
(1961) 03 BOM CK 0017

In the Bombay High Court

Case No : Special Civil Application No. 1251 of 1960

Jainabai Haji Ramjan Shaikh

APPELLANT

Vs

Bakaji Bhau Mandalik

RESPONDENT

Date of Decision : 28-03-1961

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32, 88C(1)

Citation : (1961) 63 BOMLR 657 : (1961) NLJ 71 : (1961) NLJ 474

Hon'ble Judges : H.K. Chainani, C.J;Chandrachud, J

Bench : Division Bench

Judgement

H.K. Chainani, C.J.—The facts giving rise to this application are that the petitioner's husband Haji Bamzau Shaikh was the owner of survey No. 785. Opponent No. 1, hereinafter referred to as the opponent, is the tenant of this land. The petitioner's husband died about seven years ago, leaving behind the petitioner, two sons and one daughter. Thereafter the names of all the heirs were entered in the record of rights. Subsequently the petitioner's name alone was shown as the Kabjedar, but as manager of the joint family. In 1958 the petitioner made an application to the Mamlatdar for obtaining a certificate u/s 880 of the Bombay Tenancy and Agricultural Lands Act, 1948, The Mamlatdar came to the conclusion that the income of the petitioner was less than Rs. 1,500. He, therefore, directed the issue of a certificate to her. The opponent appealed to the Assistant Collector. The Assistant Collector took the view that the petitioner and her two sons were members of a joint family and that as their total income exceeded Rs. 1,500, the petitioner was not entitled to an exemption certificate u/s 88C. He, therefore, set aside the order made by the Mamlatdar. The petitioner challenges the correctness of the view taken by the Assistant Collector.

2. The Mahomedan law does not recognise a joint family and consequently the view taken by the Assistant Collector, that the petitioner and her sons are members of a joint family, is erroneous. After the death of her husband the petitioner and each of the other heirs became entitled to a specific share in the

land held by the opponent as a tenant. They held the land as tenants-in-common and not as joint tenants. The question for determination is whether the income of all of them or of the petitioner alone should be taken into consideration in order to decide whether the petitioner is entitled to an exemption certificate u/s 88C.

3. Section 32 of the Act provides that on the 1st day of April 1957, every tenant shall be deemed to have purchased from his landlord, free from all encumbrances subsisting thereon on the said date, the land held by him as a tenant, subject to the other provisions of this section and the provisions of the next succeeding sections. The following sections upto Section 32R provide for determination and payment of purchase price and other incidental and consequential matters. Sub-section (1) of Section 88C runs as follows:

Nothing in Sections 32 to 32R...shall apply to lands leased by any person, if...the total income of such person including the rent of such land, does not exceed Rs. 1,500.

Sub-section (2) of this section states that every person eligible to the exemption provided in Sub-section (1) shall make an application to the Mamlatdar for a certificate that he is entitled to such exemption. Sub-section (3) provides for an inquiry being held by the Mamlatdar. Sub-section (4) states that if the Mamlatdar decides that the land is so exempt, he shall issue a certificate in the prescribed form to such person.

4. The object of Section 88C is to exempt small landlords from the operation of Section 32. If any landlord proves to the satisfaction of the Mamlatdar that his income is less than Rs. 1,500, he will be granted a certificate exempting the lands leased by him from the provisions of Sections 32 to 32R and the tenant will not become the owner of those lands. The income, which is to be taken into consideration, is the income of the person, who had leased the land, in respect of which exemption is sought. If the land belongs to one individual, his income will be the material factor for deciding whether a certificate should be issued to him. If the land belongs to a joint family, the income of the joint family will have to be considered. If the land is owned and is let by a number of persons, the word "person" in the expression "leased by any person" in Sub-section (1) of Section 88C would mean and include all the persons, who own the land and who have given it on lease. If they hold the land as tenants-in-common, every one of them will have a defined share in the land, but until the land is partitioned, none of them can be said to be the owner or landlord of any specific part of it. Every one of them has an interest in every part of the land. All of them collectively are the landlords and the tenant is responsible for payment of rent to all of them. No one co-owner can be said to have leased any particular part of the land and consequently he cannot make an application for exemption of any part of the land from the provisions of Sections 32 to 32R. Any application by him for exemption from the applicability of Sections 32 to 32R must be in respect of the whole land, in which he has an undivided share. The income, which will consequently have to be taken into consideration, will be the income of all the

persons, who own or who have leased the land jointly. This will be the position, whether the co-owners are Muslims or Hindus or belong to any other community.

5. In the present case, after the death of the petitioner's husband, the petitioner and the other heirs of her husband became entitled to certain defined shares in the land. These shares have not yet been divided. The petitioner cannot, therefore, be said to be the landlord of any specific part of the land. She and the other heirs are all together the owners and the landlords of the land. They all together will be deemed to have leased the land and the income of all of them will have to be taken into consideration for deciding whether the land is exempt from the provisions of Sections 32 to 32R. It is not disputed that the total income of the petitioner and other heirs exceeds Rs. 1,500. No exemption certificate in respect of the above land can, therefore, be issued u/s 88C.

6. Rule discharged. No order as to costs.