

Raghunath

Vs

Popat Lal and Others

Civil Appeal No. 1990(N) of 1979

(K. Ramaswamy, S. Saghir Ahmed JJ)

14.02.1996

ORDER

1. The only question is whether the respondents can claim right as tenants to the possession of the demised lands under the Bombay Tenancy and Agricultural Lands Act, 1948 (for short "the Act") ? The admitted facts are that the land originally belonged to one Lilachand Bhandari. He hypothecated the lands on 27-7-1942 in favour of one Hirachand, the father of Respondents 1 and 4 (Defendants 1 and 4) under the possessory mortgage. In 1947-48 Hirachand leased those lands to Respondents 2 and 3 (Defendants 2 and 3). While remaining to be tenants, Respondent 2 had purchased the equity of redemption of the suit lands for a sum of Rs 12,000 on 27-12-1949. The second respondent in turn sold half of the undivided interest in the land to one Housabai, mother of the appellant on 19-1-1950. From these facts the question arose : whether the second and the third respondents remained to be tenants in the land after the Act had come into force ? When the matter was referred to Mamlatdar for decision, a finding was recorded by him and also by the appellate authority that the property having been purchased by way of equity of redemption, the lesser right of tenancy stood merged with their larger right as owners and that, therefore, the respondents no longer remained to be the tenants; consequently, the appellant alone was held to be the owner of undivided share in the land and the respondent could not claim tenancy rights under the Act. But, unfortunately, the High Court in second appeal reversed the said finding and held in the impugned order that the respondents remained to be tenants and that, therefore, the Act got attracted. The appellant thereby had to surrender his rights to the tenants. This this appeal by special leave.

2. It would be seen that though Respondents 2 and 3 had come into possession as tenants in the year 1947-48 from the mortgagee Hirachand, after the second respondent's purchase of the equity of redemption on 27-12-1949, they became absolute owners of the suit property. Thereby, their lesser tenancy rights which they had under the mortgagee Hirachand, stood merged with their larger interest as owner of the lands. Thereby on and from 27-12-1949 they ceased to be the tenants. Having sold the undivided half land to the mother of the appellant who has since died and the appellant having succeeded the land by intestate succession by registered conveyance dated 19-1-1950 they became co-owners in the property. Thereby, they are entitled to partition of the same after redemption of the mortgage in equal moiety and enjoyment thereof. The suit of the appellant, therefore, is clearly maintainable. It is accordingly to be decreed.

3. We are informed that pursuant to the preliminary decree granted by the trial court, the appellant had deposited a sum of Rs 4000 as directed in the preliminary decree. But it would appear that the respondents have not deposited their share. Three months' time from today is granted to the respondents to deposit the same. On deposit being so made, the trial court would draw up the final decree within four weeks thereafter and pass appropriate orders according to law and deliver

possession of the land that fell to the share of the appellant, within six weeks thereafter.

4. The appeal is accordingly allowed. No costs.