PETITIONER:
RENTALA LATCHAIAH & ORS.

Vs.

RESPONDENT:
CHIMMAPUDI SUBRAHMANYAM

DATE OF JUDGMENT:
19/04/1967

BENCH:
MITTER, G.K.
BENCH:
MITTER, G.K.
WANCHOO, K.N. (CJ)
BHARGAVA, VISHISHTHA

CITATION:
1967 AIR 1793 1967 SCR (3) 712
CITATOR INFO :
RF 1989 SC2289 (7)

ACT:
Hyderabad Tenancy & Agricultural Lands Act, 1950, ss. 2(13) and 5-Persons put into possession of land by trespasser-Whether 'asami shikmi' under s. 2(13)-Whether can claim benefit of s. 5 as lawful cultivators of the land.

HEADNOTE:
R died in 1941 leaving certain landed properties. His adopted son filed a suit for a declaration in favour of his adoption against R's widow as defendant. During the pendency of the suit the widow was put in possession of the lands by the revenue authorities.' The plaintiff added a prayer of possession to his plaint. The court served the widow with an injunction not to deal with the lands in any way during the pendency of the suit. In 1951 the suit was decreed in favour of the adopted son but nevertheless in 1952 the widow leased the lands to the appellants. In execution of the decree of the court possession of the lands was given in 1954 to the adopted son and the appellants were ejected. The appellants thereupon filed a claim under s. 32(1) of the Hyderabad Tenancy. Agricultural Lands Act, 1950 to be put back in possession of the lands the plea that they had been lawfully cultivating the land as tenants. Tehsildar and the Collector held in their favour but the High Court in revision decided against them. They came to this Court by special leave.
HELD : The appellants were inducted on the land by R's widow after the decree in the suit for declaration of title and possession in favour ,of the adopted son. After the passing of the decree the possession of the widow could only be that of a trespasser and it was not open to her to create any right in the land in favour of anybody. The appellants ,could not get the benefit of s. 5 of the Act as they could not be said to be, lawfully cultivating the land. They could not call in aid the definition ,of 'asami shikmi' in s. 2(13) of the Act. When the person who inducted the tenants-on the land was found to be a trespasser on the date of ,the induction, the tenants could not continue to have a right to be on the land against the will of the true owner.

[714 G-H; 715 A-C; 719 G]
Dahya Lal v. Rasul Mohammed Abdul Hakim, [1963] 3 S.C.R. 1, Mohima Chunder Shaha v. Hazari Pramanik, I.L.R. 17 Calcutta 45 and Binad Lal Pakrashi v. Kalu Pramanik, I.L.R. 20 Calcutta 708, distinguished.

JUDGMENT:
CIVIL APPELLATE JURISDICTION : Civil Appeal No. 611 of 1964.
Appeal by special leave from the judgment and order dated 'September 10, 1962 of the Andhra Pradesh High Court in C.R.P. No. 1128 of 1959.
A. V. Rangam, for the appellants.
P. Ram Reddy, Triyambak Rao Deshmukh and R. Vasudev Pillai, for the respondent.
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The Judgment of the Court was delivered by
Miter, J. This is an appeal by special leave, from a judgment in a batch of civil revision petitions decided- by the Andhra Pradesh High Court in September, 1962.
The facts necessary for the disposal of this appeal are as follows. One Ramalingayya died in the year 1941 possessed of considerable properties including the lands which formed the subject matter of the above mentioned civil revision petitions. Before his death, he had adopted the petitioner before the High Court one Chimmapudi Subrahmanyam, the respondent before this Court. He came into possession of the properties of his adoptive father after the latter's death. Ramalingayya's widow however raised a dispute about the factum and validity of the adoption and claimed the properties as the heir of her husband. Subrahmanyam filed a suit in the court of the District Munsif, Khammam for a declaration that he was the adopted son of Ramalingayya. Pending the disposal of the suit, however, Ramalingayya's widow, who was the 4th respondent in C.R.P. No.36 of 1952 before the High Court claimed, to have her name registered in the register maintained under the Hyderabad Land Revenue Act of 1317 F. by virtue of the provisions of s. 59 of that Act. The land revenue authorities registered the widow Kaveramma as pattedar and dispossed the adopted son of all the lands putting Kaveramma in possession thereof. The adopted son amended his plaint by including a prayer for possession. During the pendency of the suit, the widow Kaveramma was prohibited by an order of injunction from dealing with the lands in any way. This was sometime in the year 1944. The suit of the adopted son was decreed, by the trial, court on March 24, 1951 both with regard to the declaration of the right of adoption and succession as also possession over' the lands mentioned in the schedule to the plaint. Thereafter, some time in the year 1952 (the exact date does not appear from the records before us) Kaveramma leased the lands which were tile subject matter of the civil revision petitions to the appellants before this court. This is borne out by the judgment of, the District Collector, Khammam dated March 19, 1959 and the petition for special leave to this Court dated October 18, 1962. Kaveramma preferred an appeal from the decree passed against her and this was dismissed by the High Court in 1954. The adopted son put the decree in execution and got delivery of posses-sion through the court in August 1954. It appears that very soon thereafter, in September 1954 the appellants surrendered possession of the lands to him and executed a deed in respect thereof. Notwithstanding that, about a year

