

BHARMAPPA NEMANNA KAWALE AND ANR.

v.

DHODI BHIMA PATIL AND ORS.

MARCH 25, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

*Land Laws :*

*Bombay Tenancy and Agricultural Lands Act, 1984 :*

*S.185-A—Suit for eviction decreed by civil court holding that defendant was not a tenant—Execution of decree—Plea of want of jural relationship raised in execution negatived—High Court directing executing court to decide the issue of tenancy—Held, the issue of tenancy having become final held, the issue of tenancy having become final under the decree, executing court was right in refusing to entertain the objection for executing the decree—High Court not justified in directing executing court to consider the objection.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5376 of 1996.

From the Judgment and Order dated 22.11.91 of the Bombay High Court in W.P. No. 319 of 1982.

Dr. R.B. Masodkar and Ms. Vrinda Dhar for the Appellants.

A.S. Bhasme for the Respondents.

The following Order of the Court was delivered :

Delay condoned.

Substitution ordered.

Leave granted. We have heard the learned counsel on both sides.

The admitted position is that the civil Court decreed the suit for eviction against the appellant holding that he was not a tenant which order had become final. The same plea of want of jural relationship is sought to be raised in execution. When the objection raised was negatived, the High

Court in Writ Petition No. 3319 of 1992 by order dated November 22, 1991 directed the executing Court to go into the question. Accordingly, this appeal by special leave came to be filed.

Shri Bhasme, learned counsel for the respondents, contended that in view of the specific language employed in Section 85-A of the Bombay Tenancy and Agricultural Lands Act, 1948 the only competent authority that has to go into the question is the revenue authority under the Act and civil Court has no jurisdiction to go into the question whether the appellant is a tenant or not. There fore, the High Court was right in directing the executing court to go into the question. It is rather unfortunate that the respondent has allowed the decree holding that he is not a tenant to become final. Having allowed it to become final, it is not open to him to contend that he is still a tenant under the Act and therefore the decree is nullity. Under those circumstances, the executing Court was right in refusing to entertain the objection for executing the decree. The High Court was not justified, the circumstances, in directing the executive Court to consider the objection.

The appeal is accordingly allowed. No costs.

Appeal allowed.