
CASE ANALYSIS: PAPILA BAI VS. CHAVDAS T. BHORTAKKE

Shrotapanna Mishra, Manipal University Jaipur

Citation: (2005) 2 SCC 509 | 2005 SCC OnLine SC 71

Introduction: Facts of the Case

- 1) **Hari Vithoba** owned land in village Mehun, Taluka Edlabad, Distt. Jalgaon, Maharashtra, with Survey No. 42, measuring about 8 acres and 21 gunthas.
 - In 1941, Hari Vithoba mortgaged the land to **Dattatray Kulkarni** via a conditional sale deed, with a redemption period of seven years.
 - Upon the expiration of the redemption period in April 1947, Dattatray Kulkarni remained in possession, having inducted **Chavdas Totaram Bhortakke** as his tenant.
- 2) Dattatray Kulkarni passed away in 1957, and his wife, Durgabai, succeeded him.
- 3) In 1977, the daughter of Hari Vithoba, the Present Appellant (**Papila Bai**), filed a suit for the redemption of the mortgage.
 - A compromise was reached between the appellant and Durgabai, resulting in a decree for redemption.
- 4) The appellant filed an application before the Tehsildar, seeking a declaration that the First Respondent was not a tenant of the land. Alternatively, she requested a certificate under Section 88C of the Bombay Tenancy and Agricultural Lands Act, 1948.
 - The Tehsildar declared the First Respondent as a tenant and issued a certificate under Section 88C in favor of the Appellant.
- 5) This decision was challenged by **the heirs of Chavdas Totaram** in a Tenancy Appeal,

which was dismissed.¹

- 6) Writ Petition was filed by the heirs of Chavdas Totaram, challenging the grant of the 88C certificate, but it was dismissed.²
- 7) The Appellant filed a Revision Application before the Maharashtra Revenue Tribunal, which was allowed.³
- 8) However, the decision of the Maharashtra Revenue Tribunal was challenged by the First Respondent in Writ Petition.⁴
- 9) The High Court set aside the order of the Maharashtra Revenue Tribunal and sustained the objections to the execution of the decree, holding that it was not binding against the heirs of Chavdas Totaram.

– The High Court emphasized that the appellant had obtained a certificate under Section 88C, which became final and binding.

– The High Court held that the First Respondent was lawfully cultivating the land and was a deemed tenant under Section 4 of the Act, even after the redemption of the mortgage.

- 10) The Appellant's contention, relying on previous judgments, was that unless there was an express provision in the mortgage deed empowering the mortgagee to induct a tenant, any person inducted would be a trespasser and not a deemed tenant.

– The High Court dismissed this contention, stating that the person claiming the status of a deemed tenant must be cultivating the land lawfully, regardless of whether their authority is derived directly from the owner.

- 11) The High Court also rejected reliance on certain judgments, stating that the law laid down in previous Constitutional Bench judgments still held.

¹ Tenancy Appeal No. 19 of 1980

² Writ Petition No. 3045 of 1985

³ Revision Application No. 166 of 1985

⁴ Writ Petition No. 184 of 1992.

- Consequently, the High Court dismissed the appeals, finding no merit, and ordered no costs to be paid.

Provisions of the Law Involved

Section 88C of the Maharashtra Tenancy and Agricultural Lands Act, 1948 – Exemption from certain provisions to lands leased by persons with the annual income not exceeding Rs. 1,500 – (1) [Save as otherwise provided by sections 33-A, 33-B, and 33-C, nothing in sections] 32 to 32-R (both inclusive) shall apply to lands leased by any person if such land does not exceed an economic holding and the total annual income of such person including the rent of such land does not exceed Rs. 1,500:

Provided that the provisions of this subsection shall not apply to any person who holds such land as a permanent tenant or who has leased such land on permanent tenancy to any other person.

[(2) Every person eligible to the exemption provided in sub-section (1) shall make an application in the prescribed form to the *Mamlatdar* within whose jurisdiction all or most of the pieces of and leased by him are situate within the prescribed period for a certificate that he is entitled to such exemption.

(3) On receipt of such application, the *Mamlatdar* shall, after giving notice to the tenant or tenants of the land, hold an inquiry and decide whether the land leased by such person is exempt under sub-section (1) from the provisions of section 32 to 32-R.

