

CASE NO.:
Appeal (civil) 800-804 of 2000

PETITIONER:
Papila Bai

RESPONDENT:
Chavdas T. Bhortakke (Dead) by LRs. & Ors.

DATE OF JUDGMENT: 10/01/2005

BENCH:
Shivaraj V. Patil & B.N. Srikrishna

JUDGMENT:
J U D G M E N T

SRIKRISHNA, J.

These five appeals by special leave impugn the judgment of the High Court of Judicature of Bombay, Aurangabad Bench in a common judgment rendered in Writ Petition No. 184 of 1992 along with Civil Revision Application No. 329 of 1995 and Civil Application No. 339 of 1998 and Review Application No. 5091 of 1998 along with Review Application No. 5094 of 1998.

Facts :

One Hari Vithoba was the owner of land bearing Survey No. 42, admeasuring about 8 acres and 21 gunthas in village Mehun, Taluka Edlabad, Distt. Jalgaon, Maharashtra. Hari Vithoba mortgaged the said land by a conditional sale deed executed in favour of one Dattatray Kulkarni, sometime in the year 1941. Although the stipulated period of redemption was seven years, upon expiry of which the owner of the land was to get back the possession of the land on repayment of the stipulated amount, the said period expired sometime in April, 1947. The mortgagee in possession, Dattatray Kulkarni, had, in the meantime, inducted one Chavdas Totaram Bhortakke as his tenant and the said Chavdas Totaram got his name entered in the revenue record as the tenant of the land. The mortgagee in possession, Dattatray Kulkarni, died on 25.2.1957 and his wife Durgabai succeeded him. In 1977 the present appellant, who is daughter of the original owner, Hari Vithoba, filed a suit for redemption of the mortgage before the competent court, Bhusawal, being suit RCS No. 127 of 1977. The appellant and Durgabai entered into a compromise in terms of which a decree for redemption came to be passed by the court. On 22.2.1978 the appellant filed an application before the Tehsildar and prayed that it be declared that the First Respondent herein was not a tenant of the suit land and, alternatively prayed that, if it was held that the present respondent was a tenant, then a certificate under Section 88C of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as 'the Act') be issued to her. The Tehsildar held that the First Respondent herein was a tenant of the land and granted a certificate under Section 88C in favour of the appellant. This order of the Tehsildar came to be challenged by the heirs of Late Chavdas Totaram in tenancy Appeal No. 19 of 1980 against the grant of 88C certificate. The appellant also filed an appeal No. 26 of 1980, being aggrieved by the declaration of tenancy in favour of the First Respondent. The Sub Divisional Officer confirmed the order of the Tehsildar and dismissed both the appeals.

The heirs of Late Chavdas Totaram filed Writ Petition No. 3045 of 1985 before the High Court of Judicature of Bombay challenging the grant of 88C certificate in favour of the appellant. This writ petition was dismissed by the High Court against which no proceedings were taken.

Consequently, the certificate issued under Section 88C became final.

The appellant herein filed Revision Application No. 166 of 1985 before the Maharashtra Revenue Tribunal challenging the decision of the Sub Divisional Officer dated 26.2.1985. Simultaneously, the appellant also filed Darkhast Proceedings before the Executing Court for execution of the compromise decree passed in the redemption suit. The heirs of Late Chavdas Totaram, the present respondents, sought stay of the execution proceedings. However, the Executing Court dismissed the said prayer. Revision Application No. 166 of 1985 filed by the present appellant came to be allowed by the Maharashtra Revenue Tribunal. The decision of the Maharashtra Revenue Tribunal was challenged by the present First Respondent before the High Court in Writ Petition No. 184 of 1992. Although the First Respondent challenged the decision of the Executing Court by an appeal before the District Court, there being no stay order at one point of time, a warrant of possession was issued and pursuant thereto the appellant took the possession of the land. The warrant of possession was also challenged before the High Court by a civil revision application which was clubbed to be heard with Writ Petition No. 184 of 1992. The respondents moved the High Court by Civil Application No. 2475 of 1995 seeking restoration of the possession. A number of legal proceedings between the parties ensued, which were all clubbed together by the High Court and disposed of by the common judgment, which is under appeal.

