

## **Husainbhai Nabibux Kunjada vs Modhia Chhotlal Mansukhlal And Ors. on 24 April, 1973**

**Equivalent citations: AIR1973SC2169, (1973)0GLR940, (1973)2SCC592, AIR 1973 SUPREME COURT 2169, 14 GUJLR 940, 1973 3 SCR 770, 1973 2 SCC 592, 1973 2 SCWR 89**

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**Bench: A. Alagiriswami**

### **JUDGMENT**

I.D. Dua, J.

1. These two appeals by special leave are directed against two judgments and orders/decrees of the Gujarat High Court arising out of the controversy between the parties which began more than 30 years ago.
2. Civil Appeal No. 316 of 1970 is directed against the judgment and decree of a Letters Patent bench of the Gujarat High Court dated April 11/12, 1967 dismissing a letters patent appeal L. P. A. No. 9 of 1962 preferred by the appellants from the judgment of a learned single Judge of that Court dated May 4, 1962 dismissing the appellants' appeal (Appeal No. 166 of 1960) under Section 47, CPC from the order dated March 20, 1958 passed by the Court of Civil Judge, Senior Division, Godhra in special Darkhast, directing the delivery of actual possession of the land in dispute by the appellants to the decree-holder respondent.
3. Civil Appeal No. 317 of 1970 is directed against the judgment and decree of a Division Bench of the Gujarat High Court dated March 26, 1969 summarily dismissing in limine the appellant's appeal (F. A. 430 of 1969) from the judgment and decree of the Civil Judge, Senior Division, Godhra dated November 26, 1968 dismissing the appellants' suit (Special Suit No. 8 of 1967) on the finding that they had failed to prove the decree passed in Special Suit No. 2 of 1942 to be a nullity.
4. In tracing the relevant facts giving rise to these appeals we must go back to the litigation in which in 1943 a decree for possession was passed in a suit for possession against several defendants, including the tenants (defendants 4 to 15 in the suit), the appellants in these two appeals. On February 25, 1939 Modhia Mansukhlal Raiji sold to Chhotlal and Punam Chand some land bearing S. No. 533 situated within the limits of Dohad for a sum of Rs. 10,000/-. The sale price was not paid at the time of sale. Punam Chand is said to have paid the full price after some time and sold the property to Nayak Mansinghji Mokamsinghji. Mansukhlal the original vendor died leaving behind

his daughter Bai Punji as heir and successor. In 1929 she instituted a suit against Chhotalal, one of the purchasers from her father, for the unpaid sale price. Chhotalal in turn instituted a suit (Suit No. 2/42) for possession of land comprised in survey No. 533 against Bai Punji, Mansukhlal Raiji, Nayak Mansinghji Mokamsinghji, Punamchand and the tenants in actual possession of the said land. The tenants were arrayed as defendants Nos. 4 to 15, including the appellants in this Court who were also the appellants in the High Court. On August 10, 1943, the suit was decreed in favour of Chhotalal and Punamchand. We may here reproduce the actual words of the penultimate paragraph of that judgment:

I, therefore, pass the following decree:

DECREE The plff. and the Deft. No. 3 either jointly or plff. alone to recover possession of the suit land from the Defts. Nos. 1, 2 and 4 to 15. The deft. Nos. 1 and 2 do pay the costs of the suit of the plff. be entitled to future mesne profits of the suit land from whichever defts. liable for it after getting it ascertained under Order 20, Rule 12 Clause (c) C. P. Code. It is declared that the Deft. No. 1 has a statutory charge of vendors' line for Rs. 8,000/- on the suit and that the plff. and the Deft. No. 3 should pay respectively Rs. 5,000/- and Rs. 3,000/- within six months from this date to the Deft. No. 1 and in default the Deft. No. 1 should on payment of the Court fees on a claim of Rs. 8,000/- recover the same amount with incidental costs by sale of the suit land.

Dated 10th August, 1943. Sd/- T. P. Chapatwala, First Class Judge, Godhra.

Two appeals were filed in the High Court against this decree one by Bai Punji and the other by Nayak Mansinghji Mokamsinghji (Appeals Nos. 310 and 317/43). It is noteworthy that the present appellants did not file any appeal against that decree. The High Court modified the decree by directing that possession of half of the land should be given to Chhotalal on payment of Rs. 5,000/- to Bai Punji. On April 22, 1948 Chhotalal applied for execution of the decree. The court directed the Collector to partition the property. The Collector did so and ordered symbolical possession of half of the property to be given to Chhotalal. On August 11, 1952 symbolical possession was delivered to Chhotalal. Thereafter, Chhotalal applied for delivery of actual possession. On February 9, 1957, the court without passing a formal order, wrote a letter to the Collector asking him to deliver actual possession to Chhotalal. On the matter being taken to the High Court against this procedure, the High Court, on July 17, 1957, directed that a proper order be made after hearing the parties. On January 9, 1958, the tenants claiming through Mansukhlal filed their reply. On March 20, 1958, the Court made an order directing actual possession to be delivered to Chhotalal. Against this order an appeal was preferred to the High Court which was dismissed by Divan, J. on May 4, 1962 and L. P. Appeal met the same fate. Leave to appeal to this Court was declined. This judgment dismissing the Letters Patent Appeal is the subject-matter of C. A. No. 316 of 1970.