afterwards, they filed a petition on October 7, 1955 for possession of the lands alleging that they had been in possession for "the last six years in the
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capacity of tenants". Their allegation further was that the adopted son and his mother had dispossessed them from the suit lands and they therefore prayed for being put back into possession. This claim was preferred under S. 32(1) of the Hyderabad Tenancy and Agricultural Lands Act, 1950. The Tahsildar made an order in favour of the appellants in July 1958 which was upheld in appeal to the Collector in March, 1959. This led to the revision applications before the Andhra Pradesh High Court. The High Court allowed the Civil Revision Petitions and this has led to the appeal.

Under S. 32(1) of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as the 'Act') "a tenant or an agricultural labourer or artisan entitled to possession of any land or dwelling house under any of the provisions of this Act may apply to the Tahsildar in writing in the prescribed form for such possession." "Tenant" has been defined in S. 2(v) of the Act as meaning an asami shikmi who holds lands on lease and includes a person who is deemed to be a tenant under the provisions of the Act. The relevant portion of s. 5 of the Act provides as follows

> "A person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the land-holder if such person is not-
>
> (a) a member of the landholder's family, or
>
> (b) a servant on wages payable in cash or kind,
>
> but not in crop share or a hired labourer cultivating the land under the personal supervision of the landholder or any member of the landholder's family, or
>
> (c) a mortgagee in possession :

The appellants before this Court never were the tenants of Ramalingayya. They were induced on the land by his widow after the decree of the suit for declaration of title and possession in favour of the adopted son. After the passing of the decree, the possession of the widow could only be that of a trespasser and it was not open to her to create any right in the land in favour of anybody. It was argued however both before the High Court and before this Court that the appellants were entitled to the benefit of s. 5, as they were lawfully cultivating the land and should therefore be deemed to be tenants of such land. It was contended that the word "lawfully" was to be taken in conjunction with the words "cultivating" and the legislature intended to protect the actual tillers of the soil even if the person who,
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put them in possession was found not to have any title to the land. This would indeed be a very strange provision of the law and would, if upheld, amount to encouraging trespass on the land by persons who had no shadow of title and creating rights in favour of others although they themselves had no title to the land. The meaning of the word 'asami shikmi' in the definition of the tenant in s. 2 (v) does not appear from any provision of the Act but our attention was drawn to the Hyderabad Land Revenue Act, s. 2(13), according to which "'asami shikmi' means a lessee, whether holding under an instrument or tinder an oral agreement, and includes a mortgagee of an asami shikmi's rights with possession, but does not include a lessee holding directly

under Government". In our opinion, this does not help the appellants for the definition shows that a person who claims to be an asami shikmi' had to be a lessee either holding under a document of lease or under an oral agreement.

The position might have been different if the appellants had been inducted on the lands by the widow after her recognition as a pattedar by the revenue authorities and before the disposal of the suit against her; but, we are not concerned with that situation. The High Court had considered at some- length the question whether she could create any tenancy rights when there was an injunction restraining her from alienating any property. We do not think it was necessary to go into that question for normally the order of injunction which was passed as an interlocutory measure would not survive the decree of the trial court. Learned counsel for the appellants cited the judgment of this Court in Dahya Lal v. Rasul Mohammed Abdul Hakim(1) and it was argued that the object of the Hyderabad Act of 1950 was to afford similar protection as was given to the tenants inducted by mortgagees under the Bombay Tenancy and Agricultural Land Act, 1948. Under s. 2(18) of the Bombay Act of 1948 as the same stood at the material time, a tenant was defined as "an agriculturist who holds lands on lease and includes a person who is deemed to be tenant under the provisions of the Act." S. 14 of the Act provided that "notwithstanding any agreement, usage, decree or order of a Court of Law, the tenancy of any land held by a tenant shall not be determined unless the conditions specified in that section were fulfilled." In that case, it was common ground that the tenancy of the respondent was not sought to be determined on any of the grounds in s. 14 but it was in execution of an award made by the Debt Relief Court that the respondent was dispossessed. The relevant portion of s. 4 of that Act provided:

