Court : Supreme Court
Title : Balkrishna Somnath Vs. Sada Devram Koli & Another Dated 20.01.1977
Judges : KRISHNAIYER, V.R., GUPTA, A.C

JUDGMENT

KRISHNA IYER, J.

These two appeals raise a short issue of interpretation of the proviso to s. 32F (1) (a) of the Bombay Tenancy and Agricultural lands Act, 1948 (Bombay Act LXVII of 1948) (hereinafter referred to as the Act). The appellants in both the cases are the aggrieved landlords, the tenants' right of purchase under the Act having been upheld by the High Court. The correctness of this view is canvassed ,before us by counsel.

The facts necessary to appreciate the rival contentions may be are different but the issue is identical and, stated briefly. The parties so a single judgment will dispose of both the appeals.

In Civil Appeal No. 2007 of 1969 the widow of a deceased landowner, one Dattatraya, is the appellant. The deceased owned several houses, had a money-lending business and considerable agricultural lands. He left behind him on his death in 1952 a widow (the second appellant) and two sons, one of whom is the first appellant. Admittedly the Act, an agrarian reform measure, was extensively amended by Bombay Act XIII of 1956 conferring great rights on tenants and inflicting serious mayhem on landlordism. The case of the appellants is that there was a partition among the mother and the two sons of the agricultural estate whereunder the second appellant (the widow) was allotted around 80 acres of land out of which about 15 acres were held by the first respondent as a tenant, On the Tillers, Day tenants, bloomed into owners by the conferment of the right of purchase. On the basis that the first respondent had become the owner, a proceeding for the determination of the purchase-price of these lands was initiated? by the Tribunal, as provided under s. 32G of the Act. Although notice was not given to the second appellant, the first appellant appeared before the Tribunal, urged the case that the land held by the first respondent. was set apart in a family partition to his mother, the second appellant, and. that since she was a widow she came squarely within the protective provision of the proviso to cl. (a) of s. 32F(1) of the Act. The first respondent, however, contested the partition and further pressed the plea that even if the agricultural' lands had been divided since the house and the money-lending business and other assets admittedly remained' joint, the appellant was ineligible to claim the benefit of the proviso aforesaid. We need not trace the history of the litigation from deck to deck but may conclude the story for the present purpose by stating that the High Court took the view that the second appellant (widow did not qualify under the said

proviso: `The proviso is not satisfied' unless the share of a disabled person is separated by metes and bounds in all of the joint family property and' unless the agricul- tural land allotted to him corresponds to his share in the entire property and is not in excess thereof.`--This was the construction put by the Court on the proviso and challenged before us by Shri Wad in C.A. 2007 of 1969 and by Shri Tarkunde in C.A. 129 of 1968.

In Civil Appeal No. 129 of 1968 the legal scenario is similar. The family owned lands and other assets and there was a partition on November 7, 1956 confined to agricultural land only, but the house property remained undivided. The partition deed shows that the land under the tenancy of the first respondent has been set apart to the share of a minor appellant. The Tillers' Day arrived'. The tenant claimed to have become owner. Proceedings under s. 32G of the Act for determination of' the compensation were commenced and the mantle of protection of the proviso to s. 32F (I) (a) was pleaded in vain. The High Court having negatived the landlord's contention summarily, this Court has been approached,the point urged being the same as in the previous appeal.

In both the appeals we my proceed, for testing the legal pro. position, on assumed facts. We may take it that there was a partition in both cases during the period referred to in the proviso, i.e., before March 31, 1958. We may further take it that the widow and the minor come within the category specified in s. 32F (1) (a). We have also to proceed on the basis that the joint family in each case has other assets which remain joint and undivided.