

Mohan Lal Vs. Mohun Ram

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Court : Himachal Pradesh

Decided On : Feb-28-1966

Reported in : AIR1966HP61

Judge : Om Parkash, C.J.

Acts : Tenancy Law; ;Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1954 - Sections 2(17), 11(1), 11(2), 20, 48 to 55 and 62; ;[Evidence Act, 1872](#) - Section 114

Appeal No. : Misc. Second Appeal No. 16 of 1963

Appellant : Mohan Lal

Respondent : Mohun Ram

Advocate for Def. : Ram Nath, Adv.

Advocate for Pet/Ap. : Mohan Lal, Adv.

Disposition : Appeal dismissed

Judgement :

Om Prakash, J.

1. This appeal, against an appellate order of the learned District Judge Mahasu, has arisen out of an application filed by the respondent, under Sub-section (1) of

Section 11 of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, (hereinafter referred to as the Abolition Act), for the acquisition of proprietary rights in the land, measuring 27 Bighas and 17 Biswas. situated in village Chethla, Sub-Tehsil Kotkhai, District Mahasu. The land belonged to Smt. Kubja and Smt. Subda, minor daughters of Smt. Radhu. The case of the respondent was that Smt. Radhu, as the guardian of the minor proprietors, had leased out the land, to him, and that he was in possession of the land as a tenant-at-will and was entitled to acquire proprietary rights in the land under the aforesaid sub section. The respondent filed the application for acquisition of proprietary rights on 6-3-61. Smt. Subda had died at the time of filing the application and Smt. Kubja had become the sole proprietor.

2. The application of the respondent was opposed by Smt. Radhu, as guardian of Smt. Kubja. She denied that she had created any tenancy in favour of the respondent. She alleged that the respondent had taken forcible and illegal possession of the land and had relinquished that possession too in a Panchayat. Smt Radhu, further, alleged that she, as guardian of Smt. Kubja. had sold the land to the appellant, on the basis of a registered sale-deed dated the 6th December, 1960 for a consideration of Rs. 4,000.

3. The appellant who was a minor also filed objections, through his father, as next friend, against the grant of the application of the respondent. Besides taking up the pleas, which had been taken up by Smt. Radhu, the appellant pleaded that he was a minor and as he had no other means of livelihood, he was entitled to the benefit of Sub-section (2) of Section 11 of the Abolition Act and the respondent could not acquire proprietary rights It was, further, pleaded that trees and buildings were standing on the land and the appellant was entitled to compensation for them, in case the respondent be granted proprietary rights.

4. The learned Compensation Officer, Mahasu, who had tried the application of the respondent, held that the respondent had been granted lease of the land, in dispute, for five years and that the lease had expired with Rabi 1960 and the respondent had relinquished possession after that and was, therefore, not a tenant on 6-3-61, when he had made the application for acquisition of proprietary rights.

The learned Compensation Officer, further, held that even if it be assumed that the respondent had not relinquished possession after Rabi 1960, his possession after the expiry of the term of lease was that of a trespasser and not of a tenant and he was, therefore, not entitled to acquire proprietary rights. The learned Compensation Officer accepted the plea of the appellant that trees and buildings were standing on the land. He assessed the value of the trees at Rs. 600. But he did not assess the value of the buildings as the respondent had declined to acquire proprietary rights in them. The learned Compensation Officer, also, held that the appellant was a minor and had no other means of livelihood. In view of his finding that the respondent was not a tenant of the land on the date of making of the application and was, therefore, not entitled to acquire proprietary rights, the learned Compensation Officer dismissed the application of the respondent.

5. Aggrieved by the order of the learned Compensation Officer, the respondent went up in appeal to the learned District Judge. The learned District Judge reversed the finding of the learned Compensation Officer regarding the status of the respondent as a tenant. He held that the respondent who had not relinquished possession did not cease to be a tenant even after the expiry of the term of lease. So far as trees were concerned, the learned District Judge held that they did not fall within the definition of 'land' as defined in the Abolition Act and that the Compensation Officer had no jurisdiction to grant proprietary rights in the trees to the respondent. The learned District Judge, in his order, did not say anything about the finding of the learned Compensation Officer that the appellant had no other means of livelihood. As a result of his findings, the learned District Judge accepted the appeal, and after setting aside the order of the Compensation Officer, granted proprietary rights to the respondent in the land, excluding trees and the buildings, on payment of compensation.

