
(1968) 09 BOM CK 0014
In the Bombay High Court
Case No : Spl. C. Application No. 930 of 1966

Gitabai

APPELLANT

Vs

Dayaram and others

RESPONDENT

Date of Decision : 04-09-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 109, 112
Constitution of India, 1950 — Article 226, 227

Citation : (1969) MhLj 838

Hon'ble Judges : N.L. Abhyankar, J

Bench : Single Bench

Advocate : J.N. Chandurkar, for the Appellant; V.R. Manohar, for the Respondent

Final Decision : Dismissed

Judgement

N.L. Abhyankar, J.—This is a landlord's petition under Article 227 of the Constitution. Dayaram, respondent No. 1, filed an application on 21-5-1963 before the Agricultural Lands Tribunal requesting that he should be declared a tenure-holder and purchaser of field No. 11, area 18 acres. 27 gunthas of mouza Munddhan. in Amravati district. He impleaded the respondent No. 2 Sukhdeo as a non-applicant to this application. Dayaram claimed that he had been holding the land as a tenant from before 1958-59, that he had acquired the rights of a tenant and was entitled to purchase the land and that he had made an offer of purchase by a notice on 5-12-1962. Along with the application, Dayaram filed a certified copy of the latest entry of the record-of-rights showing Sukhdeo as an occupant in column 9 and Dayaram as a protected lessee from 1952-53 to 1956-57 in column 11 of that document. It appears Sukhdeo preferred to remain absent but the present petitioner Gitabai filed an application for being impleaded as an additional party. The petitioner claimed that the field in dispute belonged to her, that it came to her from her mother as a legal heir and that the field had come to her mother by partition on 24-5-1954 of the family property. She also stated that the field was gifted to her by her brother Sukhdeo under a registered

gift deed dated 19-7-1954. Thus, as she was the owner of the field, she was a necessary party to this case. Dayaram agreed to implead the petitioner without prejudice to his rights, so that the petitioner may take part in the proceedings. On being impleaded, the petitioner filed a detailed written statement. In this written statement she disclosed that her mother Janibai became a widow on the death of Balkisan in 1930, that Sukhdeo, respondent No. 2, was adopted as a son after the death of Balkisan, that, the field was let out by Janibai to Dayaram in 1951-52 for one year and that she cultivated the field for the years 1951-52 and 1952-53. According to the petitioner, thereafter Dayaram relinquished possession of the field and that Janibai let out the field to Dayaram's brother Uttam for the year 1953-54 for cultivation. She also alleged that on 1-4-1933 he executed a batai patra in the name of Janibai and Janibai handed over possession of the field to him. She claimed that Dayaram did not acquire the rights of a protected lessee because the land was let out to him by Janibai who was a widow and a person under disability. It was further disclosed that Janibai died on 30-6-1954 leaving the petitioner as the only daughter. She also claimed that the estate of Janibai was stridhan property and the petitioner succeeded to it as her daughter. She also alleged that Janibai had made a will. She claimed that she had never let out the field to Dayaram and Dayaram's possession over the field was unauthorised.

2. All these adverse allegations were repudiated in the further statement filed by Dayaram. He specifically repudiated the alleged oral partition of February 1951 between Sukhdeo and Janibai. He also denied the partition of 1954. He claimed that he had acquired the status of a protected lessee because he had obtained the field from Sukhdeo.

3. Dayaram filed a copy of an order in a revenue case before the Sub-Divisional Officer determining the rent of the field at Rs. 100 on 5-2-1955. Sukhdeo was the non-applicant in these proceedings. He also filed copies of crop statements for the years 1952-53 and 1953-54 in both of which Dayaram alone was shown as cultivating the land on batai. Dayaram also filed crop statements showing his cultivation in the years 1961-62, 1962-63 and 1963-64 in which crop statements Sukhdeo continued to be shown as the occupant. Dayaram produced money-order coupon showing acknowledgment of receipt of lease-money by Sukhdeo on 7-6-1958, 19-3-1959, 5-3-1960, 6-3-1961 and 14-3-1962. He filed two more money-order receipts showing refusal of money-order by Sukhdeo in 1954. In addition, Dayaram filed receipts for payment of land revenue from 1959-60 to 1963-64.

4. As far as is evident from the record of the trial Court, the only document filed by the petitioner was the batai patra alleged to be executed by Uttam on 1-4-1953 scribed by one Madanlal and attested by two persons, Doma Maroti and Shrinivas the latter being the husband of the petitioner. At the trial Dayaram examined himself and the petitioner examined one Asaram and her husband Shrinivas.

