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MUSSAMIYA IMAM HAIDER BAX RAZVI

v.

RABARI GOVINDHAI RATNABHAI & ORS.

August 21, 1968

B [J. C. SHAH V. RAMASWAMI AND A. N. GROVER, JJ.]

Bombay Tenancy and Agricultural Lands Act (Bom. 67 of 1948), as amended by Bombay Amendment Act 13 of 1956, ss. 32, 70, 85 and 88—Suit land under management of Court of Wards—Tenancy created during such management—Tenant if became statutory owner on "tillers' day"—Jurisdiction of civil court to decide if tenancy subsisted on relevant dates—If barred.

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The appellant succeeded to the estate consisting of the suit lands when he was a minor. The State Government assumed management of the estate under the Bombay Court of Wards Act, 1905 and appointed the Collector as the manager of the estate. While the estate was under the management of the Court of Wards on July 25, 1956. the first respondent wrote to the Collector that the respondents were forming a cooperative society for carrying on agriculture, and that the suit lands were
D required for that purpose. The Collector passed an order on July 28, 1956. The *kabuliyat* was executed on August 24, 1956 by the respondents, though no cooperative society was formed. The lease was therefore created on August 24, 1956 and according to the *kabuliyat*, expired on 31st May, 1957. The Court of Wards withdrew its superintendence on May 11, 1958.

Under s. 32 of the Bombay Tenancy and Agricultural Lands Act, 1948
E every tenant shall be deemed to have become a statutory owner of the land on 1st April, 1957 known as the "tillers' day". The Act was amended by Amending Act 13 of 1956 which came into force on August 1, 1956. The effect of the amendment was that ss. 1 to 87A were not applicable to an estate or land taken under the management of the Court of Wards. Under s. 88 of the Act, after cessation of the management by the Court of Wards, the provisions of the Act would apply to such estate. Therefore, ss. 1 to 87A of the Act were not applicable to the suit lands from
F August 1, 1956 to May 11, 1958.

The appellant filed a suit on July 11, 1958 for recovery of possession of the suit lands and mesne profits on the ground that the lease was fraudulently obtained by the respondents. The respondents contended that they became statutory owners under s. 32 or s. 88 of the Act and that the civil court had no jurisdiction to hear the suit.

G The trial court decreed the suit. On appeal, the High Court held : (1) that the appellant had failed to establish that the lease was vitiated by fraud; (2) that the respondents had failed to establish that they had become statutory owners of the suit lands on or before the date of suit; (3) that the civil court had jurisdiction to decide whether the respondents were tenants on the relevant dates namely July 28, 1956 or May 11, 1958, before the suit was filed, and whether they had become statutory owners, (4) but that the civil court had no jurisdiction to deal with the
H question as to whether the defendants were or were not tenants on the date of the suit that such question could only be decided by the Revenue authorities and that the question should be referred to the Mamlatdar accordingly.

In appeal to this Court,

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HELD: (1) On the evidence adduced, the High Court was right in its view that the lease in favour of the respondents was not vitiated by fraud. The evidence showed that the lease was granted with the knowledge that there was no cooperative society. [795 A-C]

(2) (a) As during the period August 1, 1956 to May 11, 1958 sections 1 to 87A of the Act were not applicable to the suit lands, s. 32 was not applicable, and therefore, the respondents could not have become statutory owners on the "tillers' day", mentioned in s. 32. [795 G; 796 A]

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(b) As provided by the *Kabuliyat* itself the tenancy expired on May 31, 1957. That is, there was no subsisting lease on May 11, 1958 which was the date of cessation of the management by the Court of Wards. If there was no subsisting lease on May 11, 1958 the respondents were not tenants, and the High Court was right in its view that the respondents had failed to establish that they had become statutory owners of the land under s. 32 by virtue of the first proviso to s. 88. [796 B-E]

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(3) Section 70(b) of the Act imposes a duty on the Mamlatdar to decide whether a person *is a tenant* and not to decide whether a person *was or was not a tenant in the past.* In the present case, the contention of statutory ownership of the respondents was based on the question whether the respondents were tenants on July 28, 1956 or on May 11, 1958 and not whether they were tenants on July 11, 1958 the date of the suit. The question would be therefore whether they were or were not tenants in the past. Further, the question was put forward by the respondents not as an independent question but as a reason for substantiating their plea of statutory ownership. Therefore, the plea of tenancy on the past two dates was a subsidiary plea and the main plea was of statutory ownership and the jurisdiction of the civil court cannot be held to be barred by virtue of the provisions of ss. 70 and 85, as there is no exclusion, expressly or by necessary implication, of the jurisdiction of the civil court to decide the question whether the respondents had acquired title as statutory owners. Nor is the jurisdiction of the civil court barred for considering the question whether the provisions of the Act are or are not applicable to the suit land during a particular period. [796 H; 797 A-E; G-H]

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Secretary of State v. *Mask & Co.*, 67 I.A. 222, 236, referred to.

