

**SUPREME COURT OF INDIA**

Panpoi Dharmal Sansthan, Dhoterkheda

Vs.

Bhagwant

C.A.No.5416 of 1990

(S. Saghir Ahmad and D. P. Wadhwa, JJ.)

18.01.2000

**ORDER**

1. Delay in filing application for substitution is condoned and the abatement is set aside.
2. Application for substitution is allowed and the legal representatives of deceased respondent Nos. 1, 4 and 5 as mentioned in the application are brought on record.
3. The principal controversy raised in this case is covered by the decision of this Court in Shri Ram Mandir Sansthan v. Vatsalbai, (1999) 1 SCC 657 : (1999 AIR SCW 121 : AIR 1999 SC 520) which lays down that tenancy is not heritable under the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958.
4. Learned counsel for the respondents next contended that the suit instituted by the appellant under Section 100 (2) of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958

(hereinafter referred to as 'the Bombay Tenancy Act') was beyond time in view of the provisions contained in Section 12 (c) (ii) of Mamlatdar's Courts Act, 1906 (hereinafter referred to as 'the Act') which provide that the Mamlatdar shall reject the plaint where it appears upon the face of the plaint that the cause of action arose more than six months before the plaint was first presented. The learned counsel also referred to us the provisions of Section 5 of the Act specifically sub-sections (3) and (4) thereof which provide as under :-

"5(3). No suit shall be entertained by a Mamlatdar's Court unless it is brought within six months from the date on which the cause of action arose.

(4) The cause of action shall be deemed to have arisen on the date on which the (impediment to the natural flow of surface water or the) dispossession, deprivation or determination, of tenancy or other right occurred, or on which the (impediment) disturbance or obstruction, or the attempted (impediment or) disturbance or obstruction, first commenced."

5. He contended that since the cause of action had accrued to the appellant on the death of Maruti who was the tenant of the appellant, the suit ought to have been filed within six months from the date of death of Maruti. We are not prepared to accept this contention.

6. Maruti, undoubtedly, was the tenant of the appellant. After his death in 1972 respondents claimed tenancy right by inheritance which was denied by the appellant who instituted the suit for declaration that the respondents were not their tenant. This Court, as pointed out earlier, has already upheld that the tenancy under the Bombay Tenancy Act is not heritable. That being so, the possession of the respondents became unlawful when they were asked to deliver possession as they could not legally continue in possession over that land. Their refusal to deliver possession to the appellant was a continuing wrong and, therefore, the suit for declaration which was filed by the appellant under Section 100 of the Bombay Tenancy Act could not be said to be beyond time. The appeal is allowed and the impugned judgment of the High Court is set aside and the suit of the appellant is decreed but without any order as to costs.

Appeal allowed.