5. The Additional Tahsildar before whom the proceedings were pending has recorded a finding that Dayaram was not the lawful tenant of the field, that Gitabai was the owner of the field and that the application was not therefore maintainable. It is strange that Gitabai who filed original documents like the partition deed of 1954 and the gift deed executed by Sukhdeo was allowed to take away those documents without leaving certified copies thereof on record. Courts are not empowered to allow parties to take away documents filed by them before the Court and in this regard the Courts below have acted in a grossly negligent and careless manner. Courts need not be reminded that they are exercising judicial power and the material or the documents on which their decisions are based must be available throughout the Us till the matter is finally decided. As tribunals of limited jurisdiction exercising exclusive powers under special Acts, there is a special responsibility cast on the presiding officers of the tribunals faithfully to observe these rules of procedure which are also rules of caution. If a party is allowed to file documents which influences the tribunal in arriving at its conclusion, it is not only fair but it is necessary that that document must continue to form part of the record throughout the proceedings. No party which has produced a document before the Court is ordinarily entitled to take away that document. Even assuming that there is an urgent need of taking away the original document, the least that can be insisted upon is that the party files a certified copy of that document. In fact, the original documents should not be returned until the lis is decided. The High Court exercises superintendence over the tribunals under Articles 226 and 227 of the Constitution and it is unfortunate that the revenue officers exercising jurisdiction in tenancy cases and cases under other Acts omit to take the elementary precaution of preserving faithfully and intact on their record all the documents which are riled by parties or are allowed to be filed by the Court. We are constrained to observe that this elementary precaution is not taken even in proceedings before the Maharashtra Revenue Tribunal. The Courts are enjoined that no presiding officer is empowered to allow a party to take back the documents filed by him normally without notice to the other side and without placing on record a certified copy of that document. If documents are of the nature of certified copies, there is no case for taking away the documents at all. Allowing documents to be taken away introduces a grave lacuna in the procedure and creates unnecessary handicaps in the appreciation of the material and the conclusions drawn therefrom, by the superior Courts.

6. The Additional Tahsildar had observed that Dayaram failed to prove that he had taken lease in 1952-53 from Sukhdeo and in making this observation, he apparently failed to consider the pere patrak for that year which is on record clearly showing by this independent evidence that the revenue papers showed Dayaram as in cultivating possession of the field under a least; from Sukhdeo whose name appears as the occupant in that document. The Tahsildar has also committed a gross error in interpreting the evidence of Dayaram so far as the batai patra is concerned. Dayaram, it appears having been shown the batai patra, has admitted that the signature appeared to be of Uttam. But this

admission is not tantamount to saying that Dayaram admitted that Uttam had executed the batai patra. It is one thing to admit the signature of a person on a document and quite another thing which has different legal implications to admit that that person whose signature is identified by the deponent has executed the document. Execution of a document is an act importing legal implications. That was not the question put to Dayaram and that was not the answer given by Dayaram. The inference drawn by the learned Additional Tahsildar therefore is wholly unwarranted.

7. The Tahsildar however observed, "It appears that this Uttam has put the applicant in possession of the land and relinquished his possession". This is an observation for which there is absolutely no warrant. But if that is the finding reached by the Tahsildar, it would at least show that Dayaram was in possession in 1954. It is on these observations that the Tahsildar recorded a finding that Dayaram failed to prove that he took the field on lease from Sukhdeo in 1953-54 and onwards. The Tahsildar has recorded another finding that the contention of Gitabai that the field came to the share of Janibai as a result of the oral partition in 1951 was corroborated by Asaram who said that oral partition was confirmed in 1954 by documents. It is an admitted position that there is a recital in the registered partition deed of 1954 which was executed on 24-5-1954. It is stated in no uncertain terms that till that date the parties to the document of the partition, namely, Janibai on the one hand and Sukhdeo on the other, were joint. With this admission of Janibai through whom the petitioner claims, it is difficult to see any basis for the conclusion which apparently seems to have been reached on a very superficial scrutiny of the material on record by the Tahsildar that there was an oral partition between Janibai and Sukhdeo in 1951. The theory of oral partition, it is contended by Dayaram, is put forward to negative his rights which he would otherwise acquire under the Berar Regulation of Agricultural Leases Act as a protected lessee if the lease is established to be given not by Janibai but by Sukhdeo. The fact to be proved was whether there was an oral partition in 1951. That fact is assumed in coming to the conclusion that Dayaram could not get the rights of a protected lessee in the face of the contrary admission in the partition deed of 1954. Asaram's oral testimony could not be accepted which ran in flat contradiction of the averment as to jointness of parties till the date of partition on 24-5-1954. The Tahsildar has also drawn an inference of Uttam being in possession merely from the batai patra dated 1-4-1953. The Tahsildar failed to see that even assuming that Uttam had executed a batai patra, evidence had still to be led to prove affirmatively that there was delivery of possession of the property to Uttam and that Uttam was cultivating the land. The crop statement for 1953-54 runs counter to this claim of the petitioner and there is no oral evidence on record to show that the land was actually given in possession of Uttam or that he cultivated it. To draw an inference of actual possession and cultivation merely from the fact of the batai patra bearing the signature of Uttam leaves much to be desired in coming to that conclusion. There is no evidence in fact that Dayaram had given up possession when the alleged batai patra was

