

SUPREME COURT OF INDIA

Pavni Bai (Dead) Through Her Lrs

Vs.

Loona (Dead) Through Lrs

(V Khare, S V.Patil and A Bhan JJ.)

14.08.2002

ORDER

1. This appeal is directed against the judgment of the Madhya Pradesh High Court allowing the second appeal preferred by the plaintiff-respondents, herein.

2. The plaintiff-respondents brought a suit in the court of civil judge, Dhar for declaration that they being the sub-tenants of the land in dispute had acquired occupancy rights and thereafter have become Bhoomiswami of the said land. The case of the plaintiff-respondents was that the land comprising in survey Nos. 2, 21, 99, 242, 244 and 309 situate at village Mangaol belonged to the defendant-appellant's father Lalji along with Laxmanrao. The said Lalji and Laxmanrao sub-let the land to the father of the plaintiff-respondents. After the death of Lalji, his widow Bainabai and after her death her daughter became the co-tenant along with Laxmanrao in respect of the disputed land, and they were recorded as such in the revenue record. It was a further case of the plaintiff-respondents that after the death of their ' father, they continued to hold the land as sub-tenants of the defendant-appellant and thus have acquired occupancy right on coming into force the Madhya Pradesh Land Revenue Code (hereinafter referred to as 'the Code') and consequently have become Bhoomiswami of the said land under section 189 of the Code w.e.f. 1.7.1961.

3. The defendant-appellant contested the suit. Her case, inter alia, was that the land was exclusively belonged to her father, that she let out the land to the plaintiff-respondents and, that, she being a widow, was a disabled person and no occupancy right and for that matter, Bhoomiswami right would accrue to the plaintiff-respondent in respect of land in dispute. The trial court found that the defendant-appellant was not a widow and, further, there were two tenants and, therefore, plaintiff-respondents have acquired occupancy right and thereafter have become Bhoomiswami of the said land. In that view of matter, the suit was decreed.

4. Aggrieved, the defendant-appellant preferred an appeal before the first appellate court. The first appellate court even after recording a finding that the name of Laxmanrao continued to be recorded in the revenue record along with the defendant-appellant was of the view that since Laxmanrao never cultivated the land and had no concern with the land, the defendant-appellant was the sole owner of the land. The first appellate court was further of the view that

since the defendant-appellant was a widow, therefore, she was a disabled person and under such a case, no right would accrue to the plaintiff-respondents in respect of the land in dispute. In that view of the matter, the appeal was allowed and the suit stood dismissed.

5. The plaintiff-respondents preferred a second appeal under unamended Section 100 CPC. The High Court proceeded to decide the appeal on the assumptions that the defendant-appellant was an exclusive tenant of the land in dispute and further she was a widow. The High Court came to the conclusion that even if the defendant-appellant was the sole owner of the land and a widow, yet she was not a disabled person as she could have got the land cultivated through hired labour. Therefore, the plaintiff-respondents being a sub-tenant have acquired Bhoomiswami right. Consequently, the second appeal was allowed and the decree of the trial court was restored. It is in this way this appeal is before us.

6. We have heard counsel for the parties. The view taken by the High Court that the widow is not a disabled person as she could have got the land cultivated through hired labour is totally erroneous. If it is found that a tenant is a widow, she would be a disabled person. But in the present case, what we find is that the High Court has proceeded to decide the matter on assumption that the defendant-appellant was a sole pucca tenant of the land in dispute and further she was a widow. Whereas, the consistent case of the plaintiff-respondents was that there were two pucca tenants and the defendant-appellant was not a widow. Respondents herein stated that they never admitted before the High Court that defendant-appellant is a widow. This assumption on the part of the High Court was totally erroneous. In fact, the High Court was required to go into the questions whether the land in question was owned by co-tenants and if it was exclusively owned by the defendant-appellant, whether the defendant-appellant was a widow. The High Court curiously enough has not gone into those questions. In such circumstances, the whole approach of the High Court in deciding the appeal was erroneous. In that view of the matter, the judgment of the High Court deserves to be set aside.

7. We are of further view that instead of sending the matter back to the High Court, the matter may be sent back to the first appellate court. We, therefore, after setting aside judgment of the High Court as well as the first appellate court, sent the matter back to the first appellate court, who shall decide the matter afresh without being influenced by any observations made by the High Court or this Court. Since the matter is quite old, the first appellate court is requested to decide the matter within six months from the date of receipt of the certified copy of this order.

8. The appeal is allowed. No costs.