

Shaikh Sujat

Vs

S.K. Mahaboob

Civil Appeal No. 3271 of 1991

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

05.05.1999

JUDGMENT

G.T. Nanavati, J.

1. The Appellants No. 1, nephew of one Shaikh Gulab, claimed to be his tenant in the proceedings initiated in the Civil Court by the respondent who has purchased the property from Shaikh Gulab. As the plea of tenancy was raised, a reference was made to the Tehsildar for deciding whether appellant No. 1 is a tenant of the suit land or not. The Tehsildar held that he has been cultivating the land under the lease dated 1.1.68 and, therefore, he is a lawful tenant on the land. This order of the Tehsildar was reversed by the Deputy Collector in appeal as he came to the conclusion that the said lease deed was not acted upon, the appellant No. 1 was staying with Shaikh Gulab and that he was cultivating the land as a family member and not as a tenant. This finding was confirmed by the Tribunal in Revision Application. The High Court agreeing with that finding dismissed the writ petition.

2. It is contended by the learned counsel for the appellants that merely because appellant No. 1 was a family member, it cannot be said that she was not cultivating the land lawfully as a tenant. In support of his submission, he relied upon the decision of this Court in *Daya Lal & ors. v. Rasul Mohammad Abdul Rahim, 1963(3) SCR 1*. In our opinion, the said decision is of no help to the appellants because in this case it has been found by the final fact finding authority that Shaikh Gulab and the appellants were staying together as a joint family and that the lease deed dated 1.1.68 was not acted upon. These findings of fact are based upon the oral evidence and the will made in the year 1989 by Shaikh Gulab. Appellant No. 1 is claiming tenancy under the lease and not on any other basis. Once the lease deed is found not to have been acted upon and it is held that he is cultivating the lands in his capacity as a family member his claim that he is the tenant of the land must fail. In view of the these facts, it is not necessary to refer to the question of law raised in this appeal. This appeal is dismissed with no order as to costs.

Appeal dismissed.