

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4537 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

KHIMJI RANCHHOD, SINCE DECD. BY HIS HEIRS & L/ R.

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4537 of 1996
MR PJ VYAS for Petitioner No. 1-1/8
MR LB DABHI, AGP, for Respondent No. 1
..... for Respondent No. 2,3,4
MR BJ JADEJA for Respondent No. 2/A
MR PV HATHI for Respondent No. 3/A-3/E, 4/A-4/D

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 07/05/2004

ORAL JUDGEMENT

This is a petition challenging validity of an order passed in Revision Applications Nos. TEN.B.R.11/91 and TEN.B.R. 14/92 passed by the Gujarat Revenue Tribunal on 24th June 1996. By virtue of the said order, the Tribunal has upheld the order dated 20th June 1991 passed by the Deputy Collector, Amreli, in Remand Case No. 1/89-90.

2. The facts giving rise to the present petition, in a nutshell, are as under :

2.1 Late Shri Khimjibhai Ranchhodbhai claimed tenancy in respect of land bearing Survey No. 178 situated in village Varasda Road, Taluka and District Amreli. According to late Shri Khimjibhai Ranchhodbhai, the land originally belonged to respondents Nos. 3 and 4, but subsequently, the said land had been sold by a registered sale deed dated 26th May 1980 in two lots to respondent No. 2. Late Shri Khimjibhai Ranchhodbhai had been inducted as a tenant by respondent No. 2 and, therefore, he claimed right as a tenant under the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as 'the Act').

2.2 Late Shri Khimjibhai Ranchhodbhai wanted to establish himself to be a tenant in respect of the land in question and, therefore, he initiated proceedings by filing a tenancy case before the Mamlatdar and ALT, Amreli.

2.3 As there was an earlier round of litigation, without referring to the history of the litigation, it would be just and proper to come to the point to determine whether late Shri Khimjibhai Ranchhodbhai can be treated as a tenant as the question with regard to his tenancy was to be determined by the Tribunal, when the aforesaid revision applications were placed before the Tribunal.

2.4 The petitioners are heirs of late Shri Khimjibhai Ranchhodbhai, who claim tenancy.

2.5 The Mamlatdar & ALT, Amreli, by his order dated 29.1.1986, held that late Shri Khimjibhai Ranchhodbhai was a tenant in respect of the land in question. The said order had been challenged by respondent No. 2 by filing an appeal before the Dy. Collector, Amreli. The said appeal was partly allowed as the Dy. Collector, Amreli, remanded the matter to the Mamlatdar & ALT.

2.6 Being aggrieved by the order passed by the Dy. Collector, Amreli, whereby the matter was remanded to the Mamlatdar & ALT, late Shri Khimjibhai Ranchhodbhai filed Revision Application No. TEN.B.R. 24/86 before the Tribunal. The said revision application was allowed by an order dated 23.8.1989, whereby the Dy. Collector, Amreli, was directed to decide whether the evidence adduced before him was adequate enough to hold late Shri Khimjibhai Ranchhodbhai a tenant in respect of the land in question.

2.7 Upon remand, the Dy. Collector, Amreli, decided, by his order dated 20.6.1991, that late Shri Khimjibhai Ranchhodbhai was not a tenant in respect of the land in question. Thus, he set aside the initial findings of the Mamlatdar & ALT, whereby it was decided that late Shri Khimjibhai Ranchhodbhai was a tenant in respect of the land in question.

2.8 Being aggrieved by the second order dated 20.6.1991 passed by the Dy. Collector, Amreli, late Shri Khimjibhai Ranchhodbhai filed Revision Application No. TEN.B.R. 11/91. The said revision application has been dismissed by an order dated 24.7.1996 and validity of the said order has been challenged before this court by way of this petition.

3. Thus, in a nutshell, this court has to examine whether the order dated 24.6.1996 passed by the Tribunal, whereby the order dated 20.6.1991 passed by the Dy. Collector, Amreli, has been upheld, is just and legal. In other words, it is to be decided whether late Shri Khimjibhai Ranchhodbhai was a tenant in respect of the land in question. The petitioners are the heirs, who are claiming tenancy in respect of the land in question through late Shri Khimjibhai Ranchhodbhai.

4. Learned advocate Shri P.J. Vyas appearing for the petitioners has submitted that the Dy. Collector as well as the Tribunal did not properly appreciate the evidence adduced before the Mamlatdar & ALT, Amreli, and they committed an error by quashing and setting aside the initial order dated 29.1.86 passed by the Mamlatdar & ALT holding that late Shri Khimjibhai Ranchhodbhai was a tenant in respect of the land in question.