6. The appellant came up in Second Appeal to this Court against the order of the learned District Judge. As the learned District Judge had not recorded any finding on the material point whether the appellant had no other means of livelihood and was entitled to the benefit of Sub-section (2) of Section 11 of the Abolition Act and had also not specified the buildings to be excluded from the operation of his order, the case was remitted to him for recording findings on the aforesaid matters. He

was directed to submit his report and findings after affording an opportunity to the parties to lead additional evidence.

7. On remand, the parties produced additional evidence. The finding of the learned District Judge, with respect to Sub-section (2), was that the appellant had no other means of livelihood and was entitled to the benefit of that Sub-section. The learned District Judge got prepared Tatima Ex. AW-1/A, from the Patwari, showing the buildings and the adjacent land which were to be excluded from the operation of his order, under the proviso to Section 18 of the Abolition Act. Objections, against the findings, of the learned District Judge, and the Tatima Ex. AW-1/A, were filed on behalf of the respondent.

8. Coming to the merits of the appeal, it was contended on behalf of the appellant, that the learned District Judge was in error in holding that the respondent was a tenant of the land. It was urged that the respondent had taken forcible possession and had relinquished that possession too in December 1960. It was, further, urged that at any rate the respondent had ceased to be a tenant after the expiry of the term of the lease, even if it be assumed that initially he was put in possession of the land as a tenant.

9. There is only the solitary statement of Smt. Radhu that the respondent had taken forcible possession of the land. Smt. Radhu's evidence was obviously interested. The above statement stood contradicted by the admissions, made by Smt. Radhu, in the notices Ex. PB and Ex. PC. She had, unequivocally, admitted in those notices that the respondent was in possession of the land as a tenant for five years, from 1966 to 1960. It must be held that the respondent had not taken forcible possession of the land.

10. But the above finding will not lead to the conclusion that the respondent was in possession as a tenant. The question still remains whether the respondent was a tenant of the land. The respondent was recorded, as a tenant at will of the land, in the Jamabandi, for the year 1958 59. According to the Jamabandi entries he was liable to pay Rs. 40, and eight bhars of wheat, as rent. The entries in the Jamabandi, which are presumed to be correct, raised a presumption in favour of the respondent being the tenant-at-will of the land. It was urged, on behalf of the

appellant, that no reliance should be placed on the entries in the Jamabandi as the mutation, relating to the tenancy of the respondent, had been rejected. It is true that mutation of the tenancy was rejected as Smt. Radhu had stated that the respondent had committed fraud on her. But the rejection of the mutation is no ground for not relying upon the entries in the Jamabandi. It is well settled that a mutation order does not create or extinguish any right or title. It is only a piece of evidence not even a presumptive piece of evidence, like the entries in the Jamabandi.

11. The presumption, raised by the entries, in the Jamabandi of 1958-59, in favour of the respondent being a tenant of the land, was strengthened by the admissions of Smt Radhu, the guardian of Smt Kubja, the pre decessor-in-interest of the appellant, made in Ex. PB and Ex. PC. Ex. PC is a notice, served by Smt Radhu, as the guardian of Smt Kubja, on the respondent. The notice is dated 16-12-69. It is stated, in the notice that the respondent was in possession of the land, in dispute, as Chakautadar for five years and that the term of the Chakuta was to expire in Kharif 1960. The notice warned the respondent not to effect any change in the condition of the land. Smt Radhu had, in the notice Ex. PC, made a clear and unequivocal admission that the respondent was a tenant of the land for five years and that the tenancy was to expire in 1960. Ex. PB is another notice, served by Smt Radhu, on the respondent. It is dated 10-11-60. In this notice Smt. Radhu had, again unambiguously admitted that the respondent was a tenant of the land for five years and that the tenancy was to expire in 1960. This notice, further, stated that the respondent had not paid rent for the last three years and that the land would not be kept with him any longer. Clear and unequivocal admissions, made by Smt. Radhu, in Ex. PB and Ex. PC, as the guardian of Smt. Kubja, that tenancy had been created in favour of the respondent for five years, had to be presumed to be true and were binding on Smt. Kubja and the appellant, her successor-in-interest, unless they were shown to be incorrect. The appellant did not lead any evidence to show that the admissions were incorrect or were made under any misapprehension. The only ground, urged on behalf of the appellant, was that the admissions were not put to Smt. Radhu and that, therefore, they could not be used against Smt Kubja or the appellant. The notices Ex. PB and Ex. PC were read over to Smt. Radhu when she had appeared in the witness box. She

had admitted the contents of the notices to be correct. It is difficult to understand what more was required to draw the attention of Smt. Radhu to the admissions, made in the notices. The admissions were admissible against the appellant and were binding on him.