> "A person lawfully cultivating any land belonging to another per son shall be deemed to be a tenant if
> (1) [1963] 3 S.C.R. 1.
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> such land is not cultivated personally by the owner and if such person is not
> (a) a member of the owner's family or
> (b) a servant on wages payable in cash or kind
> but not in crop share or a hired labourer cultivating the land under the personal supervision of the owner's
> family, or
> (c) a mortgagee in possession."

It was found in that case that the respondent was cultivating the land which belonged to another person, that he was lawfully cultivating the land because he derived his right to cultivate it from the mortgagee of the land and did not fall within the excepted categories. In these circumstances, it was held by this Court that he was a "deemed tenant" within the' meaning of s. 4 of the Act. This Court observed in that case:

> "A mortgagee in possession is excluded from the class of deemed tenants on ground of, public policy: to confer that status upon a mortgagee in possession would be to invest him with rights inconsistent with his fiduciary character. A transferee of the totality of the rights of a mortgage in possession may also be deemed to be a mortgagee in

possession. But a tenant of the mortgagee in possession is inducted on the-land in the ordinary course of management under authority derived from the mortgagor and so long as the mortgage subsists, even under the ordinary law he is not liable to be evicted by the mortgagor."

According to this Court

"....the Legislature by restricting the exclusion to mortgagees in possession from the class of deemed tenants intended that the tenant lawfully inducted by the mortgagee shall on redemption of the mortgage be deemed to be tenant of the mortgagor."

In Dahya Lal's case(1) the ratio decidendi was that the mortgagee in possession had the right to induct tenants on the land: normally, the right of such tenants would come to an end with the extinction of the rights of the mortgagee but the object of the Act was to give protection to tenants who had been lawfully inducted thereon, inter alia by the mortgages and this class of tenants could be said to be lawfully cultivating the land. Such is not the position in the case before us. Kaveramma did not induct the tenants on the land in the normal course of manage-

(1) [1963]3 S.C.R. 1.

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ment of the property. She put them in possession when she had lost her right to be there and consequently the decision of this Court in Dahya Lal's case can be of no assistance to the appellants before us.

The appellants however sought to rely on two decisions of the Calcutta High Court which turned on the interpretation of some provisions of the Bengal Tenancy Act. In Mohima Chunder Saha v. Hazari Parmanik(1) the plaintiff, appellant before the High Court sued to eject the defendants and recover possession of the land pertaining to the estate of Char Bantai, of which they stated that they and their predecessors had been for many years in possession as proprietors. It was alleged by them that the land sued for was diluviated by the river in 1284 F. and subsequently re-formed on the old site when they re-took possession of it; that Government and other zamindars of a neighbouring mouza had dispossessed them in 1284 F. and the plaintiffs had, in a suit brought against those zamindars, obtained a decree declaring, their rights and got possession of the land. They had repeatedly asked the defendants to quit the land but the latter failed to do so. The Munsif found that the defendants had not acquired a right of occupancy, and were liable to be ejected. In appeal to the District Judge it was held that although the defendants had not proved their acquisition of a right of occupancy, they were non-occupancy ryots and not mere trespassers and as such they were not liable to be ejected except under s. 44 of the Bengal Tenancy Act on grounds which did not exist in the cast. Before the High, Court it was contended that the defendants were not non-occupancy ryots and as such could be ejected as trespassers. The High Court held that the defendants were cultivating ryots who were placed on the property by the Collector and that they had held possession for many years but not for a period sufficient to create a right of occu-pancy. Accordingly they were within the class termed in the Bengal Tenancy Act as non-occupancy ryots. Under s. 5 (2) of the Bengal Tenancy Act, a ryot means primarily "a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family, or

by hired servants, or with the aid of partners, and includes also the successors in interest of persons who have acquired such a right." S. 4 of the Act specified non-occupancy ryots as one of the classes of tenants under that Act. Under s. 3(3) of the Act, a tenant means "a person 'Who holds land under another person and is, or but for a special contract would be, liable to pay rent for that land to that person." The High Court held that the defendants were clearly liable to pay for use and occupation of the land and in the light of the definition of "rent" in s. 3(5) it

(1) I.L.R. 17 Calcutta 45.