5. It has been submitted by him that the authorities below did not consider the fact that respondent No. 2 was not having any agricultural implements and late Shri Khimjibhai Ranchhodbhai was cultivating the land in

question on a crop sharing basis. It has been also submitted by him that there was record to the effect that late Shri Khimjibhai Ranchhodbhai was a tenant in respect of the land in question and even respondent No. 2 had considered late Shri Khimjibhai Ranchhodbhai as his tenant.

6. On the other hand, learned advocate Shri B.J. Jadeja appearing for respondent No.2 has submitted that the Mamlatdar & ALT had not properly appreciated the evidence adduced before him and had, therefore, come to a wrong conclusion. He has tried to support the final findings arrived at by the Dy. Collector, Amreli, as well as the Tribunal.

7. Upon hearing the learned advocates and upon going through the record pertaining to the case, it appears that the order passed by the Tribunal, whereby the order of the Dy. Collector, Amreli, dated 20.6.91 has been confirmed, is just and proper.

8. Upon going through the record, it is clear that there is sufficient evidence on record to show that late Shri Khimjibhai Ranchhodbhai was a labourer, who was entrusted with the work of cultivating the land belonging to respondent No. 2. There is evidence to the effect that late Shri Khimjibhai Ranchhodbhai was working as a servant of respondent No. 2 and he was also paid wages to the extent of Rs. 1,700/-. Late Shri Khimjibhai Ranchhodbhai had executed a receipt to the effect that labour charges of Rs. 1,700/- had been received by him. Moreover, there is evidence on record to the effect that respondent No. 2 was giving money to late Shri Khimjibhai Ranchhodbhai for purchasing seeds, insecticides, etc. Late Shri Khimjibhai Ranchhodbhai was purchasing fertilizer, seeds, insecticides, etc. for respondent No. 2 and he was giving receipts received by him to respondent No. 2.

9. There is no evidence on record to the effect that late Shri Khimjibhai Ranchhodbhai was cultivating the land belonging to respondent No. 2 on a crop sharing basis. It is pertinent to note that his tenancy has not been believed by the revenue authorities as late Shri Khimjibhai Ranchhodbhai could not establish that he was cultivating the land of respondent No. 2 on crop sharing basis. What has been established before the authorities below is that late Shri Khimjibhai Ranchhodbhai was paid wages in cash by respondent No. 2. The said fact is not sufficient to hold late Shri Khimjibhai Ranchhodbhai a tenant in respect of the land in question. The

submission of learned advocate Shri Vyas to the effect that late Shri Khimjibhai Ranchhodbhai was a tenant in respect of the land in question, and the said fact had been admitted by respondent No. 2, is not correct. Simply because respondent No. 2 had described late Shri Khimjibhai Ranchhodbhai as his 'farmer' in some legal proceedings it would not mean that late Shri Khimjibhai Ranchhodbhai was a tenant of respondent No. 2. In a case filed by respondent No. 2, he had referred to late Shri Khimjibhai Ranchhodbhai as his "farmer". As a matter of fact, even in the said legal proceedings, late Shri Khimjibhai Ranchhodbhai had made a statement that he was working as a labourer on the land in question.

10. Upon considering the circumstances in which respondent No.2 had referred to late Shri Khimjibhai Ranchhodbhai as his "farmer", it cannot be established that late Shri Khimjibhai Ranchhodbhai was his tenant in respect of the land in question.

11. Upon carefully going through the orders passed by the authorities below, it is clear that the said authorities have meticulously gone through the evidence and have rightly come to the conclusion that late Shri Khimjibhai Ranchhodbhai was not a tenant in respect of the land in question.

12. If late Shri Khimjibhai Ranchhodbhai was not a tenant in respect of the land in question, the petitioners, who claim right of tenancy as heirs of late Shri Khimjibhai Ranchhodbhai, cannot get any right as tenants in respect of the land in question. There is no irregularity or illegality committed by the authorities below and, therefore, the petition deserves to be rejected.

13. Looking to the concurrent findings and appreciation of evidence, no fruitful purpose would be served by remanding the matter to the Mamlatdar and ALT again, as requested by learned advocate Shri P.J. Vyas appearing for the petitioners.

The petition stands disposed of as rejected.
Rule is discharged with no order as to costs.

(A.R. Dave, J.)

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