(4) If the *Mamlatdar* decides that the land is so exempt, he shall issue a certificate in the prescribed form to such person.

(5) The decision of the *Mamlatdar* under sub-section (3), subject to appeal to the Collector, shall be final.]⁵

Section 4 of the Maharashtra Tenancy and Agricultural Lands Act, 1948 – Persons to be deemed tenants. –

⁵ Maharashtra Tenancy and Agricultural Lands Act, 1948 | <https://www.bareactslive.com/MAH/MH293.HTM#4>

[(1) A person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not,-

- (a) a member of the owner's family, or
- (b) a servant on wages payable in cash or kind but not in crop share or a hired laborer cultivating the land under the personal supervision of the owner or any member of the owner's family, or
- (c) a mortgagee in possession.

Explanation [(I)]. - A person shall not be deemed to be a tenant under this section if such person has been on an application made by the owner of the land as provided under section 2A of the Bombay Tenancy Act, 1939, declared by a competent authority not to be a tenant.

[Explanation II. - Where any land is cultivated by a widow or a minor or a person who is subject to physical or mental disability or a serving member of the armed forces through a tenant then notwithstanding anything contained in Explanation I to clause (6) of section 2, such tenant shall be deemed to be a tenant within the meaning of this section.]]

[(2) Notwithstanding anything contained in sub-section (1), where any land in the Ratnagiri and Sindhudurg districts is being cultivated by a person (other than the person who, according to the Records of Rights, has right to cultivate, for not less than 12 years, such person shall be deemed to be a tenant for the purposes of this section if there is circumstantial evidence that he has been uninterruptedly cultivating the land personally, and [the *Sarpanch*, *Police Patil* or the Chairman of *Vividh Karyakari Sahakari Society*, and the cultivator of the adjoining land state on affidavit that, the said land is in the possession of, and is being cultivated by, such person, uninterruptedly for not less than 12 years].

Explanation I. - For the purpose of this sub-section, the expression "land" includes the "*warkas* land".

Explanation II. - For the purpose of this sub-section, the expression "circumstantial evidence" includes extract of voters list, ration card, electricity bill or house assessment receipt from the same village or any receipt in respect of sale of agricultural produce or any document regarding

permission of felling of trees or excavation of minor mineral or any such permission granted with respect of such land.

(3) Notwithstanding anything contained in sub-clause (a) of clause (ii) of sub-section (1) of Section 32H, the purchase price in such cases shall be 200 times the assessment.]⁶

Issues Identified

- **Validity of the 1941 Transaction:** Whether the transaction between Hari Vithoba and Dattatray Kulkarni styled as a conditional sale deed, was indeed a mortgage by conditional sale or a sale deed, and the implications of this determination on subsequent legal proceedings.
- **Status of Chavdas Totaram Bhortakke:** Whether Chavdas Totaram Bhortakke, inducted as a tenant by Dattatray Kulkarni, lawfully cultivated the land and thereby acquired the status of a deemed tenant under Section 4 of the Bombay Tenancy and Agricultural Lands Act, 1948.
- **Validity of Certificate under Section 88C:** The validity and finality of the certificate issued under Section 88C of the Act, declaring the Appellant as the landlord and the first Respondent as the tenant, and its implications on the rights and obligations of the parties.
- **Effect of Redemption of Mortgage:** The legal consequences of the redemption of the mortgage between Hari Vithoba and Dattatray Kulkarni on the rights of Chavdas Totaram Bhortakke (and his heirs) and the Appellant.

Line of Arguments

Point of arguments advanced for the Appellant – Papila Bai

Advocates who appeared in this case for the Appellant – V.A. Mohta, Senior Advocate (Makarand D. Adkar, S.D. Singh, Vijay Kumar, Anurag Kishore, Nilkantha Nayak, and

⁶ Maharashtra Tenancy and Agricultural Lands Act, 1948 | <https://www.bareactslive.com/MAH/MH293.HTM#4>

Vishwajit Singh, Advocates with him)

