

Malagar Vs. Shiv Ram

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Court : Delhi

Decided On : Nov-19-1968

Reported in : 5(1969)DLT456

Judge : S.N. Andley, J.

Acts : Himachal Pradesh Abolition of Big Landed Estate and Land Reform Act, 1953 - Sections 11

Appeal No. : Miscellaneous Second Appeal No. 42 of 1965

Appellant : Malagar

Respondent : Shiv Ram

Advocate for Pet/Ap. : Chabildas and; T.C. Chitkara, Advs

Judgement :

S.N. Andley, J.

(1) ON April 16, 1959, the appellants filed an application under section 11 of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953 (Act No.15 of 1954) for acquisition on payment of compensation of the right, title and interest of the land owners in the land of the tenancy alleged to be held by them under the land owner. This application was filed before the C. O. Bilaspur, who, by his order dated December 30, 1961, held the appellants to be tenants and

granted them proprietary rights in the land in dispute.

(2) On appeal, the learned District Judge, by his order dated August 18, 1965, held that the appellants being co-sharers with the respondents could not be tenants of the land in question and, therefore, he allowed the appeal.

(3) The short facts of the case are that the parties to this litigation are the co-owners of the land in question and this land belongs to the extent of 3/80 shares to the appellants and to the extent of 77/80 shares to the respondents. The case of the appellants was that right from 1943-44 onwards they have been shown in the Jamabandis for various years (vide Exhibits P.A., P. B., P. C. and P. D.) as tenants in respect of 77/80 shares belonging to the respondents. Entry in column 5 of Exhibits P. B. describes the appellants as co-owners to the extent of 3/80 shares and as Ghair Maurusi with respect to 77/80 sharers. It also states that a total rent of Rs. 120.00 per annum is the rate of rent for the land in question including the share of the appellants.

(4) Apart from these Jamabandis, the appellants have not proved any specific agreement between them and the respondents whereby the respondents tenancy rights in favor of the appellants and it is contended that the agreement which must have taken place some years back is reflected in the entries in these Jamabandis.

(5) The learned District Judge has expressed the view that in as much as the appellants are co-owners of the land along with the respondents, they cannot be tenants because that would amount to their becoming tenants between them and the only thing that is evident is that the appellants are owners to the extent of 3/80 shares while the respondents are owners to the extent of 77/80 shares. In these circumstances the Question is whether it would not be the transfer of a right to enjoy of an interest in immovable property to oneself

(6) Mr. Chhibildas, learned counsel for the appellants has contended that there is no prohibition against a co-sharer making a demise by way of a lease to the extent of his share in the joint property in favor of another co-sharer and in support of this contention he has first cited a case reported in Ralla v. Dina Nath. This was a case where the grant of occupancy rights was made by a co-proprietor in respect of his

own undivided share in favor of another co-proprietor but in favor of a stranger therefore, so far as this case was concerned, there was no question of transferring an interest in land belonging to oneself to oneself and, in my view, this decision cannot carry Mr. Chhabil D is to the extent of supporting him in his contention

(7) The next case cited is *Sukh Dev v. Parsi*. where a co-sharer was in exclusive possession of a portion of the undivided holding and it was held that in such a case if such a co sharer transferred his rights in favor of third persons, then such transferee would stand in the share of the transferor. This again was not a case of a transfer by a co-sharer of an interest in the land to another co-sharer.

(8) Then, reliance is placed on a decision of the Supreme Court reported in *Jahuri Sah v. Dwarika Prasad Jhunjhunwala*, where it has been observed:- 'It is no doubt true that under the law every co-owner of undivided property is entitled to enjoy the whole of the property and is not liable to pay compensation to the other co-owners who have not chosen to enjoy the property. It is also true that liability to pay compensation arises against a co-owner who deliberately excludes the other co-owners from the enjoyment of the property. It does not, however, follow that the liability to pay compensation arises only in such a case and no other. Co-owners are legally competent to come to any kind of arrangement for the enjoyment of their undivided property and are free to lay down any terms concerning the enjoyment of the property. There is no principle of law which would exclude them from providing in that agreement that those of them as are in actual occupation and enjoyment of the property shall pay to other co-owners compensation.' This case is an authority for the proposition that in given circumstances a co-owner may be entitled to claim compensation from another co owner with respect to the property which is jointly owned and which is in the possession of the other co-owner. But I do not think this case is an authority for the proposition that such right would extend to the creation of a tenancy in his own favor and create the relationship of landlord and tenant as between co-owners.

(9) To my mind, the two concepts i. e. the relationship as between one co-owner and another and the relationship between a landlord and tenant are entirely

different and stand on different footings. Each co-owner is to the extent of his undivided share an owner in the entirety or in other words in every inch of the undivided property. Most of the rights and liabilities as between a Lesser and a lessee will be incapable of being given effect to in a case where one or more of the co-owners are Lessers and the other or others of the co-owners are lessees. There is no question, to my mind, of such a co owner or joint owner transferring a right to enjoy any part of the joint land to oneself. The right already exists.

(10) The title of a lessee is inferior to that of the Lesser. Both that titles cannot co exist in the same person. In fact clause (d) of section 111 of the Transfer of Property Act provides for the determination of a lease of immovable property in case the interests of the lessee and the Lesser in the whole of the property become vested at the same time in one person in the same right and this clause is based upon the principle that when the lease-hold and a reversion coincide there is a merger of a lesser estate in the greater. I, therefore, do not find any substance in the contention of the appellants that a coowner of undivided property even if his share in the property even if his share in the property is defined can become a lessee in respect of either the whole or a part of the property.

(11) Because the learned District Judge was of the same view, he construed the entries in the aforesaid Jamabandis which used the expression 'rent' as meaning 'compensation' All that these entries show is that the rent of the entire land is Rs. 12.00 and that the appellants are liable to pay this amount and this amount includes their own share also. This entry cannot by any stretch of imagination mean that there is any relationship of landlord and tenant between the appellants on the one hand and the respondents on the other. All that these entries amount to is that the appellants are liable to pay compensation to the respondents for the latter's share in their possession in accordance with the total rent that might be payable for the land.

(12) I think on the whole the learned District Judge was right in his approach to the question and I, therefore, dismiss the appeal ; but in the circumstances I leave the parties to bear their own costs.

