
(1983) 04 GUJ CK 0014
In the Gujarat High Court

Babar Manda

APPELLANT

Vs

Bhima Surji and Others

RESPONDENT

Date of Decision : 12-04-1983

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 43, 43

Citation : (1983) 2 GLR 926

Hon'ble Judges : A.S. Qureshi, J

Bench : Single Bench

Judgement

A.S. Qureshi, J.—In this second appeal the question of law formulated by the court is to the effect whether the lower appellate court had committed an error in treating the family arrangement as a partition and in holding that it had done so in violation of Section 43 of the Bombay Tenancy and Agricultural Lands Act. It has been submitted on behalf of the appellant that by a family arrangement the co-owner had divided the suit fields half to half, each one cultivating his half portion. Such an arrangement is not believed by the court below and the same is contrary to the provisions of Section 43 of the Bombay Tenancy Act. u/s 43 the joint owners of the Agricultural lands have to apply to the Collector for dividing the land. Only after the permission is granted by the Collector for such division and the land is actually divided by metes and bounds that each of the joint owners can be said to be in exclusive possession of his separate portion.

Till then, no joint owner can claim any specific portion as being in his exclusive possession.

2. There is nothing on the record to show that such a permission was sought for or granted by the Collector. There is a concurrent finding of fact by both the courts below that the plaintiff and the defendants are co-owners and in joint possession of the suit fields. Hence, both the courts below have held that the plaintiff was not entitled to the injunction sought for. The proper remedy for the plaintiff would be to apply to the Collector for separation of their interest in the suit field and giving them possession of their respective portions. There is no

substance in this appeal and the same is therefore dismissed. The judgment and the decree of the lower appellate court are confirmed. In the circumstances of the case, there shall be no order as to costs.