12. There is, yet, another important circumstance, which indicated that the respondent was in possession of the land as a tenant. According to the recitals in the sale-deed, executed by Smt. Radhu, in favour of the appellant on 6-12-60, only symbolical possession of the land was delivered to the father of the appellant. The sale-deed, further, recited that the vendee could get the tenant ejected and cultivate the land personally. The above recitals in the sale-deed clearly showed that the land was in possession of a tenant.

13. The inescapable conclusion from the above discussion of the evidence is that the respondent had been put in possession of the land, as a tenant, under an agreement of tenancy for five years.

14. The next point is whether the respondent had relinquished possession of the land voluntarily in 1960 and had, thus, ceased to be a tenant. The plea, on behalf of the appellant, was that in December, 1960, the respondent and Smt. Radhu had effected a compromise, in a Panchayat, about the dispute, relating to the land, and that according to the compromise, the respondent had relinquished possession of the land and Smt. Radhu had given up her claim to compensation, due from the respondent, for use and occupation of the land. The appellant had produced Palas Ram RW-2, Jobha RW-4, Atma Ram RW-5, Mangat Ram RW-6 and Karam Singh RW-7, in support of the aforesaid plea. The learned District Judge was of the view that the evidence of the above witnesses was not reliable. In my opinion the learned District Judge was not wrong in his view. The learned District Judge had pointed out discrepancies in the evidence of the witnesses. The witnesses were not free from bias. Palas Ram RW-2 was the uncle's son of the father of the appellant. Atma Ram RW-5 admitted that the respondent had filed a Criminal case against the brother of the witness. Mangat Ram RW-6 admitted that Devi Singh, nephew of the respondent, had instituted a Civil Case against the father of the witness. The respondent had lodged a report to the police against Karam Singh

RW 7. Jobha RW-4 belonged to a village which was situated at a distance of 7 or 8 miles from Chethla where the Panchayat was alleged to have been convened. The witnesses admitted that there was a duly constituted Gram Panchayat at Chethla and that none of the panches of that Panchayat present at the Panchayat alleged to have been called. It appears strange that none of the panches of the Gram Panchayat was called to settle the dispute between Smt Radhu and the respondent. According to the witnesses, the respondent had relinquished possession of the land and it was delivered to the father of the appellant. The story, about possession of the land, was belied by the recitals in the sale-deed, executed in favour of the appellant, by Smt. Radhu. The recitals in the sale-deed, clearly, indicated that the father of the appellant was given only symbolical possession and not actual possession and that a tenant was in actual possession of the land.

15. I agree with the learned District Judge in holding that the appellant had failed to prove that the respondent had relinquished possession of the land, in December 1960.

16. The tenancy in favour of the respondent, was for five years. The term of the tenancy was to expire in 1960. The respondent had remained in possession after the expiry of the term of tenancy. The point, which requires consideration, is whether the possession of the, respondent after the term of the tenancy was that of a tenant or of a trespasser. In other words, the point is whether a tenant for a fixed term, who remains in possession, after the expiry of the term, retains his status as a tenant or ceases to be such. The question stands concluded by the decision of this Court in *Sureshwari Datt v. Parma*. AIR 1963 Him Pra 34. The facts, in that case, were that a tenancy was created for four years. The tenant continued to be in possession of the land after the expiry of the term of the tenancy. The land lord brought a suit for possession of the land on the ground that the tenant had become a trespasser after the expiry of the term of the tenancy. After considering various provisions of the Abolition Act and the authorities, this Court held that, under the provisions of the Abolition Act, a tenant for a fixed term, who remains in possession, after the expiry of the term of the tenancy, does not cease to be a tenant. The respondent, who was put in pos-session as a tenant, for

five years, and had remained in possession after the expiry of the term of the lease, remained a tenant and did not become a trespasser. The possession of the respondent, continued to be that of a tenant though the term of the lease had expired.

