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C.A.No. 7149 OF 1997

ITEM NO. 101 (PH)

COURT NO.10

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 7149 OF 1997

BABU P. KAIKADI (DEAD) BY LRS. .. APPELLANTS
VERSUS

BABU .. RESPONDENT

DATE: 09/09/2003 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For appellant (s)Mr. Makarand D. Adkar, Adv.
Mr. S.D. Singh, Adv.
Mr. Vijay Kumar, Adv.
Mr. Anurag Kishor, Adv.
for Mr. Vishwajit Singh, Adv.

For respondent (s)Mr. M.S. Nargolkar, Sr.Adv.
Mr. D.M. Nargolkar, Adv.

Upon hearing counsel the Court made the following

O R D E R

Mr. Makarand D. Adkar, learned counsel for the appellant resumed his arguments at 10.35 a.m. and concluded at 11.20 a.m. After that, Mr. M.S. Nargolkar, learned Senior counsel for the respondent made his submissions for 10 minutes. The appeal is directed to be placed before a Bench of three learned Judges for consideration and decision in terms of the signed order. Papers of this case may be placed before Hon'ble the Chief Justice for appropriate orders.

Sarita(Shelly Sengupta)
Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7149 OF 1997

BABU P. KAIKADI (DEAD) BY LRS. ... APPELLANT

VERSUS

BABU ... RESPONDENT

O R D E R

This appeal is by the certificate granted by the High Court of Bombay. Paragraph 14 and 15 of the impugned order read :

"14. It is true that while considering the issue of Section 32(1-B), Sections 2(6C), 15 and 29 have not been considered by the Apex Court nor was the Objects and Reasons clause seems to have placed before it. However, the question was framed on the interpretation of Section 32(1-B) and has been answered. Once the question was framed for consideration and has been answered it cannot be said that the said question was not in issue and that the said reasoning would not constitute its ration. I cannot accept the contentions of the learned Counsel. The matter was squarely in issue and the Apex Court has so answered it.

15. However, considering the fact that the Apex Court in the case of Ramchandra Keshav Adke (supra) has held that surrender of tenancy which does not

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comply with the requirement of the provisions of the Act is not est and considering the judgment of the Apex Court in the case of Bhagwant Pundlik, etc., where on the strength of a similar language of the Bombay Tenancy & Agricultural Lands (Vidarbha Region) Act, a Bench of three

Judges had negated a similar contention in the matter of interpretation of Section 36 that such injunction should be restricted to only to those cases of fraud, coercion and misrepresentation, this would be a fit and proper case where Special Leave should be granted to the petitioners."

The learned counsel for the appellant submitted that the High Court passed the impugned order relying and following the judgment of three learned Judges of this Court in Dhondiram Tatoba Kadam vs. Ramchandra Balwantrao Dubal (Dead) By Lrs. & Anr [(1994) 3 SCC 366]. But the decisions of this Court in the case of (i) Abdul Ajij Shaikh Jumma & Anr. vs. Dashrath Indas Nhavi & Ors. [AIR 1987 SC 1626]; (ii) Ramchandra Keshav Adke (Dead) By Lrs. & Ors. vs. Govind Joti Chavare & Ors. [(1975) 1 SCC 559]; and (iii) Bhagwant Pundalik & Anr. vs. Kishan Ganpat B haraqska & Ors. [(1971) 1 SCC 15] were not brought to the notice of the Court in Kadam's case (supra).

The learned counsel further submitted that in the case of Dhondiram Tatoba Kadam afore-mentioned, this Court

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did not consider the Objections and Reasons for the amendment brought in 1969 in the form of Section 32(1-B) of The Bombay Tenancy And Agricultural Lands Act, 1948 ('the Act' for short). According to him, the dispossession of the appellant, even though it was voluntarily by way of surrendering, was not in accordance with Sections 15 and 29 of the Act and his case was clearly covered by Section 32(1-B) of the Act. In this view, the impugned order cannot be sustained.