executed by Uttam. The argument suggesting such an event is again without any basis. The Tahsildar had found fault with Dayaram when he stated that he considered Sukhdeo as the owner of the property. The Tahsildar failed to see that so far as Dayaram was concerned, no notice was given to him either after partition or after the gift, that Sukhdeo made a gift of the property in favour of the petitioner. Normally, the tenant in possession is entitled to this notice. A transaction in the privacy of home between brother and sister, though under a registered document, could not possibly be construed as notice to the world when no overt steps were taken by the persons concerned that the person creating a right or the person acquiring the right gave a notice that there was change of ownership. It was the duty of both Sukhdeo and the petitioner to give such a notice to Dayaram as Dayaram was in possession of the property. Apart from this glaring omission, the Tahsildar altogether failed to notice the implication of the fact that throughout the revenue records of which he is the custodian continued to show Sukhdeo as the occupant and owner of the field. In the face of the name of Sukhdeo being shown in the record-of-rights as well as the crop statement as the occupant of the field, it is difficult to see that any blame could be fastened on Dayaram for treating Sukhdeo as the owner of the property. It will be seen that Sukhdeo did not try to correct the impression of Dayaram even in the proceedings commenced in 1955 for determination of fair lease-money. It is said that Sukhdeo preferred to remain absent and the order was passed ex parte. The service, it is alleged, was also by substituted service. All this conduct on the part of Sukhdeo however cannot make Dayaram responsible if he continued to hold that Sukhdeo was the owner of the property in the absence of any direct knowledge attributed to Dayaram about the change of ownership. If Sukhdeo was really having nothing to do with the land either on his own behalf or on behalf of the true owner, namely, his sister Gitabai, it is difficult to see how Sukhdeo would continue to receive the rent sent by money-order from Dayaram. There are money-order receipts from 1959-60 showing payment of rent to Sukhdeo. As an honest person, Sukhdeo should have either refused the money-orders or put Dayaram wise as to the proper person who was entitled to receive rent. For this conduct of Sukhdeo, which it is not suggested was in a sense collusive, Dayaram cannot be held responsible. There was no such suggestion in the pleadings in the lower Courts and it is difficult to hold that Sukhdeo could be colluding with Dayaram to the detriment of the interests of his sister. Again the inference drawn by the learned Tahsildar from the entry in the copy of the record-of-rights showing Sukhdeo as the occupant on account of the death of Janibai that he was not the owner till that date is a gross misreading of the record. The Tahsildar had before him at least till he passed the order the partition deed of 24-5-1954. Janibai had become the owner of the property as a result of this partition and it was only because of this document that Janibai's name must have come to be recorded as the owner, and after her death, naturally the field was again mutated in the name of Sukhdeo. To draw any other inference would be a gross perversion in the face of the documents on record. The learned Tahsildar¹ seems to have failed to keep in mind the elementary rule