1. **Validity of Induction:** The Appellant contends that unless there is an express provision in the mortgage deed authorizing the mortgagee to induct a tenant, any person inducted on the land would be a trespasser. Consequently, such a person cannot be deemed a lawful cultivator under Section 4 of the Act.
2. **Interpretation of Section 4:** The Appellant relies on the interpretation of Section 4 provided in the judgment of *Dahya Lal v. Rasul Mohammed Abdul Rahim*. According to this interpretation, any person lawfully cultivating land belonging to another person, regardless of the source of authority, must be deemed a tenant under the Act.
3. **Legislative Intent:** The Appellant argues that the Act intends to grant protection to all persons lawfully cultivating agricultural lands, not just those with authority directly derived from the owner. Therefore, the Respondents, in this case, should be considered deemed tenants under the Act.
4. **Precedent:** The Appellant cites various judgments, including *Dahya Lal v. Rasul Mohammed Abdul Rahim*, to support their interpretation of the law and to argue that the Respondents are deemed tenants under the Act.

Point of arguments advanced for the Respondents – Chavdas T. Bhortakke (Dead) by Legal Representatives and Others

Advocate who appeared in this case for the Respondents – S.V. Deshpande, Advocate;

1. **Validity of Induction:** The Respondent contends that the appellant's argument regarding the validity of induction is legally unsustainable. They argue that the mortgagee in possession had the authority to induct a tenant, as recognized by the judgment of the High Court of Judicature of Bombay, Aurangabad Bench, in this case.
2. **Interpretation of Section 4:** The Respondent relies on the High Court's interpretation of Section 4, which considers the Respondents as lawful cultivators and deemed tenants under the Act. They argue that the Respondents' right as tenants is fructified into a statutory right under the Act.

3. **Legislative Intent:** The Respondent supports the High Court's interpretation, emphasizing the legislative intent to protect persons lawfully cultivating agricultural lands, including those inducted by mortgagees in possession.

4. **Precedent:** The respondent might cite judgments that support the High Court's interpretation and decision, arguing that the appellant's reliance on certain judgments is misplaced or irrelevant in the present context.

Judgment passed and Evaluation of the Decision

The judgment passed by the High Court of Judicature of Bombay, Aurangabad Bench, in the case at hand can be evaluated as follows –

- **Evaluation of the Decision** – The High Court upheld the objections to the execution of the decree passed in Civil Suit, stating that it was not binding against the heirs of deceased Chavdas Totaram.⁷ The Court also emphasized that the document executed in 1941, though styled as a sale deed, was a mortgage by conditional sale.

It further highlighted that the Appellant had obtained a certificate under Section 88C of the Bombay Tenancy and Agricultural Lands Act, 1948, which had become final and binding on the parties.

The court concluded that the First Respondent was lawfully cultivating the land and, therefore, was a deemed tenant within the meaning of Section 4 of the Act. Consequently, the first respondent could not be evicted from the land.

- **Ratio Decendi** – The High Court revolves around the interpretation and application of provisions of the Bombay Tenancy and Agricultural Lands Act, 1948, particularly

Section 4, which defines the concept of a "deemed tenant."

The court's interpretation of the law led it to conclude that the first respondent qualified as a deemed tenant, thereby granting the heirs of Chavdas T. Bhortakke statutory rights even after the redemption of the mortgage.

⁷ Civil Suit RCS No. 127 of 1977

The High Court also discussed the applicability of previous judgments, particularly the decision in *Dahya Lal v. Rasul Mohammed Abdul Rahim*, to the present case.

It emphasized that the principles established in *Dahya Lal* regarding the status of deemed tenants applied, despite arguments to the contrary based on subsequent judgments. The court clarified that the observations made in other cases did not alter the fundamental principles laid down in *Dahya Lal*.

In summary, the High Court's decision was based on a careful interpretation of relevant statutory provisions and legal precedents. It emphasized the protection granted to deemed tenants under the law and applied established principles to the facts of the case. The court's analysis provides clarity on the rights of tenants in cases involving mortgages and redemption, setting a precedent for similar cases in the future.

REFERENCES

Judgments

[1] Papila Bai v. Chavdas Totaram Bhortakke (Dead) by LRS. and ORS. (2005) 2 SCC 509
[2005 SCC OnLine SC 71

Web

[1] <https://www.scconline.com/>

[2] <https://www.legalauthority.in/judgement/papila-bai-vs-chavdas-t-bhortakke-dead-by-lrs-18456>

[3] <https://www.bareactslive.com/MAH/MH293.HTM#4>