

Bharmappa Nemanna Kawale and Another

Vs

Dhondi Bhima Patil and Others

Civil Appeal No. 5376 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

25.03.1996

ORDER

1. Delay condoned.
2. Substitution ordered.
3. Leave granted. We have heard the learned counsel on both sides.
4. The admitted position is that the civil court decreed the suit for eviction against the appellant holding that he was not a tenant which order had become final. The same plea of want of jural relationship is sought to be raised in execution. When the objection raised was negatived, the High Court in Writ Petition No. 3319 of 1992 by order dated 22-11-1991 directed the executing court to go into the question. Accordingly, this appeal by special leave came to be filed.
5. Shri Bhasme, the learned counsel for the respondents, contended that in view of the specific language employed in Section 85-A of the Bombay Tenancy and Agricultural Lands Act, 1948 (67 of 1948) the only competent authority that has to go into the question is the revenue authority under the Act and the civil court has no jurisdiction to go into the question whether the appellant is a tenant or not. Therefore, the High Court was right in directing the executing court to go into the question. It is rather unfortunate that the respondent has allowed the decree holding that he is not a tenant to become final. Having allowed it to become final, it is not open to him to contend that he is still a tenant under the Act and therefore the decree is a nullity. Under those circumstances, the executing court was right in refusing to entertain the objection for executing the decree. The High Court was not justified, in the circumstances, in directing the executing court to consider the objection.
6. The appeal is accordingly allowed. No costs.