that when the competition was between an assertion of oral admission and the written document containing admission of both the parties that they were joint till 1954 he should not have persuaded himself to hold that there was an oral partition between Janibai and Sukhdeo in the face of the admissions in the written partition deed of 1954. The observation of the Tahsildar that the applicant had not filed the crop statements of 1951-52 onwards to show that he was in possession in 1951-52 or till 1952-53 is to say the least un-understandable in the face of these documents on record being very much in the record. Either the Tahsildar has chosen simply to ignore the existence of these documents or has come to make these observations in spite of them. The Tahsildar seemed to think that it is only the crop statements for the year 1961-62 to 1963-64 which were on record showing the possession of Dayaram, forgetting that there were documents of the previous periods 1951-52 to 1953-54 also. The Tahsildar also observed that it was the duty of Dayaram to examine Sukhdeo who received rent sent by money-orders because it was Sukhdeo who could have explained it, and in the absence of Sukhdeo, he observed that not such weight can be attached to the money-order receipts. Between the petitioner and Dayaram, Sukhdeo was much nearer to the petitioner, being her brother. It was he who had gifted the property and dealt with the property in spite of the gift. If an adverse inference were to be drawn on account of absence of Sukhdeo from the witness-box, it is difficult to hold that it could be against Dayaram. The further observation that Dayaram did not give lease-money of 1958-59 to anybody is again not correct as the Tahsildar has not taken into account the money-order receipt dated 19-3-1959 under the hand of Sukhdeo. The learned Tahsildar has referred to the evidence of Shrinivas, the husband of the petitioner. Even a cursory perusal of that evidence would have shown to the Tahsildar that in paragraph 16 he unequivocally admitted that in 1954 when Sukhdeo executed the gift deed the field was not in his possession but was in possession of Dayaram and the further admission of the witness that till 1954 i.e. till the death of Janibai, Gitabai had no concern and that he did not know whether Dayaram's possession till 1954 was legal or illegal. If nothing else, this statement at least amounts to an unequivocal admission that in 1954 Dayaram was in cultivating possession of the property though the petitioner's witness stated it was unauthorised.

8. On the observations noticed above, the Tahsildar recorded a finding that the application was not maintainable by Dayaram and he was not entitled to purchase the property.

9. Dayaram challenged this order by an appeal before the Sub-Divisional Officer. That officer has dismissed the appeal. It may be mentioned that after securing the order from the Tahsildar, the petitioner filed an application u/s 120 (c) of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, claiming possession of the field from Dayaram on the ground that he was in unauthorised possession. The sheet-anchor of this application naturally was the order made by the Tahsildar referred to above. This application and the appeal were apparently considered together and were disposed of on the same day. After referring to the

rival contentions of the parties, the appellate authority posed certain questions which according to it arose for decision in the appeal, namely-

- (i) Whether the lower Court was acting without jurisdiction ?
- (ii) Whether the oral partition of the year 1951 was proved ? and
- (iii) Whether Dayaram proved his tenancy of the field which entitled him to purchase the field in question ?

We are not concerned in this case with the question of jurisdiction as that is no longer in dispute. It is the findings on the other two issues which are however a matter of debate.

10. On the question whether there was an oral partition in 1951, the appellate authority, referred to the evidence of Asaram to that effect which it seems to have preferred and explained away the admission to the contrary in the partition deed which mentioned that the property was jointly hold by them till that date by saying that that admission did not mean that separate shares were not apportioned earlier. The appellate authority has further sought support to this conclusion from the fact that in 1953 a batai patra alleged to be executed by Uttam in favour of Janibai came to be made. The reasoning which has found favour with the appellate authority was that because there was a batai patra, it must lead to the conclusion that there was a previous partition. The appellate Court has fallen into the same error as the Tahsildar in interpreting the entry in the record-of-rights showing the name of Sukhdeo as the occupant and having acquired this right as a heir after the death of Janibai from 30-6-1954. The appellate Court also failed to remember that Janibai had become the owner of this field as a result of partition between Sukhdeo and Janibai on 24-5-1954, and after her death her son Sukhdeo was rightly recorded as the occupant. But this fact does not and could not lead to an inference that Janibai was all along the owner of the property in the face of the record-of-rights showing the name of Sukhdeo as the owner prior to 1954. It appears that there was a sale of field survey No. 18/1 of Wagholi on 9-4-1953 on which document of sale both Janibai and Sukhdeo appended their signatures. If Sukhdeo's name appeared as the executants of the sale deed, it would be wholly inconsistent with Janibai alone being the owner of the property or owner of the property at all, on this date. The reasoning which found favour with the learned appellate authority in paragraph 13 with regard to this circumstances is, to say the least, difficult of proper apprehension. Similarly, the statement in paragraph 15 about the admission of signature of Uttam on the batai patra is tantamount to admission of execution of the batai patra is the repetition of the same mistake committed by the Tahsildar in interpreting this document. In paragraph 18 the appellate authority has observed that the oral partition of 1951 was reiterated by the written partition deed executed in the year 1954-a statement which is wholly in contradiction of recitals of the partition deed of 24-5-1954. Now any authority acting judicially could come to such a conclusion is difficult to understand in the face of the

recitals in the partition deed. On such observations, the appeal came to be dismissed.