Per contra, the learned Senior counsel for the respondent submitted that the case of Dhondiram Tatoba Kadam (supra) fully covers the controversy that arises for consideration and the High Court was right and justified in passing the impugned order based on the said judgment.

In Kadam's case this Court in paragraph 4, has expressed thus :

"In any case both the Tribunal and the High Court concurred on the surrender by the appellant. The effect of surrender was that the appellant ceased to be tenant. Assuming that surrender was invalid and the appellant left the possession over land of his own accord, was he disposed as contemplated in

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Section 32(1-B) of the Act? Voluntary giving up of possession does not amount to dispossession unless the law provides for it. 'Dispossess' according to Black's Law Dictionary means: "To oust from land by legal process; to eject, to exclude from realty." The dispossession should have been, therefore, either by legal process or by physical act of exclusion. It would not include leaving possession voluntarily or by surrender. If the words would have been that if such a person was not in possession before April 1, 1957 then a tenant who surrendered or left the possession voluntarily could be included in it. But the legislature having used a stronger word it should, in absence of any indication to the contrary, be understood in its normal sense. A tenant surrendering the land either in accordance with the provisions of law or lea

ving possession voluntarily would not be covered in the expression 'dispossessed'. The appellant, on the finding of the High Court, therefore, was not dispossessed. Even if the surrender was not valid as found by the Tribunal then the appellant shall be deemed to have left possession voluntarily. In either case it was not dispossession. The appellant therefore did not satisfy the second requirement. Consequently he did not become purchaser of the land under Section 32(1-B) of the Act."

In the case of Abdul Ajij, two learned Judges of this Court, dealing with the amended provisions of Section 32(1-B) in a similar situation as arises in this case, has states thus :

"The Maharashtra Revenue Tribunal (Tribunal) by its judgment under appeal has taken the view that the respondents are entitled to claim the rights conferred by S.32(1B) of the Bombay Tenancy and Agricultural Lands Act, 1948.

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The Tribunal has recorded the finding that on the 'appointed day', that is to say, on June 15, 1955, the father of the respondents who was the tenant in respect of the lands in question at the material time was in possession of the lands but that he had been later on dispossessed otherwise than in accordance with law. The contention raised by the appellants before the Tribunal that the tenant had surrendered the lands in accordance with law on February 21, 1955 and that he was not in possession of the lands in question on the appointed day (June 15, 1955) was as repelled by the Tribunal. This very contention has been reiterated before us on behalf of the appellants in this appeal. We agree with the reasoning and conclusion of the Tribunal that surrender could have been made lawfully only under S.15 read with S.29(2) of the Bombay Tenancy and Agricultural Lands Act, 1948 (BTAL Act) as it stood at the material time. There was no such order passed by any competent authority under the BTAL Act, evidencing the surrender in accordance with the provisions of the Act. Under the circumstances the submission urged by the appellants that the tenant had surrendered his tenancy in favour of the appellants on February 21, 1955 cannot be acceded to or sustained."

In the case of Ramchandra Keshav Adke, again the Bench of three learned Judges has taken the view that the surrender of tenancy otherwise than in accordance with the procedure prescribed was not valid. The same view is taken in the case of Bhagwant Pundalik (supra).

In the light of these decisions, the question arises whether surrender of possession, assuming it to be

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voluntary, if it is not in accordance with Section 15 read with Section 29(2) of the Act, amounts to dispossession 'otherwise' within the meaning of Section 32(1-B) of the Act. Having regard to the conflicting views taken in the above-cited decisions, particularly, having regard to the decisions rendered by three learned Judges of this Court, we think it just and appropriate that this appeal be placed before a Bench of three learned Judges for consideration and decision.

Papers of this case may be placed before Hon'ble the Chief Justice for appropriate orders.

.....J.
(SHIVARAJ V. PATIL)

New Delhi, (D.M. DHARMADHIKARI)
September 9, 2003.

.....J.