The High Court allowed the writ petition and set aside the order of the Maharashtra Revenue Tribunal and sustained the objections to the execution of the decree by holding that the decree passed in civil suit RCS No. 127 of 1977 was not binding against the present respondents (heirs of deceased Chavdas Totaram). The High Court has arrived at the categorical finding that the document executed in 1941, though styled in the nature of a sale deed, was really a deed of mortgage by conditional sale and, in any event, the said issue was not very material as the heirs of the mortgagee had consented to the decree of redemption being passed and thus had accepted that the transaction was one of mortgage and not sale. The High Court emphasized the fact that the present appellant had sought for and obtained a certificate under Section 88C of the Act, which had become final and binding on the parties. A certificate issued under Section 88C necessarily evidences that the land of the landlord has been leased to another person, that the total annual income of the landlord does not exceed Rs. 1500, and further that the land is exempted from the provisions of Sections 32 to 32-R of the Act. It is only after ascertaining these facts, that the Mamlatdar is required to issue a certificate in the prescribed form. In the instant case, such a certificate under Section 88C had been issued in favour of the appellant as landlord as against the First Respondent as a tenant. The High Court took the view that this certificate, therefore, was evidence of the fact that deceased Chavdas Totaram was a tenant of the appellant.

Placing reliance on the decision of this Court in *Dahya Lal and Ors. v. Rasul Mohammed Abdul Rahim*, the High Court was of the view that the First Respondent was "lawfully" in possession of the land and "lawfully" cultivating the land and, therefore, was a deemed tenant within the meaning of Section 4 of the Act. Consequently, the First Respondent continued to have the right as a tenant even after the redemption of the mortgage and extinguishment of the interest of the mortgagee in possession. The right of the First Respondent, which was originally derived from the mortgagee in possession, fructified into a full-fledged statutory right by reason of the provisions of the Act, because of his fulfilling the description of 'deemed tenant' within the meaning of Section 4 of the Act. On this reasoning, the High Court held that the First Respondent could not have been evicted from the land.

Contentions :

Learned counsel for the appellant strenuously contended that the view taken by the High Court was legally unsustainable. He strongly relied on the

judgment of this Court in Hanmanta Daulappa Nimbal v. Babasaheb Dajisaheb Londhe and urged that unless there was an express provision in the mortgage deed empowering the mortgagee in possession to induct a tenant, any person inducted on the land would be a trespasser and, therefore, not in "lawful" cultivation of the land. Consequently, such a person did not fulfil the requirements of Section 4 and did not become a deemed tenant of the land. The observations in Hanmanta case (supra) appear to support the contention. However, the attention of their Lordships does not appear to have been drawn to the earlier judgment of this Court in Dahya Lal (supra) rendered by a Bench of five learned Judges. Under somewhat similar circumstances, a mortgagee in possession had inducted the respondent as the tenant of the land. The question arose as to whether the respondent could be deemed to be a tenant within the meaning of Section 4 as "a person lawfully cultivating the land belonging to another person" and not falling within the excepted categories. This court rejected a similar argument by the following observation:

"It would therefore be difficult to assume in construing s.4 that the person who claims the status of a deemed tenant must be cultivating land with the consent or authority of the owner. The relevant condition imposed by the statute is only that the person claiming the status of a deemed tenant must be cultivating land "lawfully": it is not the condition that he must cultivate land with the consent of or under authority derived directly from the owner. To import such a condition it is to rewrite the section, and destroy its practical utility. A person who derives his right to cultivate land from the owners would normally be a contractual tenant and he will obviously not be a "deemed tenant". Persons such as licencees from the owner may certainly be regarded as falling within the class of persons lawfully cultivating land belonging to others, but it cannot be assumed therefrom that they are the only persons who are covered by the section. The Act affords protection to all persons who hold agricultural land as contractual tenants and subject to the exceptions specified all persons lawfully cultivating lands belonging to others, and it would be unduly restricting the intention of the Legislature to limit the benefit of its provisions to persons who derive their authority from the owner, either under a contract of tenancy, or otherwise. In our view, all persons other than those mentioned in cls. (a), (b) and (c) of s. 4 who lawfully cultivate land belonging to other persons whether or not their authority is derived directly from the owner of the land must be deemed tenants of the lands."

