

(1955) 09 BOM CK 0054

In the Bombay High Court

Case No : Special Civil Application No. 1145 of 1955

Gordhanbhai Lalbhai

APPELLANT

Vs

K.C. Sen and Others

RESPONDENT

Date of Decision : 12-09-1955

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 34
Constitution of India, 1950 — Article 227

Citation : AIR 1956 Bom 240

Hon'ble Judges : Vyas, J;Dixit, J

Bench : Division Bench

Advocate : J.M. Barot and M.R. Baroa, for the Appellant; D.V. Patel, for the Respondent

Judgement

Dixit, J.—The applicant applied u/s 34, Bombay Tenancy and Agricultural Lands Act, 1948, to recover from Opponent No. 3, possession of the lands in dispute on the allegation that he required them for personal cultivation. The Mamlatdar made an order in his favour, but the tenant appealed and upon appeal, the Prant Officer, Baroda, set aside the order of the Mamlatdar and directed the application of the applicant to be dismissed. From that order the applicant went in revision before the Bombay Revenue Tribunal and that Tribunal confirmed the order of the Prant Officer.

2. Upon this application under Article 227 of the Constitution of India, Mr. Barot appearing for the applicant contends that the Bombay Revenue Tribunal was wrong in refusing his application, Now the applicant filed the application u/s 34 on the footing that he was the son of one Lallubhai Somansing manager of the estate of the heirs of Nanabhai Bhogibhai. It is admitted that in respect of the estate of Nanabhai there are as many as 30 to 32 sharers.

Under Section 34 to enable a person to make an application for possession, it must be shown that he is in possession of lands less than fifty acres. If the applicant is suing as an individual, then he must show that the lands in his

possession are less than fifty acres. But, admittedly, the applicant is not suing as an individual. He is suing on behalf of a body of co-sharers. Again, if the application is made by one who is the manager of a joint Hindu family, it is for the applicant to show that the lands in his possession are less than fifty acres.

There is no dispute that the present application does not apply to the case of the manager of a joint Hindu family. The only question, therefore, is whether the applicant as the son of Lallubhai Somansing, manager of the property of the heirs of Nanabhai, is entitled to make this application. Now, the Tribunal has taken the view that it was not shown that the applicant was the manager of the joint Hindu family, and clearly that case does not arise.

The only question then is whether it is shown that the applicant has a right to file the application u/s 34 and he can do so only if it is shown that each of the 30 to 32 co-sharers "has in his possession lands less than fifty acres and unless that is shown, the applicant is not entitled to make the application u/s 34, That was the view taken by the Bombay Revenue Tribunal and we think that view is right. Consequently, there is no reason to interfere with that order.

3. The application, therefore, fails and the rule will be discharged with costs.

4. Application rejected.