11. The matter was therefore taken up at the instance of Dayaram before the Revenue Tribunal. The Tribunal being fully cognizant of the limitations of its powers as a revisional authority, to which a reference is made in the order itself, has reversed the findings of the lower authorities and held that Dayaram had established his status as a tenant. The Tribunal rightly observed that the main issue involved was whether Dayaram was a protected lessee and a tenant of the field in dispute. It was only if he was a tenant that he would be entitled to purchase the field. It may be mentioned that two revisions had been filed before the Tribunal, one against the appellate order and the other against the order of summary eviction of Dayaram in proceedings u/s 120 (c) of the new Tenancy Act filed before the Sub-Divisional Officer.

12. The Tribunal pointed out that the Courts below had totally ignored the material evidence, namely, the inference to be drawn from the crop statements for the years 1952-53 and 1953-54 which were on record and which showed not only cultivating possession of Dayaram as a tenant but also the status of Sukhdeo as occupant of the fields. The Tribunal also correctly pointed out that the mutation in the name of Janibai as a result of a partition dated 24-5-1954 which was effected on 4-6-1954 had necessarily to be followed by further mutation in the name of Sukhdeo after her death on 30-6-1954. If Sukhdeo was the owner of the property in 1952-53 and 1953-54, then Dayaram must necessarily have acquired the rights of a protected lessee under the Leases Act on account of his cultivating possession, in those two years. The specious argument that there was an oral partition in 1951 and therefore Janibai had become the owner of the property in 1951 could not be countenanced in the face of the registered partition deed of 1954 which contained an unequivocal admission that till the date of that partition the parties were joint. In paragraph 12, the Tribunal pointed out that there was no evidence to show that Uttam had ever cultivated the field in 1953-54 or at any time. Thus, this is a case where the finding about Uttam being the tenant is reached without evidence as to actual cultivation. I have already observed that mere production of a document of batai patra alleged to contain the signature of Uttam cannot lead to an inference of Uttam's cultivation. For that affirmative evidence had to be led before the Court from which an inference of actual cultivation had to be drawn. No such inference is drawn. If Sukhdeo alone was the owner of the property in 1953, it is another fact entirely omitted from consideration by the lower authorities. Even the execution of the batai patra could not clothe him with any rights in the property because the batai patra was in favour of Janibai who had no interest in the property as owner. This finding that Sukhdeo was the owner of the property cannot be displaced and cannot be shown to be wrong. The batai patra which appears to be the sheet-anchor of the case of the petitioner is of no assistance in establishing her case. The Tribunal also pointed out that throughout the conduct of Janibai and Sukhdeo vis-a-vis Dayaram was of acquiescence in the cultivation

and possession of Dayaram. If Dayaram was at any time in unauthorised occupation of the land as squatting or trespasser, it is difficult to believe that neither of them could have taken steps to oust him. On the contrary the conduct of Sukhdeo in receiving rent and acknowledging his right on land goes to show that the owner of the property was aware of the rights of Dayaram and had not raised his little finger against him. It is complained that no rent receipts are filed for the years 1952-53 and 1953-54, It must be remembered that the dispute was raised in 1963 and ordinarily agriculturists are not expected to retain receipts of payment long after they are made. Even persons given to keep regular accounts and papers find it difficult to maintain records after decades. In paragraph 16, the Tribunal has pointed out that the circumstances, documents and the inferences to be drawn from documents which are inferences of law have been completely ignored by the lower Court who had, as it were, gone off at a tangent in upholding the claim of the petitioner that there was an oral partition in 1951 and therefore Dayaram could not acquire any rights. If there is no basis for that finding, and I have not been shown any material or document from which such an inference could be drawn, the orders of the revenue authorities could not possibly be sustained. In my opinion, they have rightly been reversed and the only inference that can be drawn has been recorded by the Tribunal.

