

(1950) 08 GUJ CK 0001

In the Gujarat High Court

Case No : Civil Revision Application No. 13 of 1950

Mangal Singh Sardar Singh

APPELLANT

Vs

Popat Thakarshi and Another

RESPONDENT

Date of Decision : 02-08-1950

Acts Referred:

Saurashtra Mamlatdars Courts Act — Section 2, 4, 4(1), 61

Citation : AIR 1950 Guj 23

Hon'ble Judges : H.V. Divatia, C.J.; S.J. Chhatpar, J

Bench : Division Bench

Advocate : Bapubhai M. Buch and V.G. Hathi, for the Appellant; S.C. Joshi, for Opponent No. 1 and C.N. Shah, General, for the Respondent

Judgement

Divatia, C.J. and Chhatpar, J.—This is a revision application filed by the original applicant Jadeja Mangalsingh. Sardarsingh against the dismissal of his application by the Collector, Madhya Saurashtra District. The applicant had originally filed his petition before the Mahalkari of Lodhika under the "The Saurashtra Mamlatdars" Courts Ordinance, 1948, for taking possession of certain lands from the opponent Patel Popat Thakarshi. The Mahalkari returned the application on the ground that it did not fall within the purview of the Mamlatdars" Courts Ordinance. The petitioner filed a revision application against that order before the Collector, Madhya Saurashtra District, who upheld the order. The reasons given by him were that the relationship between the parties was that of a landlord and a tenant, and the applicant had given a notice to the opponent under ordinance XXII [22] of 1948, which could only be on the basis of a subsisting tenancy. Thereafter the "Saurashtra Gharkhed Tenancy Settlement and Agricultural Lands Ordinance", XLI [41] of 1949, was promulgated, and possession of land can be claimed under the appropriate provisions of one of these two Ordinances, and not under the Mamlatdars" Courts Ordinance. The application for possession had been filed before Ordinance XLI [41] of 1949 had come into force. The Mahalkari, therefore, had no jurisdiction to hear the application under the Mamlatdars" Courts Ordinance.

2. It is contended by Mr. Bapubhai Buch on behalf of the applicant that the opponent is not a tenant. He had passed a document in favour of the applicant for a fixed period, and he continued to remain on the land without any right thereafter. He was thus a trespasser, and a suit for eviction can, therefore, lie under the Mamlatdars' Courts Ordinance only, and not under the Gharkhed Ordinance. It is urged that u/s 2(u) of ordinance XLI [41] of 1949 a "tenant" means an agriculturist who holds land on lease and includes a person who is deemed to be a tenant under the provisions of this Ordinance, and u/s 4, a person lawfully cultivating any land belonging to Anr. person shall be deemed to be a tenant if such land is not cultivated personally by the owner, etc. The argument is that as the tenant was a trespasser, he was not lawfully cultivating the land, and therefore, there was no relationship of landlord and tenant between the parties. It is further urged that the Mamlatdars' Courts Ordinance which was passed in November 1948, has not been repealed by ordinance XLI [41], and that therefore, where the tenant is a trespasser, proceedings can lie only under the Mamlatdars' Courts Ordinance, and not under the Gharkhed Ordinance. This argument overlooks the material fact that after the Ordinance XXII [22] promulgated on 22-5-1948, but before the Gharkhed' Ordinance was promulgated on 8-7-1949, Anr. Ordinance called "The Saurashtra Temporary Postponement of Eviction Ordinance XXVIII [28] of 1949 was promulgated on 28-8-1949. This Ordinance specifically provides that notwithstanding anything contained in the Saurashtra Protection of Tenants Ordinance, XXII [22] of 1948, a notice given by a landlord to his tenant before or after the commencement of this Ordinance, under Sub-section (1) of Section 4 of the said Ordinance, shall not be deemed to terminate tenancy. In the present case, the applicant gave a notice to the opponent in September 1948 to hand over possession of the land on 1-4-1949, and before that date arrived, Ordinance XXVIII [28] of 1949 came into force on 28-8-1949. It would, therefore, follow that by virtue of the provisions of Ordinance XXVIII [28] the applicant's notice would not terminate the tenancy between the parties. The fixed period under the document of tenancy had not expired when ordinance XXVIII [28] came into force. It is true that ordinance XXVIII [28] was repealed by ordinance XLI [41] of 1949, which was promulgated on 8-7-1949, but on that date the opponent was in possession of the land, and u/s 4 of ordinance XXVIII [28] he must be deemed to be a person lawfully cultivating the land, and therefore, he must be deemed to be a tenant as such, The repeal of ordinance XXVIII [28] would not have the effect of making the opponent's possession unlawful, because the repeal of that Ordinance and the enactment of ordinance XLI [41] were simultaneous in time. As the opponent's possession was lawful, the relationship between the parties would be governed by the provisions of Ordinance XLI [41] and u/s 61 of that Ordinance, the Mamlatdar can decide all questions mentioned in that section, but in doing so, he has to act under that Ordinance, and not under the Mamlatdars Courts Ordinance. Moreover, even though the opponent had remained in possession of the land after the expiry of the fixed period, he was really holding over; and can, therefore, be regarded as a tenant on sufferance, and not a

trespasser, but even apart from that his possession was lawful u/s 4 of ordinance XLI [41] which alone would govern the relationship between the parties. For these reasons, the order of the lower Court is correct, and the application is dismissed with costs.