PETITIONER:
HANMANTA DAULAPPA NIMBAL SINCE DECEASED BY HIS HEIRS ANDLRS.

Vs.

RESPONDENT:
BABASAHEB DAJISAHEB LONDHE

DATE OF JUDGMENT29/08/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)

CITATION:
1996 AIR 223 1995 SCC (6) 58
JT 1995 (6) 654 1995 SCALE (5)196

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

This appeal by special leave arises from the judgment of the High Court at Bombay in Special Civil Application No.277 of 1972 dated 8th September, 1977. The respondent-landlord filed Civil Suit No.10/68 in the Court of Civil Judge, J.D. at Akkalkot. Since the appellant raised plea of oral tenancy for the year 1968-69, the Civil Court referred the issue : "Does the defendant prove tenancy over the suit land thereon?" to the Tehsildar who in his proceedings held that in respect of Survey No.3 to the extent of 16 acres 26 Gunthas situated in Mirajgi village belongs to the respondent and the appellant had not proved oral tenancy. Thereon, the appellant carried the matter in appeal to the Special Deputy Collector, Tenancy Appeals, Sholapur, who held that oral tenancy was established. Even otherwise, the appellant is a deemed tenant under s.4 of the Bombay Tenancy and Agricultural Land Act, 1948 (for short, 'Tenancy Act"). On revision, Maharashtra Revenue Tribunal, Pune, confirmed the findings. A writ Petition was filed under Article 227 of the Constitution.

The learned Single Judge of the High Court, while holding that since the issue referred to the Tribunal under the Tenancy Act is only the contractual tenancy for the year 1968-69, the Tribunals could not have gone into the question of deemed tenancy under s.4. On the question of tenancy, the High Court came to the conclusion that the oral tenancy has not been proved on the grounds that the entries in the revenue records for the year 1968-69 were made without notice to the landlord. When the parties were litigating their rights, it cannot be said that the landlord had agreed for creating oral tenancy in favour of the appellant. Thus on that premise, reversed the orders of the Tribunals below, accepted the finding of the Tehsildar and referred the matter to the Civil Court for decision according to the finding of the Tehsildar. Thus, this appeal.

The only question that arises for consideration is whether the appellant is in lawful possession of the property. Admittedly, there is no written lease granted in favour of the appellant. He claimed that the landlord had agreed for an oral lease for the year 1968-69. The admitted facts are that the landlord was a minor and was prosecuting his studies and his maternal uncle was looking after the properties. The suit property was subject of hypothecation and the mortgagee had inducted one Somanna who remained in possession and cultivated the land till 1964-65. Thereafter, the maternal uncle of the respondent claimed to have been in possession and cultivated the land. The question whether who cultivated the land upto year 1967-68 is not material for the reason that the appellant is not laying any claim for that period. In view of the admitted position that the respondent is the owner and, being minor, his maternal uncle must be deemed in law to be in possession.

The only material question is whether the appellant had any tenancy rights in respect of the land in question? His claim is that he came into possession under the oral tenancy for 1968-69. That was denied by the maternal uncle who was examined on behalf of the respondent-landlord. It is true that one witness was examined on behalf of the appellant and that evidence was believed by the Appellate Authority, and the Revisional Authority did not disturb that finding. But the Revisional Authority primarily proceeded on the finding that the appellant is a deemed tenant. The question, therefore, is whether the ingredients of s.4 of the Tenancy Act are satisfied. Section 4 reads thus:

> "A person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not culltivated personally by the owner and if such person is not----"

The other criteria as enumerated in clauses (a), (b) and (c) and the Explanation re not relevant for the purpose of this case.

The question springing for consideration is whether the appellant has lawfully cultivated the land for the year 1968-69? The admitted position is that the respondent filed the suit for injunction on January 20, 1969 and ad-interim injunction was issued on January 21, 1969. The appellant issued notice on January 22, 1969 claiming oral tenancy. In other words, the appellant had raised his claim for the first time, after the landlord had filed the suit. The appellant could have got lawful possession over the lands, if there would have been an agreement with the landlord, and pursuant thereto the landlord inducted the tenant in possession for beneficial enjoyment of the demised land on payment of premium or rent etc., or there would have been acquiescence of the landlord, for the tenant continuing to possess by accepting the rent. Since the claim of the appellant that he came into possession in the year 1968-69 under oral lease was not conclusively accepted and there is no proof that the landlord had accepted any rent, the appellant is a trespasser on the land. The suit was filed for injunction against the appellant. The burden is on the appellant to establish his lawful possession. Except the oral tenancy, no other evidence was brought on record. Entries in the revenue records cannot establish lawful possession, when, admittedly, no notice was given to the respondent before making those entries. The other circumstance is payment of land revenue to the Government through Talatti (village servant). For the payment thereof also, there is no notice or acquiescence by the landlord.

If these two circumstances are excluded, then the only fact is on the land, but the possession cannot be said to be lawful possession. In other words, his possession is of a trespasser, which is not protected by the Act. The question of benefit of s.4 does not arise. Though the Tribunals below or the High Court has not adverted to this aspect of the matter, we feel that the order passed by the High Court needs no interference.

The appeal is, therefore, dismissed with costs through out.