
(1990) 03 BOM CK 0061
In the Bombay High Court
Case No : Writ Petition No. 969 of 1984

Syed Ibrahim Syed Ashraf and another	APPELLANT
Vs	
Zamarrudbi Nizamuddin and others	RESPONDENT

Date of Decision : 14-03-1990

Acts Referred:

Citation : (1990) 03 BOM CK 0061

Hon'ble Judges : B.N. Deshmukh, J

Bench : Single Bench

Advocate : K.G. Khader, for the Appellant; Madhubala Patni for Respondents
Nos. 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Deshmukh, J.—This petition arises out of reference, made to the tenancy authorities by Civil Court, regarding the claim of tenancy by the petitioners.

2. In a suit, filed by the respondents, the petitioners, who are defendants in the suit, filed their written statement and contended that they are cultivating the suit land on the basis of lease for the last 25-30 years. On the basis of pleadings, the following issue was framed -

Do the defendants prove that they are cultivating the land as tenants?

The issue is referred to the Tenancy Court.

3. The Additional Tahsildar held that petitioners are not the tenants. However in appeal, the Deputy Collector reversed the finding and held that the petitioners are tenants of the suit land.

4. The respondents thereafter went in revision before the Revision Tribunal and the Revenue Tribunal allowed the revision of the respondents, holding that the petitioners are not the tenants of the suit land and so the petitioners cannot be deemed to be the tenants of the suit land.

5. Shri Kadar, the learned counsel for the petitioners, challenged the decision of the Revision Tribunal on the ground that the Revenue Tribunal has upset the finding, recorded by the Deputy Collector, on the grounds which cannot be sustained.

6. The main ground, on which the Revenue Tribunal has negated the claim of the tenancy of the petitioners, is that the original land holder Syed Fazal was uncle of the petitioners while the present respondents are daughters of deceased Syed Fazal. The petitioners claim to be the tenants of the suit land, belonging to their uncle Syed Fazal, since during his life time. The Revenue Tribunal, therefore, found that because of the close relationship, the cultivation, even assuming of the petitioners, would be that of the family member of Syed Fazal, for the purposes of deemed tenancy u/s 5 of the Hyderabad Tenancy and Agricultural Lands Act.

7. Shri Kadar, relying on certain decisions, contended that the petitioners and deceased Syed Fazal do not constitute members of the same joint family. The concept of joint family is unknown to Muslim Law. The principle governing the joint family under Hindu Law cannot be applied or introduced for considering the membership of the petitioner's joint family with their deceased uncle Syed Fazal.

8. Shri Kadar relied upon the unreported decision of this Court in Special Civil Application No. 1882/63, decided on 7-12-1964, wherein it is observed that a separated brother after partition, can claim to be the tenant of the other brother and his claim can be considered as valid, under the provisions of section 5 of the Hyderabad Tenancy and Agricultural Lands Act, as he can be deemed to be the tenant of the land of the other brother, who is separated after the partition.

9. I am unable to appreciate the contention of Shri Kadar as the consistent view is taken by this Court that the concept of family is different for the purposes of section 5 than the concept of Hindu joint family.

10. In Nilavabai Sida Khajure vs. Chanamalappa Bassappa Khajure and others, 1977 Mh.L.J. 443. it is held by the Court that:

The word "family" not having been defined in the Hyderabad Tenancy and Agricultural Lands Act, the general meaning of the word used in the context of cultivation of land, must be taken into consideration. Family relations do not come to an end for general purposes of blood relations by partition or separation which severs the legal status of the joint family. The mere fact, therefore, that the person cultivating had separated, would not alter the blood relationship and he does not cease to be the member of the family and cannot be deemed to be a tenant, u/s 5(a) of the said Act. The cultivation by such a member would also amount to personal cultivation of land holder in view of section 2(1)(g).

11. In S.N. Sundalaimuthu Chettiar Vs. Palaniyandavan, , similar question is considered by the Supreme Court, though under Madras Cultivating Tenants Protection Act, 1955. The ratio laid down by the Supreme Court would squarely

apply in the present case. What is observed by the Supreme Court in this case is:

Before an heir can be given the benefit of the definition of "carry on personal cultivation", it is necessary for him to establish that someone is contributing his physical, labour in the cultivation of the land and that someone is a member of his family. A son-in-law can be regarded as a member of the family, because the word "family" is not to be construed in a narrow sense or meaning only a member of a Hindu joint family because the Act applies to all tenants irrespective of the personal laws, which govern them. A person can, therefore, be properly regarded as being a member of his wife's family and not merely of his father's family.

12. In view of the ratio, laid down by the Supreme Court, in the case cited above, there is no force in the contention of Shri Kadar that the Hindu joint family concept has no application for considering the property relations of the Muslims. So far as the question of deemed tenancy u/s 5 of the Hyderabad Tenancy and Agricultural Lands Act is concerned, the cultivation by a nephew will be the cultivation for and on behalf of the uncle, irrespective of the character of jointness of family.

13. The same view is taken by this Court in another unreported decision in Writ Petition No. 506/83, decided on 14th February, 1985. (Aurangabad Bench) What is observed in this case is:

If relationship by blood or marriage is to be one of the tests for ascertaining the connotation of the word "family", it is difficult to see why a sister's husband should not be regarded as a member of the family, under the provisions of the Hyderabad Tenancy and Agricultural Lands Act, 1950. The legislative intent behind excluding a certain category of persons from the definition of tenant under various Tenancy Acts seems to be that when the need for assistance for cultivation of land arises, usually the assistance of a near relation is obtained for personally cultivating the land to ensure that the holding will not be lost to the land holder on account of the relationship by the breach of implicit faith.

14. In the result, the petition is dismissed. Rule discharged. No order as to costs.