

State of Gujarat

Vs

Biharilal

Civil Appeal No. 1826 of 1988

(G.T. Nanavati, S.N. Phukan JJ)

09.03.1999

JUDGMENT

Nanavati, J.

1. The State is challenging in this appeal the judgment and decree passed by the High Court of Gujarat in First Appeal No. 681/85. It has confirmed the judgment and decree passed by the trial court which declared that Bihari Lal (since deceased), father of the respondents, was the owner of the trees, except kher and bamboos, standing on the suit, lands and directed the State and its officers to grant necessary permission to the respondents to cut and remove those trees.

2. The facts of this case are that the lands in question were originally parts of villages kel and Babda. They were purchased by one Chandubhai from the Rajpipla state on or before 14.12.42. They were then sold by Chandubhai to different persons who became occupants of the said lands. Bihari Lal then entered into an agreement in 1964 with those occupants with respect to those trees. Thereafter, he applied to the Divisional Forest Officer for granting required pass or permit to cut and remove those trees. As no material was produced by Bihari Lal to show that he had acquired any right over those trees, the Divisional Forest Officer refused to grant any pass or permit. The, on 10.4.68, Bihari Lal again made an application. This time the required permission was granted by the concerned Forest Officer and pursuant to that permission, some trees were cut and removed by Bihari Lal. That permission was for a short duration and expired on 13.6.68. Again, by his letter dated 7.1.77, Bihari Lal applied to the forest authorities for granting fresh permission in respect of the remaining trees. It was refused on the ground that the owners of the lands had sold away their rights over the trees to some other contractor and, therefore, no permission could be granted to him. That led Bihari Lal to file a civil suit in the court of Second joint civil Judge Bharuch.

3. The State resisted the suit by disputing any right of Bihari Lal over those trees and also of the occupants of the lands on the ground that no survey and ad settlement having been made of those lands under Chapter 8A of the Bombay and Revenue Code, no rights over the trees were conferred on them. The trial court negated these contentions and decreed the suit partly as stated above.

4. The State feeling aggrieved by the judgment and decree, preferred an appeal. The High Court agreeing with the findings of the trial court confirmed the declaration regarding ownership of Bihari Lal over the trees and directed the authorities to issue the required pass or permit to the heirs of Bihari Lal for cutting and removing those remaining trees.

5. Learned counsel for the State contended that there was no survey and settlement in respect of the said lands even by the Rajpipla State and therefore even the occupants of the said lands have no

right over the trees standing thereon. In the alternative, he submitted that even if it is assumed that there was a survey by the Rajpipla State and the rights of owners of such lands were settled, the same was not accepted by the succeeding State and the State of Gujarat and, therefore, also the owners of the said lands do not have any right over those trees. It was next contended that the respondents were claiming right to cut and remove the trees under an agreement, which was not registered and proved and the High Court was wrong in proceeding on the basis that the point regarding the proof of document was raised for the first time before the High Court.

6. It is not necessary to go into the larger question regarding the Act of State and recognition of survey and settlement by the succeeding State as this appeal deserves to be allowed on the ground that no decree could have been passed granting a higher right to Bihari Lal than what was available to him under the agreement which he had entered into with the owners of the land. It is now not in dispute that under the said agreement, Bihari Lal was entitled to cut and remove trees for a period of two years only. Though it is true that there was some delay on the part of the Forest Department in granting necessary permission to cut and remove the trees, the agreement between Bihari Lal and the owners of lands remained unchanged. No fresh agreement was entered into by Bihari Lal with the owners of the lands nor the period of the said agreement was extended by the owners. The right of Bihari Lal under the agreement being of a limited duration, the decree in the present form could not have been passed in his favour. Whatever rights he had, came to end with the expiry of the period mentioned by the agreement. We, therefore, allow this appeal and set aside the judgment and decree passed by the High Court and dismiss the suit. There shall be no order as to costs.