(4) In the written statement, the only plea set up on behalf of the respondents was the plea of tenancy on July 28, 1956 which was the basis of statutory ownership. The High Court found that the tenancy was created on August 24, 1956 and that the tenancy did not subsist on May 11, 1958 when there was a cessation of the management by the Court of Wards. There was no plea of any intervening act or transaction between May 11, 1958 and July 11, 1958, the date of suit, under which a fresh tenancy was created and which was subsisting on the date of the suit. There was thus no issue which survived for the decision of the Mamlatdar under s. 85A of the Act. Therefore, the High Court should have decreed the suit and was in error in referring the issue whether the respondents were tenants of the land on the date of suit to the Mamlatdar. [798 A-G]

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CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 312 and 313 of 1966.

A Appeals by special leave from the judgment and decree dated February 5, 1963 of the Gujarat High Court in Appeal No. 1009 of 1960 from original decree.

S. T. Desai, G. L. Sanghi, B. R. Agarwala and *M. I. Patel,* for the appellant (in C.A. No. 312 of 1966) and the respondent (in C.A. No. 313 of 1966).

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K. L. Hathi, for respondents Nos. 1 to 8 (in C.A. No. 312 of 1966) and the appellants (in C.A. No. 313 of 1966).

N. S. Bindra and *S. P. Nayar,* for respondent No. 9 (in C.A. No. 312 of 1966).

C The Judgment of the Court was delivered by

Ramaswami, J. These appeals are brought, by special leave, from the judgment of the High Court of Gujarat dated February 5, 1963 in appeal No. 1009 of 1960 arising out of Civil Suit No. 64 of 1958 filed by Mussamiya Imam Haider Bax Razvi, appellant in Civil Appeal No. 312 of 1966 (hereinafter referred D to as the plaintiff) against the respondents in Civil Appeal No. 312 of 1966 and the appellants (excepting the Charity Commissioner) in Civil Appeal No. 313 of 1966 (hereinafter referred to as the defendants).

The lands in dispute are located in the village Isanpur and form part of a 'Devasthan' inam. The 'Sanads' were created in E the name of the ancestors of the plaintiff as the Sarjudanashi of the estate of Shah Alam which was an estate consisting of 'Roza', a mosque, a grave-yard and several other properties. The estate was last held by the father of the plaintiff who expired on or about March 9, 1948 leaving behind him the plaintiff who was then a minor as his only heir. On August 26, 1948 the Collec- F tor of Ahmedabad was appointed as the guardian of the properties of the plaintiff by an order of the District Court, Ahmedabad. Subsequently, on or about January 15, 1953, the then Bombay Government assumed management of the estate under the Court of Wards Act, 1905 (Bombay Act No. 1 of 1905) and appointed the Collector of Ahmedabad as the manager of the same. The case of the plaintiff is that the defendants fraudulently entered G into a conspiracy with the Collector's subordinate staff for getting possession of the disputed lands. In this connection the first defendant wrote to the District Collector, Ahmedabad on July 25, 1956 representing that certain persons formed or will form a Co-operative Society for carrying on agriculture and therefore required the lands for that purpose. Defendants 1, 2, 3 and 5 H also made applications for that purpose alleging that they were Rabari, kept cattle and were residents of Ahmedabad but none of them had any agricultural land. On account of the fraud of the defendants the Collector was prevailed upon to make an order