17. The learned counsel for the appellant drew the attention of the Court to the statement of the respondent that the father of the appellant, along with others, had forcibly entered upon the land and ploughed it and contended that as, on his own admission, the respondent was dispossessed of the land, he had ceased to be a tenant on dispossession. The above statement referred to an incident which was alleged to have occurred on 30-3-61, after the filing of the application for acquisition of proprietary rights, by the respondent. Moreover, the forcible dispossession of the respondent from the land could not put an end to his tenancy. It is clear, from the various provisions of the Abolition Act, e.g. Section 2(17), Sections 48 to 55 and Section 62, that once a tenancy has come into existence, it can be determined only by the ejectment of the tenant in execution of a decree or order, or by relinquishment or abandonment, by him, of the tenancy. Wrongful dispossession of a tenant cannot terminate his tenancy unless even his right to possess the tenancy has come to an end under some provisions of law. The right, to possess the tenancy, of the respondent had not been determined. The respondent remained a tenant, despite forcible dispossession.

18. The respondent, whose tenancy rights in the land subsisted, was entitled to acquire proprietary rights.

19. The next question is whether the appellant was entitled to the protection of Sub-section (2) of Section 11 of the Abolition Act and the respondent could not be granted proprietary rights, under Sub-section (1) of the above Section, during the minority of the appellant. Subsections (1) and (2) of Section 11 are as under:

'(1) Notwithstanding any law, custom or contract to the contrary a tenant other than a sub-tenant shall, on application made to the compensation officer at any time after the commencement of this Act, be entitled to acquire, on payment of compensation, the right, title and interest of the landowner in the land of the tenancy, held by him under the landowner:

Provided that a tenant not having a right of occupancy shall not be entitled to acquire the right, title and interest of the landowner in the land of the tenancy from which he is liable to ejectment under Clause (d) or Clause (g) of Sub-section (1) of Section 54. (2) Nothing contained in Sub-section (1) shall apply to a landlord, if he has no other means of livelihood and is a minor, widow or a person suffering from physical or mental disability incapable of earning his livelihood. In the case of a minor, Sub-section (1) shall not apply during his minority and in other cases for his lifetime.'

20. The appellant was admittedly a minor. The controversy centered round the point whether the appellant had no other means of livelihood. The plea of the appellant was that he had no property other than the land in dispute and, therefore, possessed no other means of livelihood. The plea, on behalf of the respondent, on the other hand, was that the word, 'means' in the aforesaid Sub-section (2) is not confined only to the other tangible property of the minor but also includes his statutory right, under Section 20, Hindu Adoptions and Maintenance Act, to be maintained by his father, and, in that connection, the property of the father and the capacity of the minor to earn and that as the father of the appellant was alive and possessed property, the appellant, who was also capable of earning, possessed sufficient other means of livelihood.

21. The aforesaid pleas had been advanced, by the parties, before the learned District Judge, also. The learned District Judge was of the view that the word, 'means' in Sub-section (2) meant only tangible property and did not include the legal right of the minor to be maintained or his capacity to earn or the property of the father. The learned District Judge was of the further view that as the appellant had no tangible property other than the land in dispute, he had no other means of livelihood.

22. The word 'means' has not been defined in the Abolition Act or, perhaps, in any other enactment. The Dictionary meaning of the word 'means' is 'resources', vide Webster's New International Dictionary, There can be no yard stick or fixed principles, applicable to all cases, for ascertaining what will constitute the resources of the minor. Every case will have to be decided on its own facts and

circumstances. Tangible property will no doubt constitute resources of the minor. But the statutory right of the minor, under Section 20 Hindu Adoptions and Maintenance Act, to be maintained by the father, cannot, invariably, be regarded as the means of the minor. It is not difficult to visualize a case where a father refuses, or neglects, to maintain his minor child. It will be unjust and inequitable, in such a case to regard the legal right of the minor to be maintained as his means. But in a case where a minor is being actually maintained by his father, his statutory right to be maintained may be taken into consideration, when ascertaining his means. The property of the father cannot be regarded as the means of the minor. It has, however, to be taken account, in a case where the legal right of the minor to be maintained constitutes his means.

