

DIGAMBAR ADHAR PATIL

v.

DEVRAM GIRDHAR PATIL (DIED) AND ANR.

FEBRUARY 21, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Bombay Tenancy and Agricultural Lands Act, 1948 : Ss. 32B, 32G—Determination of land in excess of ceiling—Fixation of price for land which the tenant could purchase—Partition—Held entries in Record of rights established partition—Land belonging to minor son and cultivated by father—Even if it is taken as family property, holding within the ceiling limit—Remand order issued by High Court for computing the land holding—Upheld.

The respondents filed an application under S.32G of the Bombay Tenancy & Agricultural Lands Act, 1948 to determine the price payable to the appellant for purchase of 8 acres and 26 guntas, which was admittedly in their possession as tenant. The Tribunal found that respondent no. 1 was in possession of 54 acres of land i.e. in excess of the ceiling of 48 acres, and therefore he was not entitled to purchase the land in question from the appellant.

On appeal the High Court reversed the finding of the Tribunal and held that the oral evidence coupled by the entries in the Record of Rights established that there was a partition between Respondent No. 1 and his brother stood excluded; and that even assuming that the land belonging to the minor son & cultivated by his father respondent No.1 was considered to be either held as a tenant or as a member of the joint family, the total land held was within the ceiling limit and therefore Respondent no. 1 was entitled to purchase the said land of the appellant under s.32B of the Act. Accordingly the High Court directed the Mamlatdar to conduct the enquiry under S.32-G and remanded the matter for fixing the price. Hence this appeal.

The appellant contended that there was a concurrent finding regarding the land possessed by Respondent No. 1; that the land belonging to the minor son should be included in the holdings held by the respondent-tenant and that the alleged partition between Respondent No. 1 and his brother was not evidenced by any documentary evidence.

A Dismissing the appeal, this Court

B **HELD : 1.** The High Court was right in its conclusion that the land allotted to the brother of the respondent should be excluded. If that land is excluded necessary conclusion is that the respondent was within the ceiling limit. Consequently, he is entitled to purchase the land of the appellant who is the owner under the provisions of the Act as he is a deemed tenant on the tiller date under s.32 of the Bombay Tenancy & Agricultural Lands Act, 1948. Whether the respondent is in excess of the land or not would be considered while computing the holding as ordered by the High Court in its remand order. [137-E]

C **2.** Section 32B clearly postulates that the land held as an owner or as a tenant along should be taken into consideration to determine ceiling limit and if the land held as owner or tenant is within the ceiling limit, he shall be entitled to purchase the land held by him as a tenant. Admittedly, D the respondent held the land as an owner to the extent of 36 acres 1 gunta. The area of dispute is only in respect of the land held by his minor son and land allotted at a partition to his brother. With regard to the land held by the son, even assuming that it is a joint family property for the purpose of the Act and it is includible in his holding yet he is within the ceiling limit, namely, 43 acres 35 guntas. As rightly held by the High Court E he cultivated it on behalf of his minor son. [136-F-G]

F **3.** The entries in the Record of Rights regarding the factum of partition is a relevant piece of documentary evidence in support of the oral evidence given by the respondent and his brother to prove the factum of partition. Even in his evidence, Respondent's brother had clearly stated that there was a partition but he could not give the date and year in which the partition was effected nor the deed of the partition was produced. Under the Hindu law, it is not necessary that the partition should be effected by a registered partition deed. Even a family arrangement is G enough to effectuate the partition between coparceners and to confer right to a separate share and enjoyment thereof. Under those circumstances, when the factum of partition was evidenced by entries in the Record of Rights, which was maintained in official course of business, the correctness thereof was not questioned, it corroborates the oral evidence given by the H brother and lends assurance to accept it. [137-B-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2653 of 1972. A

From the Judgment and Order dated 26.4.72 of the Bombay High Court in S.C.A. No. 1097 of 1968.

Devendra Singh for the Appellant. B

V.N. Ganpule and Ms. Urmila Sirur for the Respondents.