dated July 28, 1956 in breach of the provisions of ss. 63 and 64 of the Bombay Tenancy and Agricultural Lands Act (Bombay Act 67 of 1948), hereinafter referred to as the 'Act', and the Rules made thereunder granting possession of the lands to the defendants who were neither carrying on agriculture on co-operative basis nor ever formed a Co-operative Society. It was contended on behalf of the plaintiff that the lease granted to the defendants was void and the plaintiff was entitled to a decree for recovery of possession of the lands from the defendants and also for a sum of Rs. 10,000 for damages for use and occupation of the land prior to the date of the suit and for future mesne profits at the rate of Rs. 500 per month. The main written statement was filed by the first defendant and his contention was that the Civil Court had no jurisdiction to hear the suit. It was said that a valid lease had been created in favour of the defendants and as a result of the coming into force of the Amending Act (Bombay Act No. 13 of 1956) the defendants had become statutory owners of the lands in question. The suit came up for hearing before the 5th Joint Civil Judge, Senior Division at Ahmedabad who by his judgment dated July 30, 1960, held that the Civil Court had jurisdiction to hear the suit and the provisions of the Act did not apply to the suit lands and therefore the defendants were trespassers. The learned Judge accordingly granted a decree in favour of the plaintiff for recovery of possession of the lands from defendants 1 to 8. He also granted the plaintiff a decree for a sum of Rs. 10,000 as damages for use and occupation of the lands with interest at 6 per cent p.a. from August 1, 1956 till the date of the suit *i.e.*, July 11, 1958. The learned Judge further ordered that the plaintiff was entitled to recover mesne profits to be determined under O.20, r.12, Civil Procedure Code. Defendants 1 to 8 took the matter in appeal to the High Court of Gujarat, being First Appeal No. 1009 of 1960. The High Court held : (1) that the defendants had failed to establish that they had become statutory owners of the suit lands on or before the date of the suit, (2) that the plaintiff had failed to establish that the lease created either on July 28, 1956 or on August 24, 1956 was vitiated by fraud, and (3) that the Civil Court had no jurisdiction to deal with the question as to whether the defendants were or were not tenants from the date of the suit and this question could only be decided by the Revenue Authorities. For these reasons the High Court directed that under s. 85A of the Act the following issue should be referred to the Mamlatdar having jurisdiction in the matter for his decision and that the officer shall communicate his decision, or, if there are appeals from the decision, the final decision, to the High Court as soon as possible. The issue was as follows : "Do the defendants prove that they are tenants of the lands in suit?" The High Court further directed that the hearing of the appeal

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A should stand adjourned until after the relevant communication was received from the Revenue Authorities.

It is necessary at this stage to set out the relevant provisions of the Act as it stood at the material time. Section 2(18) states :

B "2. In this Act, unless there is anything repugnant in the subject or context,—

(18) 'tenant' means a person who holds land on lease and include—

(a) a person who is deemed to be a tenant under section 4;

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(b) a person who is a protected tenant; and

(c) a person who is a permanent tenant;

and the word 'landlord' shall be construed accordingly;" Section 32(1) is to the following effect :

D "32.(1). On the first day of April 1957 (hereinafter referred to as 'the tillers' day") every tenant shall, subject to the other provisions of this section and the provisions of the next succeeding sections be deemed to have purchased from his landlord, free of all encumbrances subsisting thereon on the said day, the land held by him as tenant, if

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(a) such tenant is a permanent tenant thereof and cultivates land personally;

(b) such tenant is not a permanent tenant but cultivates the land leased personally; and

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(i) the landlord has not given notice of termination of his tenancy under section 31; or

(ii) notice has been given under section 31, but the landlord has not applied to the Mamlatdar on or before the 31st day of March 1957 under section 29 for obtaining possession of the land; or

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(iii) the landlord has not terminated the tenancy on any of the grounds specified in section 14, or has so terminated the tenancy but has not applied to the Mamlatdar on or before the 31st day of March 1957 under section 29 for obtaining possession of the lands.

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Provided that if an application made by the landlord under section 29 for obtain-

ing possession of the land has been rejected by the Mamlatdar or by the Collector in appeal or in revision by the Gujarat Revenue Tribunal under the provisions of the Act, the tenant shall be deemed to have purchased the land on the date on which the final order of rejection is passed. The date on which the final order of rejection is passed is hereinafter referred to as 'the postponed date'.

Provided further that the tenant of a landlord who is entitled to the benefit of the proviso to sub-section (3) of section 31 shall be deemed to have purchased the land on the 1st day of April 1958, if no separation of his share has been effected before the date mentioned in that proviso."

Section 32-F reads as follows :

"(1) Notwithstanding anything contained in the preceding sections,—

(a) where the landlord is a minor, or a widow or a person subject to any mental or physical disability or a serving member of the armed forces the tenant shall have the right to purchase such land under section 32 within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy under section 31.

Provided that where a person of such category is a member of a joint family, the provisions of this sub-section shall not apply if at least one member of the joint family is outside the categories mentioned in this sub-section unless before the 31st day of March 1958 the share of such person in the joint family has been separated by metes and bounds and the Mamlatdar on inquiry is satisfied that the share of such person in the land is separated, having regard to the area, assessment, classification and value of the land in the same proportion as the share of that person in the entire joint family property and not in a larger proportion.

