

(1965) 01 MP CK 0012

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 80 of 1964

Daryav Khema Beldar and others

APPELLANT

Vs

Rakhabdas Punamchand and others

RESPONDENT

Date of Decision : 08-01-1965

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Land Revenue Code, 1959 — Section 165(7)(a), 2(1)(i)

Citation : (1968) ILR (MP) 200 : (1968) JLJ 430 : (1968) MPLJ 418

Hon'ble Judges : P.K. Tare, J;H.R. Krishnan, J

Bench : Division Bench

Advocate : N.A. Phadke, for the Appellant;

Final Decision : Dismissed

Judgement

In this petition under Article 226 of the Constitution of India, the Petitioners assailed the order of Revenue Board holding that by virtue of Section 71 of the Madhya Bharat Land Revenue and Tenancy Act, 1950, they together as joint tenants were entitled to the exemption of 15 acres of land in all from attachment and sale in execution of the Respondents' decree.

The Petitioners' holding consists of 79.8 acres of land held jointly. The question, therefore, arises whether in a holding each one of the joint tenants is entitled to claim exemption of 15 acres of land individually, or the joint tenants collectively are entitled to the total exemption of 15 acres.

In this connection, it is to be noted that a similar provision has been made in Section 165(7)(a) of the M.P. Land Revenue Code, 1959 exempting five acres of irrigated land and ten acres of unirrigated land from attachment and sale in execution of a decree in stated circumstances.

There have been decisions of the Revenue Board taking the contrary view. In Nanuram v. Ganpat 1955 RN 113 it was held that each one of the joint tenants would be entitled to the exemption of 15 acres of land individually, while in

Babulal and Ors. v. Chkajjula 1954 RN 193, the Revenue Board held that all the joint tenants together would be entitled to the exemption of 15 acres. The learned Member of the Board of Revenue however, preferred the view of the Board as expressed in Babulal and Ors. v. Chhajjula(supra). It is unnecessary to refer to the later decisions of the Revenue Board concerning Section 165(7)(a) of the M.P. Land Revenue Code, 1959.

In this connection, we might further observe that there are two Single Bench decisions of the High Court on this point. Newaskar J. in Tarachad and Ors. v. Kalu and another Misc. Appeal No. 48 of 1964, dated 21-12-1964, with reference to Section 165(7)(a) of the M.P. Land Revenue Code, 1959, took the view that all the joint tenants together would be entitled to the exemption provided by the section; and not that each joint tenant would be entitled to it individually. The reasoning of the learned Judge was based on the definition of the word "holding" as per Section 2(1)(i) of the M.P. Land Revenue Code, 1959, which means a parcel of land separately assessed to land revenue and held under one tenure. We are in agreement with the view expressed by the learned Judge in the said case as the exemption granted is in respect of a holding, and not in respect of each individual joint tenant. As per the definition of the word "tenure-holder" as provided by Section 2(z) of the M.P. Land Revenue Code, 1959 it means a person who holds land from the State Government and who is or is deemed to be a Bhumiswami under the provisions of this Code. We agree with the view of Newaskar J. that in the case of joint tenants, they together would be considered to be tenure-holders, and not that each one of the joint tenants would be a separate tenure-holder. That would be the position so far as Section 165(7)(a) of the M.P. Land Revenue Code, 1959 is concerned.

So far as the position under the M.B. Land Revenue and Tenancy Act, 1950 is concerned, it is not different except for the fact that the limit of 15 acres of land was provided in that Act instead of the limit of 5 acres of irrigated land and ten acres of unirrigated land provided by the M.P. Land Revenue Code, 1959. The instant question came up for consideration before another Single Bench of this Court to which one of us (Tare J.) was a party, namely, Balmukund v. Gendalal and Ors. 1966 MPLJ 168 : 1966 J L J 232 (Misc. (Second) Appeal No. 27 of 1962, dated 13-7-1964). In that case two questions were mainly concerned, (i) whether each one of the joint tenants was entitled to claim exemption separately; and (ii) whether protection afforded by Section 71 (2) of the M.B. Land Revenue and Tenancy Act, 1950 could be available at a time when the said Act had been repealed and substituted by the M.P. Land Revenue Code, 1959. As regards the first question, the Single Bench expressed the same opinion as was done by Newaskar J. As regards the other question, the learned Judge followed the Division Bench case of Ithoha and two others v. Bhalchand and Anr. 1064 MPLJ 221 : 1964 J L J 606 (Letters Patent Appeal No. 9 of 1962, dated 12-4-63) (Jabalpur Bench) which followed the Supreme Court case of Ahmad Hafiz v. Mohd. Hassan Khan 1963 MPLJ 660 : 1963 J L J 657 (Civil Appeal No. 293 of 1961, dated, 4-3-1963). The said Division Bench case laid down that the

provision of Section 165(7)(a) of the M.P. Land Revenue Code, 1959 would be operative against any sale that may be sought to be effected after the Code came into force, although the attachment might be prior to the coming into force of the Code. The learned Judge further held that by virtue of Section 10 of the M.P. General Clauses Act, 1958, the exemption granted by the M.B. Land Revenue and Tenancy Act, 1950 could not be availed of by a judgment-debtor if the sale was sought to be held after the repeal of the said Act and its substitution by the Madhya Pradesh Land Revenue Code, 1959. Therefore, if the sale is held after the enactment of the M.P. Land Revenue Code, it will be Section 165(7)(a) of the said Code, which will be attracted, and not Section 71 (2) of the M.B. Land Revenue and Tenancy Act, 1950. However, that question may be considered by the authorities concerned when the sale proceedings are taken up. For the purposes of the present petition, we find that the view taken by the learned Member of the Board of Revenue is correct and in consonance with the view expressed by two Single Bench decisions of this Court. We would approve of the view expressed in the said Single Bench cases. Consequently, there would be no occasion to interfere with the order of the Board of Revenue.

This petition, therefore, falls and is dismissed summarily without notice to the other side.