The capacity to earn of a minor cannot be taken to be his means. The words, 'incapable of earning his livelihood' in Sub-section (2) govern 'a person suffering from physical or mental disability'. Those words do not govern the words 'a minor widow'. It appears that the intention of the legislature was that a minor or a widow who had no other means of livelihood should get the protection of Sub-section (2), irrespective of the fact whether he or she had the capacity to earn. The learned counsel for the respondent had cited authorities, in which it was held that the word 'means' in Section 488 Cr. P. C., included capacity to earn. The principle, laid down in those authorities, for interpreting the word 'means' in Section 488 Cr. P. C. cannot be applied to interpret the word 'means' used in Sub-section (2) of Section 11, Abolition Act. The purpose and object of Section 488 Cr. P. C., is entirely different from the purpose and, object of Sub-section (2). The object of Section 488 Cr. P.C. is to prevent vagrancy by compelling a person to support, his wife or child. Obligation to support in case of a wife, arises from marriage, and in case of a child, from paternity. The object of Sub-section (2) of Section 11 is to afford protection to a minor and others, mentioned therein, who had no means of livelihood other than the land whose proprietary rights are being acquired by a tenant. As already discussed, the context, in which the word 'means' has been used, in Sub-section (2), indicates that it was not intended that the word should include capacity to earn.

23. It is, also, to be noted that the words used in Sub-section (2) are 'means of livelihood' and not 'means of maintenance'. The word 'maintenance' is a term of wider connotation than livelihood. Maintenance includes food, clothing and other reasonable wants. Livelihood covers only food, adequate for sustaining life.

24. The question whether the appellant had no other means of livelihood is to be decided in the light of the principles, discussed above.

25. The appellant resided with his father and, was being maintained by him. The legal right of the appellant under Section 20, Hindu Adoptions and Maintenance Act may, therefore, be taken into account, while determining his means. The father of the appellant had appeared as a witness. He had admitted that he had augmented ancestral property by purchasing lands. The father had purchased the land, in dispute, for the appellant for a consideration, of Rs. 4,000. It was urged, on behalf of the appellant, that the sale consideration, was supplied by his maternal grandfather, and not by the father. This plea appears to be an afterthought. The plea was neither put forth before the Compensation Officer nor before the District Judge, in appeal. It was advanced, for the first time, when the case was remitted to the District Judge, by this Court. The recitals in the sale-deed contradicted this plea. It was stated in the sale-deed, that the father of the appellant had already advanced a loan of Rs. 2000 and had agreed to pay the balance of Rs. 2000 on completion of the sale. There was no suggestion, in the sale-deed, that the previous loan of Rs. 2000 was advanced by the maternal grandfather.

26. The appellant had a legal right to be maintained by his father. The father was not only maintaining him but had purchased, land for him. The father possessed sufficient property. The conclusion, in the circumstances of the case, is that the appellant had other means of livelihood. He was, therefore, not entitled to the benefit of Sub-section (2) of Section 11.

27. So far as the trees, standing on the land are concerned, it has been held by this Court in *Nanku v. Union of India*, AIR 1964 Him Pra 16 that trees, unless they form an orchard, do not constitute land, as defined in the Abolition Act and that the rights of a tenant and his landlord, in the trees, cannot be determined in proceedings, relating to an application under sub-section (1) of Section 11- The

right of the parties, in the trees, standing on the land, cannot be decided in the present proceedings. The parties will be free to get their rights in the trees determined, by taking appropriate proceedings.

28. The Compensation Officer, who had inspected the spot, had noted in the inspection note, that buildings were standing on the land. The respondent had admitted in his statement dated 26-4-61 that buildings, belonging to the husband of Smt. Radhu, were standing on the land. The learned District Judge, on remand of the case, to him, by this Court, had got the Tatima Ex. AW-1/A prepared by the Patwari, showing the buildings and the land adjacent to those buildings. The Patwari had prepared the Tatima after measurements on the spot. In face of the above evidence, the statements of the witnesses of the respondent that Kharoli did not exist on the land are not worthy of reliance.

29. The respondent had declined to acquire the buildings. The appellant was entitled to retain them; The learned District Judge had not specified, by a plan or otherwise; the buildings standing on the land, in the order, under appeal. After the case was remitted to him, he had got the Tatima Ex. AW-1/A prepared specifying the buildings. It is, therefore, clarified that the appellant will be entitled to retain the buildings, shown in, the Tatima Ex. AW-1/A.

30. Subject to the above clarification about buildings, the appeal is dismissed with costs. The Tatima Ex. AW-1/A will be attached as a schedule to this order.