(b) Where the tenant is a minor or a widow or a person subject to any mental or physical disability or a serving member of the armed forces, then subject to the provisions of clause

(a), the right to purchase land under section 32 may be exercised—

(i) by the minor within one year from the date on which he attains majority;

(ii) by the successor-in-title of the widow within one year from the date on which her interest in the land ceases to exist;

. . . . . .

Provided that where a person of such category is a member of a joint family, the provisions of this sub-section shall not apply if at least one member of the joint family is outside the categories mentioned in this sub-section unless before the 31st day of March 1958 the share of such person in the joint family has been separated by metes and bounds and the Mamlatdar on inquiry is satisfied that the share of such person in the land is separated, having regard to the area, assessment, classification and value of the land, in the same proportion as the share of that person in the entire joint family property, and not in a larger proportion.

. . . . . ."

Section 63(1) reads thus :

"63. (1) Save as provided in this Act,—

(a) no sale (including sales in execution of a decree of a Civil Court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue), gift, exchange or lease of any land or interest therein, or

(b) no mortgage of any land or interest therein, in which the possession of the mortgaged property is deliyered to the mortgagee,

shall be valid in favour of a person who is not an agriculturist (or who being an agriculturist will, after such sale, gift, exchange, lease or mortgage, hold land exceeding two-thirds of the ceiling area determined under the Maharashtra Agricultural Lands (Ceiling on Holdings Act, 1961, or who is not an agricultural labourer):

Provided that the Collector or an officer authorised by the State Government in this behalf may grant permission for such sale, gift, exchange, lease or mortgage, on such conditions as may be prescribed.

Explanation.—For the purpose of this sub-section the expression 'agriculturist' includes any person who as

a result of the acquisition of his land for any public purpose has been rendered landless, for a period not exceeding ten years from the date possession of his land is taken for such acquisition.

. . . . . ."

Section 70 is to the following effect :

"70. For the purposes of this Act the following shall be the duties and functions to be performed by the Mamlatdar—

(a) to decide whether a person is an agriculturist;

(b) to decide whether a person is a tenant or a protected tenant (or a permanent tenant);

. . . . . .

(c) to decide such other matters as may be referred to him by or under this Act."

Section 85 states :

"(1) No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar or Tribunal, a Manager, the Collector or the Maharashtra Revenue Tribunal in appeal or revision or the State Government in exercise of their powers of control.

(2) No order of the Mamlatdar, the Tribunal, the Collector or the Maharashtra Revenue Tribunal or the State Government made under this Act shall be questioned in any Civil or Criminal Court.

Explanation.—For the purposes of this section a Civil Court shall include a Mamlatdar's Court constituted under the Mamlatdars' Courts Act, 1906."

Section 85A provides as follows :

"(1) If any suit instituted in any Civil Court involves any issues which are required to be settled, decided or dealt with by any authority competent to settle, decide or deal with such issues under this Act (hereinafter referred to as the 'competent authority') the Civil Court shall stay the suit and refer such issues to such competent authority for determination.

(2) On receipt of such reference from the Civil Court, the competent authority shall deal with and decide such issues in accordance with the provisions of this Act and shall communicate its decision to the Civil Court and such court shall thereupon dispose of the

A suit in accordance with the procedure applicable thereto.

Explanation.—For the purpose of this section a Civil Court shall include a Mamlatdar's Court constituted under the Mamlatdars' Courts Act, 1906."

B Section 88 reads

"(1) Save as otherwise provided in sub-section (2), nothing in the foregoing provisions of this Act shall apply—

(a) to lands belonging to, or held on lease from, the Government;

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(b) to any area which the State Government may, from time to time, by notification in the Official Gazette, specify as being reserved for non-agricultural or industrial development;

(c) to an estate or land taken..... under the management of the Court of Wards or of a

D Government Officer appointed in his official capacity as a guardian under the Guardians and Wards Act, 1890;

(d) to an estate or land taken under management by the State Government under Chapter IV or

E section 65 except as provided in the said Chapter IV or section 65, as the case may be, and in sections 66, 80A, 82, 83, 84, 85, 86 and 87 :

Provided that from the date on which the land is released from management, all the foregoing provisions of this Act shall apply thereto; but subject to the modification that in the

F case of a tenancy, not being a permanent tenancy, which on that date subsists in the land—

(a) the landlord shall be entitled to terminate the tenancy under section 31 or under sec-

G tion 33B in the case of a certificated landlord within one year from such date; and

(b) within one year from the expiry of the period during which the landlord or certificated landlord is entitled to terminate the tenancy as aforesaid, the tenant shall

H have the right to purchase the land under section 32 (or under section 33C in the case of an excluded tenant); and

. . . . . ."