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had to be held that the defendants were ryots and therefore non-occupancy ryots within the terms of the Bengal Tenancy Act. The High Court finally observed: ,

> "It may seem anomalous that the defendants, who have no title from the plaintiffs directly, or through their predecessors in estate, should thus be protected as non-occupancy ryots from ejectment as trespassers at the plaintiff's free will; but it seems to us that this is in accordance with the general spirit of the Bengal Tenancy Act, which regards a landlord as a rent-receiver and as able to eject a tenant or cultivator of the soil, not an under-tenant, only for certain specified reasons and conditions, none of which here exist. If the defendants had acquired a right of occupancy by occupation for twelve years, they would have been protected from ejectment, ' and as non-occupancy ryots they are also protected except as specially provided."

It will therefore be noticed that the scheme of the Bengal Tenancy Act was entirely different from the provisions of the Act we have to construe. There occupancy ryots were protected altogether from ejectment but so long as they were non-occupancy ryots they were also protected except under conditions mentioned in s. 44. Here too the Act would have protected them if their original induction was lawful so that they could be said to be lawfully cultivating the lands.

The other decision of the Calcutta High Court is that in Binad Lal Pakrashi v. Kalu Pramanik(1). In this case the plaintiffs who were proprietors sought to oust the defendants from certain lands which they were cultivating in Barakahali village. Previously thereto, there was a dispute regarding these lands between the plaintiffs and the trustees of the late D. N. Tagore who claimed them as the re-formed lands of village, Modhupur. The plaintiffs were dispossessed of the lands in consequence of the order of a Magistrate who in a proceeding under s. 145 Cr.P.C. declared possession to be with the trustees. The lower ,courts found that the defendants were settled on the land by the trustees but they had not acquired a right of occupancy at the time the suits were brought against them by the plaintiffs in January 1889. Meanwhile in 1878 the plaintiffs had sued the trustees and obtained decrees which were confirmed in appeal by the High Court. In January 1886 the plaintiffs took possession of the lands as against the trustees and then they brought Suits to eject the defendants as trespassers. They had not received rent from the defendants or in any way admitted their tenancy. The trial court decreed the suits in favour of the

(1) (I.L.R. 2) Calcutta 708.

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plaintiffs but these were upset in appeal by the District Court on the authority of Mohima Chunder Saha's(1) case. According to the Full Bench:

> "The possession of the land in question for the purpose of cultivating it was acquired a good many years ago by the defendants from the persons who at that time were in actual possession of the zemindari within which it was situated and who were then the only persons who could give possession of the lands of the zemindari to cultivators."

The Full Bench held that although they had established their right to the zamindari the plaintiffs could not treat the cultivators as trespassers and obtain khas possession of the lands from them. Referring to s. 5 (2) of the Bengal Tenancy Act, the learned Chief Justice said:

> "The possession and interest in the land which the defendants acquired from the persons in possession of the zemindari was a right to hold it for the purpose of cultivating it as against all the world except the true owners of the zemindari, and against them unless they proved a title to the zemindari paramount to that of the plaintiff's landlords.
>
> This was, I think, a right to hold the land for the purpose of cultivating it within the meaning of section 5, cl. 2 . . . . the defendants are ryots, and the only right of the person who has Obtained possession of the zemindari is to the rent payable for the land, and not to the khas possession of the land itself, unless they can do so under the provisions of the Tenancy Act."

The facts in the Calcutta cases were different from the case before us and the Bengal Tenancy Act gave protection to persons cultivating the land in circumstances which do not obtain here. It would therefore not be right to hold, on the basis of the decisions in the Calcutta High Court, that although the person who inducted the tenants on the land was found to be a trespasser on the date of such induction, the tenants continued to have a right to be on the land against the will of the true owner.

The appeal therefore fails and is dismissed, but, on the facts of this case, we do not make any order as to costs.

G.C. Appeal dismissed.

(1) I.L.R. 17 Calcutta 45.

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