

A BAPU MAHADU MALI & ORS.

v.

VITHALRAO BHAUSAHEB DESHMUKH AND ANR.

NOVEMBER 2, 1995

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

*Code of Civil Procedure, 1908 :*

C *Suit for possession—Decreed in favour of rival reversioners—Remained in possession for more than 12 years—Prescribed title by adverse possession—Tenancy agreement with rival reversioners—Hence other party estopped from denying title to landlords—Contention not canvassed before Courts below—Raised for the first time before Supreme Court—No clinching evidence produced—Hence contention rejected.*

D *Bombay Tenancy and Agricultural Land Act, 1948 :*

*S.31—Applicability of.*

E In a suit for possession by the rival reversioners, the appellants—landlords were the defendants. The suit was decreed against the appellants as the respondents remained in possession for more than 12 years and they had prescribed title by adverse possession. The appellants having entered into a tenancy agreement with the respondents they were estopped under S.116 of the Evidence Act to deny the title to the landlords. Thus, unable to succeed in the Courts below, the appellants preferred the

F Dismissing the appeal, this Court

G HELD : The contention that when a notice was issued to the appellants to pay Nazrana after the abolition of wattan, the appellants had paid the same and thereby became entitled to remain in possession and Section 31 of the Bombay Tenancy and Agricultural Lands Act, 1948 has no application was rejected by the appellate authorities recording the finding that the respondents paid the Nazrana but this finding was not canvassed either before the Revenue Tribunal or the High Court. No clinching evidence has been produced before this Court to show that the appellants

H had paid Nazrana. The contention, therefore, has no substance. [747-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10420 of 1995. A

From the Judgment and Order dated 21.6.83 of the Bombay High Court in W.P. No. 1730 of 1983.

V.N. Ganpule and A.S. Bhasme for the Appellants. B

Yatender Sharma and A.M. Khanwilkar for the Respondents.

The following Order of the Court was delivered :

Leave granted. C

We do not find any justification warranting interference in this appeal.

The only point before the Revenue Tribunal and the High Court was of the title. For valid reasons the contention was rejected. D

Admittedly, there was a suit for possession by the rival reversioners. The appellants-landlords were the defendants in the suit. The suit ended against the landlords-appellants and thereby the title remained with the other side of the reversioners. Since the respondents remained in possession for more than 12 years they have prescribed title by adverse possession. That apart, the appellants' having entered into a tenancy agreement with the respondents they are estopped under Section 116 of the Evidence Act to deny the title of the landlords. Having these insurmountable difficulties in the way, Shri V.N. Ganpule, learned senior counsel for the appellants, contended that when a notice was issued to the appellants to pay Nazrana after the abolition of wattan, the appellants had paid the same and thereby became entitled to remain in possession and Section 31 of the Bombay Tenancy and Agricultural Lands Act, 1948 has no application. This contention was rejected by the appellate authorities recording the finding that the respondents paid the Nazrana but this finding was not canvassed either before the Revenue Tribunal or the High Court. No clinching evidence has been produced before us to show that the appellants had paid Nazrana. The contention, therefore, has no substance. E F G

The civil appeal is accordingly dismissed without costs.

G.N.

Appeal dismissed. H