

Sadasheo Vs. Vithoba and Others

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Court : Privy Council

Decided On : Nov-22-1929

Judge : Vicount Dunedin, Lords Darling, Tomlin, Sir George Lowndes & Sir Binod Mitter

Appeal No. : Privy Council Appeal No. 42 of 1928 (From Nagpur)

Appellant : Sadasheo

Respondent : Vithoba and Others

Advocate for Pet/Ap. : A.M. Dunne and J.M. Parikh, for Appellant. Solicitors for Appellant, Hy. S.L. Polak, Respondents, Ex-parte.

Judgement :

VISCOUNT DUNEDIN:

This is an appeal ex parte. The suit was brought by respondent 1, who does not appear, in March 1923, in the Court of the Munsiff of Kelapur, against the appellant, who is his landlord, to have it declared that he is permanent tenant of certain fields by virtue of the provisions of the Berar Alienated Villages Tenancy Law, 192.1. By S. 47 of that Act, which came into force on 1st January 1922, it is provided that

"A tenant, other than an ante-alienation tenant or a sub-tenant, who, at the commencement of this law, has either by himself or by himself and through his

predecessor-in-title, sub-tenant or mortgagee in possession, held land continuously from a date previous to 1st day of June 1895, shall, notwithstanding any agreement to the contrary executed prior to the commencement of this law, be deemed to be a permanent tenant of such land."

Admittedly respondent 1 has held the fields continuously from a date prior to 1-01-1895, up to the spring of 1921. In March 1921, the appellant gave him notice to quit. What followed after that is a matter of controversy. The appellant says that he voluntarily quitted the fields in April. Respondent 1 says that he did not do so, but was forcibly and wrongfully ejected in May. The sections of the Act to which reference has been made, beside S.47, are Ss.74 and 75 :

74 "Any tenant who has been ejected from his holding or from any portion thereof otherwise than in accordance with this law, or whose holding has been treated as abandoned under 8. 87, may, on application to a revenue officer made within one year from the date on his ejection, or from the first day of the agricultural year next after the entry by the landlord, as the case may be, reinstated in possession of such holding or portion thereof :"

75 : "Any tenant who has been ejected on or after 1st day of January 1916, from his holding or any portion thereof, under decree or order of a civil Court, and who, if he had not been so ejected, would be deemed under S. 47 to be a permanent tenant thereof, may apply to revenue officer, within one year from the commencement of this law, to be reinstated in possession of such holding or portion thereof."

The Munsif took the view that S. 74 only applied to ejection after the Act, and that the only reinstatement which could bring with it permanent tenancy was S. 75. He, therefore, considered it unnecessary to decide the controverted question of fact as to which he had granted an issue.

Appeal was then taken to the Court of the District Judge, who took the same view and dismissed the appeal.

The appeal was then taken to the Court of the Judicial Commissioner. He held that it had been practically admitted that the plaintiff had been forcibly dismissed and that upon that assumption he held that the plaintiff still held the land, although he had not cultivated or possessed it, and he gave a declaration of permanent tenancy as craved.

From this judgment this appeal is taken.

Their Lordships think that the view as to the law of the Judicial Commissioner is substantially right. They do not think that the matter depends on either Ss. 74 or 75, but only on S.74. S. 74 gives a summary remedy ; S.75 deals with another state of affairs altogether. But the true view depends upon S.47, and in their Lordships' opinion a person who being a tenant is forcibly dispossessed is still a tenant holding land. But the learned Judicial Commissioner erred in assuming that the question of forcible disposition was ceded. It was not ; and a separate issue as to this had been framed, although, owing to the view of the learned Judges in the Courts below as to Ss. 74 and 75, it was not disposed of. The case must, therefore, go back in order to have the disputed question of fact decided. If the plaintiff was forcibly dispossessed he was a tenant in terms of S. 47 ; if he voluntarily ceded possession after receiving the notice he had no such right and the action must be dismissed.

Their Lordships will humbly advise His Majesty that the appeal ought to be allowed, the decree of the Court of the Judicial Commissioner discharged, and the case referred back in accordance with the directions given above.

The costs already incurred and to be incurred in the Courts in India should abide the result of the further proceedings there, and there should be no costs of this appeal.

Case remanded.

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