The following Order of the Court was delivered :

Substitution allowed. C

This appeal by special leave arises from the judgment of the Bombay High Court in Special Civil Application No. 1097 of 1968 dated April 26, 1972. The respondents filed an application under s.32G of the Bombay Tenancy & Agricultural Lands Act, 1948, (for short, 'the Act') to determine the price payable to the appellant to purchase 8 acres 26 guntas of land which was admittedly in his possession as a tenant. The Tribunal below under the Act found that the respondent No. 1 was in possession of 54 acres of land. In other words, in excess of 48 acres, which is the ceiling limit prescribed under the Act. Therefore, he was not entitled to purchase the land in question from the appellant. The High Court found that the conclusion reached by the Tribunal was vitiated by personal law, namely, Hindu Law and also by evidence on record. D E

We are concerned in this case with the land held by the respondent's minor son to the extent of 7 acres 34 guntas and the land said to have been allotted to the share of his brother by name, Ram Chander, at a partition between them. The High Court has held that by operation of provisions of s.32B of the Act, the land which the respondent held as an owner and tenant alone should be taken into consideration in determining the area of ceiling limit. The land cultivated by the respondent belonging to his minor son was not as a tenant but as a guardian of his minor son. The land allotted to his brother was evidenced by the entries in the Record of Rights and, therefore, the oral evidence coupled by those entries established that there was a partition between him and his brother Ram Chander and thereby the said land stood excluded. Even assuming that the land belonging to his minor son and cultivated by the respondent was considered to be either held as a tenant or as a member of the joint family, the total land held by H

A the respondent was within the ceiling limit and therefore, he is entitled to purchase the land of the appellant to the extent of 8 acres 26 guntas cultivated as a tenant by the respondent under s.32B of the Act. Accordingly, it directed the Mamlatdar to conduct the enquiry under s.32G and remanded the matter for fixing the price. Thus this appeal by special leave.

B It is contended for the appellant that three Tribunals below, namely, Mamlatdar, appellate authority and the Land Tribunal concurrently held that the respondent was in possession of 54 acres 23 guntas. In other words, in excess of the ceiling limit. It is a finding of fact based on appreciation of evidence. The High Court, therefore, while exercising the revisional
C power under Art. 227 of the Constitution should not have embarked upon appreciation of evidence to reverse the finding of fact recorded by the Tribunal below. It is also contended that the definition of the person includes joint family and the Act does indicate that the land belonging to the minor son should be included in the holdings held by the respondent-tenant. If that land is included, it would be beyond the ceiling limit. It is
D also contended that the partition said to have been effected between the respondent and his brother Ram Chander was not evidenced by any documentary evidence which was claimed to be in the possession of respondent but was denied by Ram Chander. Therefore, the High Court was not right in reversing the concurrent findings recorded by the Tribunals
E below.

We find no force in the contention. Section 32B clearly postulates that the land held as an owner or as a tenant alone should be taken into consideration to determine ceiling limit and if the land held as owner or
F tenant is within the ceiling limit, he shall be entitled to purchase the land held by him as a tenant. Admittedly, the respondent held the land as an owner to the extent of 36 acres 1 guntas. The area of dispute is only in respect of the land held by his minor son and the land allotted at a partition to his brother Ram Chander. With regard to the land held by the son, even
G assuming that it is a joint family property for the purpose of the Act and it is includible in his holding yet he is within the ceiling limit, namely, 43 acres 35 guntas. As rightly held by the High Court he cultivated it on behalf of his minor son. As to the land allotted to the brother of the respondent, the Tribunals below negated it on two grounds, namely, in the cultivation column of the Revenue records, it was shown that the respondent had
H cultivated the land and no documentary evidence of partition was produced

before the authorities. The Tribunals below did not advert to the entries in the Record of Rights or to the factum of partition, while the High Court has taken this factor into consideration, which in our considered view had rightly been taken into account. The entries in the Record of Rights regarding the factum of partition is a relevant piece of documentary evidence in support of the oral evidence given by the respondent and his brother to prove the factum of partition. Even in the evidence of Ram Chander, he clearly stated that there was a partition but he could not give the date and year in which the partition was effected nor the deed of the partition was produced. Under the Hindu Law, it is not necessary that the partition should be effected by a registered partition deed. Even a family arrangement is enough to effectuate the partition between coparceners and to confer right to a separate share and enjoyment thereof. Under those circumstances, when the factum of partition was evidenced by entries in the Record of Rights, which was maintained in official course of business, the correctness thereof was not questioned, it corroborates the oral evidence given by the brother and lends assurance to accept it.

The High Court, therefore, was right in its conclusion that the land allotted to the brother of the respondent, namely, Ram Chander should be excluded. If that land is excluded necessary conclusion is that the respondent was within the ceiling limit. Consequently, he is entitled to purchase the land of the appellant who is the owner under the provisions of the Act as he is a deemed tenant on the tiller date under s.32 of the Act. Whether the respondent is in excess of the land or not would be considered while computing the holding as ordered by the High Court in its remand order. The appeal, therefore, does not warrant interference. It is accordingly dismissed.

G.N.

Appeal dismissed.