

Kahandu Daulat Dange

Vs

Jaywantrao Yadavrao Kharade and Others

Civil Appeal No. 5400 of 1995

(Kuldip Singh, S. Saghir Ahmed JJ)

14.02.1996

JUDGMENT

KULDIP SINGH J.

1. The appellant was the tenant of the agricultural land in dispute. The land was owned by Anjanabai. After her death on 8-8-1969, Hirabai and Draupdabai, respondents in the appeal herein, became the owners. The Agricultural Lands Tribunal in the proceedings under Section 32-F read with Section 32-P of the Bombay Tenancy and Agricultural Lands Act, 1948 (the Act) came to the conclusion that the appellant was not entitled to purchase the land in dispute and as such was directed to surrender the possession of the said land to the respondents. Appeal against the said order was dismissed by the Sub-Divisional Officer, Parner Division at Ahmednagar. Revision application filed by the appellant was also dismissed by the Maharashtra Revenue Tribunal, Pune. The appellant, thereafter, challenged the orders of the authorities under the Act by way of a writ petition before the Aurangabad Bench of the Bombay High Court which was dismissed on 22-6-1994. This appeal by the appellant-tenant is against the judgment of the High Court.

2. We may briefly state the facts. One Yadavrao @ Yadu Kharade and his three sons - Baburao, Jaywantrao and Shankar - from his wife Anjanabai and the fourth son Balu from a predeceased wife constituted the joint family. Baburao filed a civil suit in the Court of Civil Judge at Shrigonda for partition and possession of his share in the joint family property. The suit was disposed of by the trial court on 6-4-1961 by way of compromise decree. It is not disputed that as a result of the compromise decree partition took place and the property was divided by metes and bounds. The land in dispute came to the share of Anjanabai. It is further not disputed that the appellant was the tenant of the land in dispute since prior to 1-4-1957 (tillers' day).

3. After the tillers' day, Anjanabai applied for an exemption certificate under Section 88-C of the Act. The said proceedings were taken to the High Court which remanded the same for disposal to the original authority. After the death of Anjanabai, the proceedings were continued by her heirs and were finally disposed of by the Additional Tehsildar on 1-12-1981.

4. The case of the respondents before the authorities under the Act was that Anjanabai-deceased being widow since prior to 1-4-1957, it was mandatory for the appellant to give notice under Section 32-F(1)(a) of the Act indicating his desire to purchase the land. Since the said notice was not given within the statutory period the appellant was not entitled to purchase the land. The plea of the respondents was accepted by all the courts below. The appellant's contention was that the proceedings under Section 88-C of the Act were pending which terminated in the year 1981. According to him the requisite notice was given by him within the specified period after the

termination of the proceedings under Section 88-C of the Act.

5. The appellant also contended before the courts below that the land being joint family property and there being more than one member of the joint family who did not belong to any of the categories mentioned in Section 32-F(1)(a), the provisions of Section 32-F were not applicable and the appellant was entitled to purchase the land in dispute. The contention was rejected by the courts below.

6. Sections 32-F(1) and 88-C which are relevant are reproduced :

"32-F. (1) Notwithstanding anything contained in the preceding sections -

(a) where the landlord is a minor, or a widow, or a person subject to any mental or physical disability, the tenant shall have the right to purchase such land under Section 32 within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy under Section 31 and for enabling the tenant to exercise the right of purchase, the landlord shall send an intimation to the tenant of the fact that he has attained majority, before the expiry of the period during which such landlord is entitled to terminate the tenancy under Section 31 :

Provided that where a person of such category is a member of a joint family, the provisions of this sub-section shall not apply if at least one member of the joint family is outside the categories mentioned in this sub-section unless before 31-3-1958, the share of such person in the joint family has been separated by metes and bounds and the Mamlatdar on inquiry is satisfied that the share of such person in the land is separated, having regard to the area, assessment, classification and value of the land, in the same proportion as the share of that person in the entire joint family property, and not in a larger proportion.

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88-C. (1) Save as otherwise provided by Sections 33-A, 33-B and 33-C, nothing in Sections 32 to 32-R (both inclusive) shall apply to lands leased by any person if such land does not exceed an economic holding and the total annual income of such person including the rent of such land does not exceed Rs 1500 :

Provided that the provisions of this sub-section shall not apply to any person who holds such land as a permanent tenant or who has leased such land on permanent tenancy to any other person.

(2) Every person eligible to the exemption provided in sub-section (1) shall make an application in the prescribed form to the Mamlatdar within whose jurisdiction all or most of the pieces of land leased by him are situate within the prescribed period for a certificate that he is entitled to such exemption.

