

(1982) 11 GUJ CK 0013
In the Gujarat High Court

Special Recovery Officer, Land Development Bank Ltd.

APPELLANT

Vs

Koli Ramshi Bhikha

RESPONDENT

Date of Decision : 29-11-1982

Acts Referred:

Gujarat Co-operative Societies Act, 1961 — Section 48, 48(2), 48(3)

Citation : (1983) 1 GLR 621

Hon'ble Judges : A.S. Qureshi, J

Bench : Single Bench

Judgement

A.S. Qureshi, J.—The petitioner in this revision application is the Special Recovery Officer, Land Development Bank Limited, Una Branch, Una, District Junagadh, challenges the Judgment and order dated 15th May, 1981 passed by the learned Assistant Judge, Junagadh, dismissing the appeal filed against the Judgment and order dated 15th February, 1980 passed by the learned Civil Judge, Senior Division, Junagadh, whereby the ad interim injunction granted to the plaintiff by the trial Court was confirmed by the appellate Court.

2. The plaintiff had filed a suit for declaration and injunction that the suit property consisting of a field admeasuring 2 acres and 38 gunthas which the plaintiff claims to be of his ownership and that he was in possession of the same. The suit land was mortgaged by Koli Bhikha, the father of the present plaintiff to the Land Development Bank Limited, Una, in the year 1968. The Bank sought to realise the loan amount from Koli Bhikha against the said land whereupon the plaintiff filed the present suit and stayed the injunction as stated above. The plaintiffs case is that he was shown to be in the occupation of the suit land in the year 1976-77 in the record of rights and that he was the auction purchaser of the same in the year 1979.

3. The plaintiff has not been able to bring any material on record to snout-that he was the owner of the suit land in 1968 when the land in question was mortgaged by his father Koli Bhikha. If Koli Bhikha was the owner of the suit land in 1968 when it was mortgaged to the Land Development Bank, Una, it could not

have been transferred by him to anybody until the mortgage was redeemed. Moreover u/s 48 Sub-sections (2) of the Gujarat Co-operative Societies Act, 1961, no property or any interest therein which is subject to a charge can be transferred in any manner without the previous permission of the society. Further, under, Section 48 Sub-sections (3) of the said Act any transfer in contravention of Sub-sections (2) is declared to be void. In this case there is no evidence to show that Koli Bhikha had transferred the suit land to his son who is the plaintiff in the suit. Indeed, if he had tried to transfer the land it would have been void and inoperative in law.

4. Both the Courts below have erroneously Held that because the plaintiff is cultivating the same at present and that his name has been entered in the record of rights since 1976-77 there is a prima facie case that he is in possession of the suit lands and that his possession needs to be protected. Both the Courts have failed to appreciate that the plaintiff did not have the title to the suit land in 1968 when the land was mortgaged and that subsequently the land could not have been transferred to the name of the present plaintiff, the plaintiff cannot be held to have legal possession or title to the suit land which could be protected. Hence the interim injunction granted by the trial Court and confirmed by the lower appellate Court is wholly unjustifiable and is hereby vacated. The rule is made absolute with no order as to costs.