissed