
(1994) 09 SC CK 0124

In the Supreme Court Of India

Case No : Civil Appeal No. 605 Of 1976

Rambhai Lallubhai Patel and Others

APPELLANT

Vs

Bai Kamla and Others

RESPONDENT

Date of Decision : 06-09-1994

Acts Referred:

Citation : (1995) 3 SCC 615 Supp

Hon'ble Judges : P. B. Sawant, J; Faizan Uddin, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. APPLICATION for amendment of the cause title is allowed.

2. The appellant in this case is admittedly a tenant on the suit land. His right to purchase the suit land under Section 326 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the "Act") was deferred since on the relevant date, the landlady was a widow. She died in 1961. Although it is the case of the appellant-tenant that within the requisite time, thereafter, he made an application to initiate the proceedings under Section 326 of the Act, this claim is disputed on behalf of the respondent-landlady. It is not necessary to refer to this controversy since, as is pointed out hereafter, in view of the provisions of Section 32-F(1-A) such an application was not necessary to be made by the tenant. It appears that one Kalidas (Respondent 4 on behalf of the minor Ashok Kumar, a grandson of the deceased landlady through one of her three daughters, Savita, set up a will dated 6/8/1966 whereunder the suit lands were alleged to have been bequeathed to him. He also claimed to have obtained Letters of Administration of the estate of the widow including the suit land. There may be some truth again in the contention of the tenant that although he made an application under Section 32-G of the Act the same was not considered because of the will and the Letters of Administration which were produced on behalf of Respondent 4. Whatever that may be, it appears that thereafter on 24/6/1969, Ashok attained majority and terminated the tenancy of the appellant and started

proceedings for recovery of the suit land under Section 29(2) of the Act.

3. IN the meanwhile, the tenant made yet another attempt for the purchase of the land under Section 32-G which has given rise to the present proceedings. This application was dismissed by the Tenancy Mamlatdar on 21/2/1970 on the ground that the date of the statutory purchase was postponed till 24/6/1970, i.e., till after the expiry of one year after the minor Ashok Kumar attained majority. The tenant challenged this decision before the Deputy Collector in appeal. The Deputy Collector confirmed the decision of the Mamlatdar on the ground that the Tenancy courts could not go into the question of the validity of the Letters of Administration. The tribunal rejected the revision of the tenant which decision was confirmed by the High court in the writ petition Filed by him under Article 227 of the Constitution.

4. The learned counsel appearing for the appellant-tenant raised two questions of law in view of the relevant provisions of the Act. The first was whether in view of the provisions of Section 31-A(d) the grandson of the widow-landlady, viz., the minor Ashok Kumar could at all be considered a landlord and if not, whether the appellant had not become the statutory purchaser under Section 32-G read with Section 32-F(1-A) automatically after the death of the widow-landlady. The second question was whether under the Act, the statutory date of purchase under Section 32-G could be postponed more than once and if not whether the tenant would become the statutory tenant after the death of the first disabled landlord or the landlady, as the case may be. It is not necessary for us to examine the second question since as is pointed out hereafter, the appellant is entitled to succeed on the first point and if he does so, the second question does not survive for consideration.

5. The provision of Section 31 -A(RF) reads as under:

"31-A. (d) The land leased stands in the record of rights or in any a public record or similar revenue record on the 1st day of January, 1952 and thereafter during the period between the said date and the appointed day in the name of the landlord himself, or of any of his ancestors but not of any other predecessor-in-title from whom title is derived, whether by assignment or court sale or otherwise, or if the landlord is a member of a joint family, in the name of a member of such family."

6. IT is clear from the aforesaid provision that it is only those who derive title from their ancestor landlord by way of intestate succession who are the landlords within the meaning of the Act and entitled to terminate the tenancy of the tenant under the provisions of Section 31-A and apply for possession under Section 29 thereof. In the present case, the ownership of the land is claimed on the basis of a will. Such ownership is not recognised for the purpose of Section 31-A in view of the aforesaid clear provisions of the Act. This view of ours is supported by the decision of this court in Tarakprasad Rajaram (Dr) v. Vesta Vkara which is on all fours of the facts of the present case. In spite of this, however, Mr Mehta,

learned counsel appearing for the respondents contended that the legatees under wills are not covered by the exception made in the aforesaid provision. He contended that the exception covers cases of only those who are transferees and since a legatee is not a transferee, but a successor in d interest by testament he would be a landlord for the purposes of S. 31 -A and 29 of the Act. We are afraid that this contention is the result of the wrong reading of the said provisions. The expression in the provision that "but not of any other predecessor-in-title from whom the title is derived, whether by assignment or court sale or otherwise" will cover a legatee under a will.

7. The provision emphasises the mutation of title in the name of the landlord or in the name of his ancestor and enumerates thereafter the sources of title which are precluded from claiming possession of the land. In this view of the matter, we find no force in the contention of the learned counsel that the legatee should be entitled to claim the possession. This being the correct interpretation of the said provisions, it is apparent that the legatee, Ashok Kumar is not the landlord for the purposes of exercising the right under Section 31-A read with Section 29 of the Act.

8. IT was then contended by Mr Mehta that the tenant has to make an application to exercise his right of statutory purchase within one year as laid down by Section 32-F(I)(a) and since in the present case he has made no such application, he is not entitled to purchase the land under the said provisions. This contention ignores the provisions of Section 32-F(1-A) which were enacted simultaneously with the amendment of the provisions of Section 31-A. The Said Section 32-F(1-A) reads as follows:

"32-F. (I-A) On and after the date of the commencement of the Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Act, 1960 (Guj. XVI of 1960, (hereinafter referred to in this sub-section as "the said date"), every tenant who has not exercised his right of purchase within the period of one year within which it may be exercised under Ss. (1, shall, if the said period has commenced be deemed to have purchased the land on the said date, whether the period has expired or not, and if the period has not commenced, he shall be deemed to have purchased the land on the date on which the period would have commenced but for the provision of this sub-section."

9. IN view of these provisions, the appellant will be deemed to have purchased the land on the date of the death of the widow.

10. WE are thus of the view that the appellant is entitled to succeed in this appeal. In the result, we allow the appeal and set aside the decision of the High court and the tenancy courts below. The appellant shall be deemed to have purchased the land under Section 32-G on the date of the death of the widow, that is, 14/2/1961. The appeal is allowed accordingly with costs.