(3) On receipt of such application, the Mamlatdar shall, after giving notice to the tenant or tenants of the land, hold inquiry and decide whether the land leased by such person is exempt under sub-section (1) from the provisions of Sections 32 to 32-R.

(4) If the Mamlatdar decides that the land is so exempt, he shall issue a certificate in the prescribed form to such person.

(5) The decision of the Mamlatdar under sub-section (3), subject to appeal to the Collector, shall be final."

7. The following contentions were raised by the appellant before the High Court :

(a) Anjanabai - though a widow (disabled category) - was member of the joint family of which more than one members were not the persons who were under disability, and as such she was not entitled to the protection of Section 32-F of the Act in view of the proviso to Section 32-F(1)(a).

(b) When Anjanabai died in 1969 the proceedings under Section 88-C of the Act were pending. The said proceedings came to an end on 1-12-1981 and immediately thereafter the appellant sent the notice under Section 32-F(1-a) in February 1982. Even otherwise the appellant contested the proceedings under Section 88-C of the Act and as such his intention to purchase the land was clear and obvious. His right to purchase the land could not be defeated on technical grounds.

(c) The partition decree on the basis of which Anjanabai became owner of the land in dispute was a collusive decree. There being no partition the provisions of Section 32-F(1)(a) were not attracted to the facts of this case.

8. We are of the view that the High Court fell into patent error in holding that proviso to Section 32-F(1)(a) of the Act was not attracted to the facts of the present case. The High Court referred to paragraphs 322 and 325 of Mulla's Hindu Law and came to the conclusion that once a member of a joint family intimates unequivocally to the other members his desire to sever himself from the joint family, his right to obtain and possess his share is unimpeachable whether or not they agree to separation, and there is an immediate severance of the joint status. Relying upon the judgments of this Court in *A. Raghavamma v. A. Chenchamma* [AIR 1964 SC 136 : (1964) 2 SCR 933], *Puttrangamma v. M.S. Ranganna* [AIR 1968 SC 1018 : (1968) 3 SCR 119] and *Krishnabai Bhritar Ganpatrao Deshmukh v. Appasaheb Tuljaramarao Nimbalkar* [(1979) 4 SCC 60 : AIR 1979 SC 1880], the High Court came to the conclusion that Baburao had asked for partition of the property as way back as March 1956 and as such the severance of the status of the joint family took place at that time. According to the High Court consent decree passed on 6-4-1961 would relate back to 1956 and as a consequence there would be no joint family on 1-4-1957 (tillers' day).

9. We are of the view that deeming fiction regarding severance of the joint family cannot be read in the provisions of Section 32-F(1)(a) of the Act. Proviso to Section 32-F(1)(a) specifically provides that a member of a joint family who is a minor, widow or subject to any mental or physical disability who has at least one member of the joint family outside the categories of disabled persons, cannot be given benefit of the said provision unless the following two conditions are fulfilled :

(i) Before 31-3-1958 the share of such person in the joint family was separated by metes and bounds.

(ii) The Mamlatdar on enquiry was satisfied that the share of such person in the land was separated, having regard to the area, assessment, classification and value of the land, in the same portion as the share of that person in the entire joint family property and not in larger proportion.

10. The concept of notional severance cannot be attracted in the context of the provisions of Section

32-F(1)(a) of the Act. The two overt acts inherent in proviso to the said section must have happened in practice and as a fact prior to 31-3-1958. The theory of relation-back cannot be read in the language of the proviso to Section 39(1)(a) of the Act.

11. None of the above conditions are fulfilled in the present case. There was no separation of the share of Anjanabai by metes and bounds till the date of decree in 1961. Since it was not done before 31-3-1958, the provisions of Section 32-F(1)(a) could not be made applicable to Anjanabai. Even the second condition was not fulfilled. Since there was no separation of the share of Anjanabai by metes and bounds prior to 31-3-1958, there was no question of an enquiry by Mamlatdar in this case. On the plain reading of the proviso to Section 32-F(1)(a) of the Act, there is no scope for incorporating the theory of relation-back in the facts of the present case.

12. We, therefore, set aside the finding reached by the High Court on this issue and hold that on 1-4-1957 (tillers' day) Anjanabai was a member of the joint family and as such the provisions of Section 32-F(1)(a) were not applicable to her.

13. After the view we have taken on the first point, it is not necessary to deal with other points arising in this case.

14. We allow the appeal, set aside the judgment of the High Court and the orders of the authorities under the Act and hold that the appellant was the tenant of the land in dispute on 1-4-1957 and was entitled to purchase the land in accordance with provisions of the Act. The competent authority under the Act shall now proceed with the case in accordance with law. No costs.