5. In the meantime, the present appellants instituted a suit (No. 8/67) against Chhotalal for a declaration that they had become the owners of the suit land under Section 32 of the Bombay Tenancy and Agricultural Lands Act, 1948 and for perpetual injunction restraining the defendant from taking possession of the suit land from the plaintiffs in execution of the decree in Suit No. 2/42 on the ground that the said decree was a nullity, since the plaintiffs had acquired protected tenancy rights in the suit land under the Bombay Tenancy Act, 1939 made applicable to the area in question on April 1, 1941, and that the plaintiffs had not been served with a notice under Section 84 of the Land Revenue Act.

6. Eight issues were framed in that suit. Issue No. 4 reads:

(4) Whether the decree passed in Special Civil Suit No. 2 of 1942 is a nullity?

Issue No. 4 was decided in the negative and the decree passed in Suit No. 2/42 was held not to amount to a nullity. That decree, therefore, could not be considered to be inexecutable under the law. The Court also came to the conclusion after going through the relevant evidence that the plaintiffs had not proved that they were holding and cultivating the suit land personally during the relevant period. They further did not appear to have paid any rent to the defendants from the year 1942 onwards and the relationship of landlord and tenant did not subsist between them. There was undoubtedly a dispute about the suit land between the defendants and some others but the defendants' title was established in suit No. 2/42. In that suit these plaintiffs, though impleaded as parties, had not cared to lead any evidence and indeed they had allowed the suit to proceed against them ex parte. After considering the scheme of the Bombay Tenancy Act, 1939, the Court also concluded that the Act did not bar the jurisdiction of the trial Judge in Suit No. 2/42, to pass a decree for possession, as indeed the decree for partition and possession could only be made by the civil court. That decree was thus held not to be violative of any provision of the Bombay Tenancy Act, 1939, the plaintiffs having never admitted or accepted the defendants as their landlords. The suit was accordingly dismissed. An appeal preferred by the plaintiffs to the High Court of Gujarat was dismissed by a Division Bench in limine on March 26, 1969. Leave to appeal to this Court was declined by the High Court on August 14, 1969.

7. In this Court, Shri Shukla tried to show that the appellants were tenants of the suit land and were in its cultivating possession, with the result that they were entitled to the benefit of the Bombay Tenancy Act, 1939. He contended that they could not be deprived of their holding as tenants, adding, that in fact no actual possession of the land in dispute was ever taken from them. According to his submission, in execution of the decree in Suit No. 2/42, only symbolical possession could be given and no steps were in fact ever taken, in accordance with law, for delivery of actual physical possession of the land in question. Shri Shukla also submitted with some emphasis that against the appellants only attornment was claimed in Chhotalal's suit (No. 2/42), with the result that their status as tenants and their possession of the land in dispute in that capacity remained unchallenged and undisturbed. Having been in continuous possession since 1929, they actually became owners under Section 32 of the Bombay Tenancy and Agricultural Lands Act, 1948.

8. In our view, both appeals are without merit. As already observed, the trial Court (Civil Judge S. D. Godhra) in Suit No. 8/67 in a well-considered judgment came to the conclusion that the plaintiffs (appellants in this Court) had. never recognized the defendants as their landlords and for this reason the decree in Suit No. 2/42 did not violate any provision of the Bombay Tenancy Act, 1929. Suit No. 2/42, being for partition and recovery of possession involving title, could only be dealt with by Civil Judge and not by Mamlatdar. The decree in that suit was, therefore not a nullity and actual physical possession in execution of the decree made in that suit could be delivered. The plaintiffs (appellants in this Court) were not entitled to the declaration that they had become owners of the suit land under Section 32 of the Bombay Tenancy and Agricultural Lands Act, 1948. This Act came into force after the institution of Suit No. 2/42 with the result that the execution of that decree by the ordinary civil courts was permissible. This conclusion has not been shown to be erroneous, and certainly not so grossly erroneous as to justify interference by this Court on appeal by special leave. According to the settled practice of this Court, in appeals by special leave, ordinarily, this Court does not embark upon an inquiry into the correctness or otherwise of all conclusions of fact or even of law arrived at by the High Court and re-appraise the evidence for itself. This Court may examine the evidence in those rare cases where there is misreading of evidence or where the effect of evidence has been seriously misunderstood or where important evidence making a fundamental difference in the ultimate conclusion has been completely ignored and it has led to injustice. Such is clearly not the case here.

9. A faint attempt was made by Shri Shukla to show that the appellants had throughout remained in actual physical cultivating possession of the suit land which is stated to be 47 acres of agricultural land in the town of Godhra and for that purpose he referred us to the evidence on the question by submitting that this evidence had been ignored by the courts below. Reference to the entries in the revenue papers to which our attention was drawn, however, does not support the appellants' case. There is no clear evidence to that effect. Once it is held that the conclusion of the courts below that the appellants had not been in possession of the suit land as tenants, as alleged is not open to challenge, their claim must fail. The decree in Suit No. 2/42 being a lawful decree and not being a nullity as contended on behalf of the appellants, it is difficult to appreciate their claim to protection against dispossession. The order granting delivery of actual possession to the respondents decree-holder is, in the circumstances of the case, fully justified.

10. On the conclusions of the Courts below, it is not possible to hold that the impugned judgments suffer from any serious legal infirmity which can be said to have resulted in grave injustice.

11. Both the appeals must, therefore, be held to be without merit. However, keeping in view the peculiar facts and circumstances of this case and particularly the fact that the appellants were originally tenants and they have lost their right by reason of their own ill-advised action in not participating in Suit No. 2/42, we consider it to be proper to direct that the parties should bear their own costs both here and in the High Court.

12. The appeals are accordingly dismissed, but with no costs either here or in the High Court.