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Date of Decision: 21st September 1995

SPECIAL CIVIL APPLICATION NO. 2177 of 1980

FOR APPROVAL AND SIGNATURE

THE HONOURABLE MR. JUSTICE A.N. DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Shri D.F. Amin, Advocate, for the Petitioner

Shri H.M. Parikh, Advocate, for Respondent No. 3

Shri V.B. Gharaniya, Asst. Govt. Pleader, for Respondent No. 5

Respondents Nos. 1, 2 and 4 served

CORAM: A.N. DIVECHA, J.
(Date: 21st September 1995)

ORAL JUDGMENT

The order passed by the Mamlatdar and Agricultural Lands Tribunal ('the first authority' for convenience) on 24th January

1977 in Tenancy Case No. 298 as affirmed in appeal by the order passed by the Deputy Collector of Kheda ('the appellate authority' for convenience) in Tenancy Appeal No. 1010 of 1978 as affirmed in revision by the decision rendered by the Gujarat Revenue Tribunal ('the Tribunal' for convenience) on 20th February 1979 in Revision Application No. TEN.S.A. 995/78 is under challenge in this petition under Art. 227 of the Constitution of India. By his impugned order, the first authority rejected the petitioner's application under sec. 37 of the Bombay Tenancy and Agricultural Lands Act, 1948 ('the Act' for brief) for restoration of possession of one parcel of land bearing survey No. 897 (part) admeasuring 2 acres 33 gunthas situated at village Ode taluka Anand district Kheda ('the disputed land' for convenience).

2. The facts giving rise to this petition move in a narrow compass. The disputed land originally belonged to the father of respondents Nos.1 and 2. The father of the petitioner was its tenant. The landlord obtained its possession by the order passed by the first authority on 7th May 1956 in Tenancy Case No. 249/71 under sec. 29(2) read with sec. 34 of the Act. It appears that the landlord died as also the father of the petitioner, that is, the original tenant. It appears that respondents Nos. 1 and 2 herein sold the land to respondents Nos. 3 and 4 herein by a registered sale deed executed on 31st May 1971, The petitioner appears to have come to know that the land was sold to respondents Nos. 3 and 4 herein much earlier but the formal transaction was executed on 31st May 1971. He thereupon moved the first authority by means of an application under sec. 37 of the Act. It came to be registered as Tenancy Case No. 298. After hearing the parties, by his order passed on 24th January 1977 in the aforesaid proceeding, the first authority rejected it. Its copy is at Annexure A to this petition. The aggrieved petitioner carried the matter in appeal before the appellate authority under sec. 74 thereof. It came to be registered as Tenancy Appeal No. 1010/78. By his order passed on 14th August 1978 in the aforesaid appeal, the appellate authority dismissed it. Its copy is at Annexure B to this petition. The aggrieved petitioner carried the matter in revision before the Tribunal under sec. 76 of the Act. It came to be registered as Revision Application No.. TEN.S.A. 995 of 1978. By its decision rendered on 20th February 1979 in the aforesaid revisional application, the Tribunal rejected it. Its copy is at Annexure C to this petition. The aggrieved petitioner has thereupon invoked the extra-ordinary jurisdiction of this court by means of this petition under Art. 227 of the Constitution of India for questioning the correctness of the order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition as further affirmed in revision by the decision at Annexure C to this petition.

3. All the three authorities below have concurrently found that respondents Nos. 1 and 2 herein sold the disputed land to respondents Nos. 3 and 4 herein on 31st May 1971, that is 15 years after the landlord obtained its possession for personal cultivation. This finding of fact cannot be interfered with by this court under Art. 227 of the Constitution of India in view of the binding ruling of the Supreme Court in the case of Mohd. Yunus v. Mohd. Mustaqim and Others reported in AIR 1984 SC 38.

4. It is difficult to accept the submission urged before me by Shri Amin for the petitioner to the effect that the admission by respondent No. 1 herein to the effect that he did not know when the landlord obtained possession of the disputed land for personal cultivation pursuant to the order passed by the first authority on 7th May 1956 would render the concurrent finding as perverse. The reason therefor is quite simple. As pointed out hereinabove, the original landlord was no longer alive after the aforesaid order was passed on 7th May 1956 awarding possession to him for personal cultivation. The proceeding was initiated by the petitioner under sec. 37 of the Act as late as in 1974, that is, 18 years after the aforesaid order was passed. Even the original landlord might not have been able to say with certainty as to when he received possession pursuant to the order passed on 7th May 1956. It is possible that respondent No.1 herein might have been a small boy at the relevant time and he would not be in a position to remember when his father obtained possession of the disputed land pursuant to the aforesaid order passed on 7th May 1956. It transpires from the impugned orders and the impugned decision that the concurrent finding of fact with respect to the sale transaction occurring after 15 years was recorded on the basis of the material on record. It is not found to be perverse. In that view of the matter, it cannot be interfered with in view of the aforesaid binding ruling of the Supreme Court.

5. In the result, this petition fails. It is hereby rejected. Rule is discharged with no order as to costs.