13. It is however seriously contended that the Tribunal has acted in excess of its jurisdiction in reversing the finding of the two Courts and especially the appellate authority as to the status claimed by Dayaram. It is urged that whether Dayaram had proved that he was a tenant is essentially a question of fact and however erroneous - assuming that there is error - the finding may be the Tribunal had no jurisdiction to interfere with such a finding. In my opinion, this contention is not well founded. It is true that in reaching a conclusion about the jural relationship like that of landlord and tenant in this case, certain facts are required to be established, and so far as the facts to be established lead to an inference of fact, that may be a finding which is binding on the superior authorities. But if the inference reached itself is without evidence, then it is open to the revisional authority to find what the evidence is in order to come to a proper conclusion as to the jural relationship. Moreover the question of status of Dayaram who claimed to be a tenant on land and a protected lessee is not a pure question of fact, nor is it dependent on an inference from fact. It is a question of law and/or at any rate, a mixed question of law and fact. If any authority is needed for this proposition, it is only necessary to refer to a few precedents. In *Medavarapu Narasayya Vs. Medavarapu Veerayya and Others*, it has been held that the question as to whether a certain legal position is created as between the parties as the result of a certain transaction is a matter of law, and hence the question whether the relationship of landlord and tenant existed between the defendants and the plaintiff is one of law and not of fact. Reference is made to the decision of the Privy Council in *Salgar Prasad v. Raj Kishore Lal* A I R 1919 P C 60. A similar view was taken in the Allahabad High Court recently in *Ram Prakash Vs. Shambhu Dayal Agarwal and Another*, wherein the Court observed:

Whether the facts found by the lower Court constitute a relationship of sub-tenancy or of landlord and tenant between the parties is a question of law, and if the lower Courts have come to an erroneous conclusion on this point, the High Court can interfere in Second Appeal.

There is another decision of the Privy Council in AIR 1927 102 (Privy Council) laying down that the proper effect of a proved fact is a question of law and the question whether a tenancy is permanent or precarious is one of a legal inference from facts and not itself a question of fact. This decision was followed by the Supreme Court in *Bejoy Gopal v. Pratul Chandra* AIR 1954 Bom. 100 = I L R 1953 Bom, 969=55 Bora. L R 663. In that case the question arose under sections 109 and 112 of the Code of Civil Procedure, there being concurrent finding that the tenancy is permanent. The appellant urged that the appeal was not concluded by the concurrent finding of the Courts below that the tenancy was permanent because that question was one of the proper inference in law to be deduced from the facts as found by the Courts below. This contention was accepted.

14. In this Court, a similar view has been taken when the matter was referred to a Division Bench, in *Dhondi v. Dadoo* AIR 1954 Bom. 100 = I L R 1953 Bom, 969= 55 Bora. L R 663. In his order of reference, Mr. Justice Shah (as he then was) has observed:

It is true that an inference as to permanent tenancy is a mixed question of law and fact and could be raised in second appeal. But the facts found from which the inference in favour of a party claiming to be a permanent tenant is sought to be raised must be regarded as binding in second appeal, though the question as to what inference should be raised from those facts must be regarded as a question of law.

A similar view has been taken in oilier High Courts also.

15. Where, therefore on facts which could be said to be established, an inference as to the jural relationship between the parties viz. that of landlord and tenant, is required to be drawn, the jurisdiction of the revisional authority cannot be denied on the ground that it is interfering with the finding of fact. The inference being a legal inference to be drawn from proved circumstances, it was open to the Tribunal to record a finding. There was a further infirmity in reaching the finding, namely, the total absence of evidence regarding the oral partition or the letting of land or cultivation of land by Uttam which was the sheet-anchor of the petitioner's case, the total exclusion from consideration of other documents on record such as the crop-statements of 1952 and 1953-54 which proved the cultivating possession of Dayaram from Sukhdeo who was shown as occupant, and a wholly erroneous inference is drawn from the mutation entry in the record-of-rights in coming to the conclusion that Janibai was the owner of the property from whom Sukhdeo obtained the property after her death, ignoring altogether the intervening fact of the partition of the property under which alone Janibai had

been granted this field.

16. On a consideration of all the circumstances of the case, therefore, I have come to the conclusion that the Tribunal has properly exercised its jurisdiction and has arrived at the conclusions which cannot be successfully challenged. The result is that the petition fails and is dismissed with costs.

17. A grievance is made that Dayaram was dispossessed on the very next day of the order of the Sub-Divisional Officer holding that he was in unauthorised possession without giving any opportunity or time to Dayaram to secure stay of that order. Such indecent haste unnecessarily gives cause for complaints against, the proper administration of justice. The authorities would have been better advised to avoid occasion for such complaints. As Dayaram succeeded, Dayaram may be restored to possession as early as possible.