
(1982) 07 GUJ CK 0011
In the Gujarat High Court

Smt. Amthibai

APPELLANT

Vs

Patel Shankerbhai Purshottamdas

RESPONDENT

Date of Decision : 28-07-1982

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 4, 4

Citation : (1982) GLH 1046 : (1983) 1 GLR 170

Hon'ble Judges : B.K. Mehta, J

Bench : Single Bench

Judgement

B.K. Mehta, J.—This petition, at the instance of a widow-landlady is directed against the order of the Gujarat Revenue Tribunal in Revision Application No. TEN. B.A. 518 of 1976 of March 25, 1977 reversing the concurrent findings by the subordinate authorities that the respondent was not the tenant of four pieces of land of Section Nos. 117, 278, 279 and 375 situate within the revenue limits of village Vijapurda in Chanasma taluka of the Mehsana district. The sole ground on which the subordinate authorities, namely, the Agricultural Lands Tribunal and the Deputy Collector, had held against the respondent that he was not the tenant was that he happened to be the uncle-in-law of the widow-landlady and, therefore, a member of the family with the result that he was not entitled to claim the status of a tenant within the meaning of Section 4 of the Bombay Tenancy & Agricultural Lands Act 1948 (hereinafter referred to as "the said Act"). It is this order of the Tribunal which is the subject-matter of the present petition.

2. No reply affidavit has been filed on behalf of the respondent.

The only question which arises and which has been agitated behalf of the petitioner is that the Revenue Tribunal was clearly in error in reversing the conclusion of the subordinate authorities that the respondent was not a tenant though admittedly he happened to be the uncle-in-law of the petitioner-landlady. The material part of Section 4 which is relevant for our purposes is Section 4(a) which reads as under:

4. A person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not--

(a) a member of the owner's family; or...

3. Now, who can be within the purview of this exception in Clause (a) is a question I which is concluded by a decision of a Division Bench of this Court consisting of Diwan C.J. (as he then was) and myself in Letters Patent Appeal No. 166 of 1978 with Letters Patent Appeal No. 167 of 1978 decided on December 8, 1980 (Per : Diwan C.J.) The Division Bench was concerned in the said appeals with the question whether the married sister who was cultivating the land of her brother and who was the first respondent in L.P.A. No. 166/78, and the husband of the deceased sister, who was cultivating the land of his brother-in-law and was respondent in L.P.A. No. 167 of 1978, can have the benefit of the deemed tenancy u/s 4. The Division Bench for purposes of reaching the conclusion that they could be the members of the family within the excepted category to the status of tenant as provided in Section 4(1) of the said Act, relied on the decision of the Supreme Court in S.N. Sundalaimuthu Chettiar Vs. Palaniyandavan, . Before the Supreme Court, the daughter and the widow of the original tenant were claiming that they were cultivating the land through the son-in-law of the deceased tenant and therefore, were entitled to be treated as tenants as defined in the Madras Cultivating Tenants Protection Act of 1965. In that context, the Supreme Court upheld the contention of the counsel appearing for the son-in-law that he can be regarded as a member of the family because the word "family" should not be construed in a narrow sense or meaning only a member of a Hindu joint family and the dictionary meaning of the term "family" is "a group of people related by blood or marriage, relatives". The Division Bench referred to an earlier decision of this Court (Coram : J.B. Mehta, J.) in Special Civil Application No. 1199 of 1966 decided on June 18, 1970. The Division Bench, speaking through Diwan C.J., thereafter held as under:

It is clear that in the case of legislations pertaining to agricultural lands and the tenants of agricultural lands, the Supreme Court has interpreted the word "family" to mean all persons who are related by blood or marriage, relatives, to mean members of the family and that definition must be applied in the context of the enactment before us which also deals with the question of tenancy in respect of agricultural lands. Applying that definition in the light of the interpretation placed by the Supreme Court it must be held that Bai Mani, sister of Ranchhodbhai, the original owner of these survey numbers, and Prabhubhai, the husband of the deceased sister of Ranchhodbhai were members of the family of Ranchhodbhai inasmuch as Bai Mani was related to Ranchhodbhai by blood being his sister and Prabhubhai was related to Ranchhodbhai by ties of marriage being the husband of deceased sister of Ranchhodbhai.

4. This question is, therefore, not much capable of being debated any further and it must be held that the Revenue Tribunal was clearly in error in holding that the

respondent herein was the tenant of the lands in question though he happened to be uncle-in-law of the petitioner-landlady. It must be held that since the respondent is related by marriage, he must be held to be a member of the family and, therefore, beyond the purview of the benefit of deemed tenancy prescribed u/s 4 of the said Act.

5. The result is that this petition is allowed. The order of the Tribunal is quashed and set aside and the orders of the subordinate authorities, namely, Agricultural Lands Tribunal as confirmed in appeal by the Deputy Collector that the respondent is not the tenant of the lands in question should be upheld. Having regard to the facts and circumstances of this case there should be no order as to costs. Rule is made absolute accordingly.