(emphasis ours)

The Court also rejected the argument by saying that the principle applicable under the Transfer of Property Act, 1882, namely, that the right of a tenant inducted by a mortgagee in possession ordinarily came to an end with the extinction of the mortgage by redemption, had no application in the interpretation of a statute which has been enacted with the object of granting protection to persons lawfully cultivating agricultural lands. It also emphasized that "a tenant of a 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." Then the Court added "it appears that 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." This judgment, in our view, really clinches the issue, but does not seem to have been noticed in the decision of the Bench of two learned Judges in Hanmanta case (supra). To the extent it suggests a view contrary to the judgment of the Constitutional Bench of this Court in Dahya Lal (supra), it is not good law.

Learned counsel also referred to Mahabir Gope and Ors. v.

Harbans Narain Singh and Ors. and Harihar Prasad Singh & Anr. v. Must. of Munshi Nath Prasad & Ors. . Both these judgments have been considered by a later judgment in Prabhu v. Ramdev & Ors. rendered by a Bench of five learned Judges. Prabhu distinguishes and explains Mahabir Gope (supra) and Harihar Prasad (supra). We may also noticed that Prabhu was a case arising squarely under the Transfer of Property Act, 1882, and considered the impact of Section 15 of the Rajasthan Tenancy Act, 1955, but was not concerned with the application of the Bombay Tenancy and Agricultural Lands Act, 1948 or any other equivalent Legislation. Even in Prabhu (supra), the view taken by the Revenue Board that the respondents, who had been inducted by the mortgagee in possession, were not trespassers, was upheld by this Court, by reason of the application of provisions of Section 15 of the Rajasthan Tenancy Act, 1955. Explaining away of the observations in Mahabir Gope (supra), the Court said:

"It must be remembered that these observations were made by reference to the normal relationship between the mortgagor and the mortgagee and their respective rights and obligations as determined by relevant provisions of the Transfer of Property Act. Having made these observations, however, this Court has taken the precaution to point out that even in regard to tenants inducted into the land by a mortgagee cases may arise where the said tenants may acquire rights of special character by virtue of statutory provisions which may, in the meanwhile, come into operation. A permissible settlement by a mortgagee in possession with a tenant in the course of prudent management and the springing up of rights in the tenant conferred or created by statute based on the nature of the land and possession for the requisite period, it was observed, was a different matter altogether. Such a case is clearly an exception to the general rule prescribed by the Transfer of Property Act."

The judgments in Jadavji Purshottam v. Dhami Navnitbhai Amaratlal and Ors. , The All India Film Corporation Ltd. and Ors. v. Sri Raja Gyan Nath and Ors. , and Carona Shoe Co. Ltd. and Anr. v. K.C. Bhaskaran Nair , and reliance on the judgment of learned Single Judge in Naravansa Dharamchandsa v. Laxman Motiram and Anr. are of no avail, in our judgment. The proposition of law laid down in Dahya Lal (supra) and reiterated by the other Constitutional Bench judgment in Prabhu (supra) still hold the field, notwithstanding the cited judgment of the Bench of two learned Judges which appears to make slight distinction on the basis of factual parameters.

Conclusion:

In the circumstances, considering the law laid down by the two judgments of the Constitutional Benches, we are of the view that the impugned judgment of the High Court can hardly be faulted.

In the result, we see no merit in the appeals and hereby dismiss the appeals. However, there shall be no order as to costs.