PETITIONER:
HEIRS & LRS. OF DECEASED SOMABHAI KANJIBHAI BARIA

Vs.

RESPONDENT:
PATEL PARSHOTTAMDAS JAMDAS (D) & ANR.

DATE OF JUDGMENT03/03/1995

BENCH:
K RAMASWAMY & B.L. HANSARLA, JJ.

ACT:

HEADNOTE:

JUDGMENT:
ORDER

1. Respondent Patel Parshottamda Jamnadas has died. The appellants ha filed an application to bring the legal representatives on record. Ghanshamdasbhai Parshottamdas Patel, son of the deceased Patel Parshottamdas Jamnadas, has also made an application independently on the basis of will said to have been executed by his father. Without going into the inter se rights of the legal representatives of Patel Parshottamdas Jamnadas, we bring Ghanshamdasbhai Parshottamdas Patel on record to represent his estate for the purpose of the disposal of these appeals. The inter se rights, if any, would be decided in an appropriate proceedings.

2. The three appeals are being disposed of by a common order. The appellants initially were tenants of respondent. The lands are watan lands. Though the appellants remained in possession from the year 1939, since the lands being watan lands, they are not directly governed by the Bombay Tenancy and Agricultural Lands, Act 1 of 1948 (for short, 'the Tenancy Act') as extended to the State of Gujarat. The Gujarat Watans Abolition 'Act, 1961, abolished the watans with effect from 1.4.63. Subsequently, re-grant was made in favour of the respondent on March 23, 1966. In the meanwhile, the respondent terminated the tenancy of the appellants with effect from 31.3.61 and filed present civil suit for possession on August 14, 1962.

3. The appellants contended that civil court has no jurisdiction to decide the question whether the appellants are tenants under the respondent and that they are not liable to ejectment on the basis of termination of tenancy. The civil court relying upon s.88 of the Tenancy Act, held, as preliminary issue, that the appellants are tenants and that, therefore, until the question of termination of tenancy has been duly determined by the mamlatdar, the civil court has no jurisdiction. Accordingly, the civil court dismissed the suit. On revision, the learned single Judge of the-High Court by judgment dated 15.4.77, held that for application of s.88 of the Tenancy Act, read with s.9 of Watan Act, 1961, two conditions must be satisfied, namely, the lease should have been lawfully made and such a lease

must be subsisting on the appointed date, namely, April 1, 1963. Though there was a lease, since it was determined as effective from 31.3.61, there was no subsisting lease. Therefore, the civil court was wrong in its conclusion that the tenancy court has jurisdiction to determine the rights of the tenancy between the parties and accordingly reversed the decree and remitted the matter for trial according to law. Thus these appeals by special leave.

4. Shri Ganpule, learned senior counsel for the appellants, contended that by operation of sub-s.(6) of s.32(G) of the Tenancy Act, despite the abolition of the watan and re-grant in favour of the respondent, the right of tenancy created in favour of the tenants still subsists. Therefore,-whether the termination of the tenancy has been legally done should be decided only by the mamlatdar and not by the civil court. We find no force in the contention.

5. Sub-s.(6) of s.32(G) envisages:

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> "If any land which, by or under the provisions of any of the Land Tenures Abolition Acts referred to in Schedule 111 of this Act, is re-granted to the holder thereof on condition that it was not transferable, such condition shall not be deemed to affect the right of any person holding such land on lease created before the re-grant and such person shall as a tenant be deemed to have purchased the land under this section, as if the condition that it was not transferable was not the condition of re-grant. "

6. For application of sub-s.(6) of s.32(G) two essential conditions are required to be satisfied. The kind of land tenures, referred to in sub-s.(6), should find place in the IIIrd Schedule. We have verified Schedule 111 and the Watan Abolition Act 1961 is not part of Schedule Ill. Secondly, though the re-grant is made in favour of the holder of the watan with a condition that it is not transferable, the lease created before the re-grant must be subsisting. In that event, the tenant would be entitled to purchase the land under s.32(G). It is already seen and a clear finding of fact was recorded by the High Court and it is not disputed before us that the tenancy was terminated with effect from 31.3.1961 and the suit for possession was filed on 14.8.1962.

7. The question then is what is the nature of possession the appellants held. This Court in Maneksha Ardeshir Irani v. Manekji Edulji Mistry, 1975 (2) SCR 34 1, held that on cessation of original tenancy, the right of protected tenant would continue until it would duly come to an end. It was found that on August 1, 1956 it came to a terminus and the original contract of tenancy thereby had ceased. The appellant therein was in occupation of the land only on sufferance since the land-lord had not given any consent for the continuance of possession of the tenant. When the landlord did not give his consent, express or necessary implication, after the termination of lease, his possession is only by sufferance and he cannot be said to be in possession as a tenant holding over or a tenant at will.

8. The same ratio applies to the facts in this case. After the determination of the tenancy and after the respondent filed the suit, there was no consent given by the landlord either in writing or by acquiescence or by conduct. In that view of the matter, the civil court was clearly in error in holding that there exists a jural relationship of landlord and tenant between the respondent and the

appellants and that, therefore, the mamlatdar is the competent authority to decide the dispute of the tenancy rights. The High Court was right in holding that the condition precedent prescribed under s.88(IXc) of the Tenancy Act read with s.9 of Watan Act has not been complied with and that, therefore, the civil court alone has jurisdiction to decide the question.

9. The appeals are accordingly dismissed. No costs.

10.In view of the above findings, the suits stand decreed, as nothing more remains for trial as agreed by both the counsel.

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