Rule 36 of the Bombay Tenancy and Agricultural Lands Rules, 1956 is to the following effect :

"Conditions on which permission for sale etc. of land under section 63 may be granted—

(1) The Collector or other officer authorized under the proviso to sub-section (1) of section 63 shall not grant permission for the sale, gift, exchange, lease or mortgage of any land in favour of a person who is not either an agriculturist or an agricultural labourer or who, being an agriculturist, cultivates personally land not less than the ceiling area whether as owner or tenant or partly as owner and partly as tenant unless any of the following conditions are satisfied :—

(a) such a person *bona fide* requires the land for a non-agricultural purpose; or

(b) the land is required for the benefit of an industrial or commercial undertaking or an educational or charitable institution; or

(c) such land being mortgaged, the mortgagee has obtained from the Collector a certificate that he intends to take the profession of an agriculturist and agrees to cultivate the land personally; or

(d) the land is required by a Co-operative Society; or

. . . . . ."

The first question to be considered in this case is whether the High Court was right in taking the view that the plaintiff failed to establish that the lease created on August 24, 1956 was vitiated by fraud. It was contended by Mr. S. T. Desai on behalf of the plaintiff that the trial court had reached the finding that there was a conspiracy between the defendants and the Collectorate staff and the Collector was induced by fraud and misrepresentation to grant lease in favour of the defendants. It was argued that there was no justification for the High Court to interfere with the finding of the trial Judge on this point. Mr. S. T. Desai took us through the relevant documentary evidence on this issue but having perused that evidence, we are satisfied that the High Court was right in holding that the plaintiff had not established that there was any fraud or misrepresentation made to the Collector or that there was a conspiracy between the defendants and the City Deputy Collector or his subordinates. In this connection, the High Court has referred to the circumstance that the offer made by the Collector in his letter, Ex. 51 embodies

A the conditions which are capable of being explained on the ground that the Collector was aware of the fact that there was no Co-operative Society in existence and that the defendants were not members of any Co-operative Society. The High Court also referred to the application, Ex. 53 which contains an endorsement of the City Deputy Collector that the defendants were given the lands for cultivation on co-operative basis. The High B Court also referred to the circumstance that neither the plaintiff nor his personal guardian had appeared in the witness box to support the allegation of fraud. We are accordingly of the opinion that the High Court was right in expressing the view that the lease in favour of the defendants was not vitiated by fraud and Counsel on behalf of the plaintiff has been unable to make C good his submission on this aspect of the case

We pass on to consider the next question arising in this case, namely, whether the defendants had become statutory owners of the suit lands because of the provisions of s. 32, s. 32-F or s. 88(1) of the Act. It is necessary to state at the outset that the Amending Act No. 13 of 1956 came into force on August 1, D 1956. It is not disputed by the parties that the Act as it stood before the Amending Act 13 of 1956, applied to the suit land. One of the sections which was amended by the Amending Act 13 of 1956 was section 88. One of the effects of the amendment of s. 88 was that ss. 1 to 87A were not applicable to "an estate or land taken under the management of the Court of E Wards". So, it is not in dispute that after August 1, 1956 the provisions contained in ss. 1 to 87A of the Act did not apply to the suit lands. It is also admitted that after the cessation of the management by the Court of Wards the provisions of the Act again became applicable to the suit lands. It has been found by the High Court upon examination of the evidence that the F Court of Wards withdrew its superintendence on May 11, 1958 when the order for the release of the management was actually passed and not on May 11, 1957 when the plaintiff attained majority. It is evident therefore that the Act applied to the suit lands before August 1, 1956, that ss. 1 to 87A did not apply during the period between August 1, 1956 and May 11, 1958 which was the date on which the management of the estate by G the Court of Wards ceased, and that the provisions of the Act again applied to the suit lands after the cessation of such management. On behalf of the defendants the argument was presented that there was a valid lease granted on July 28, 1956 and the defendants were tenants on April 1, 1957 *i.e.*, the date of 'the tillers day' under s. 32 of the Act and accordingly the defen- H dants became statutory owners of the lands in suit under that section. Mr. Hathi on behalf of the defendants challenged the finding of the High Court that there was no valid lease created on July 28, 1956, but having gone through the relevant documentary

and oral evidence, we are satisfied that the defendants have not substantiated their case that there was any valid lease of the lands on July 28, 1956 and the High Court was right in taking the view that the lease was created only on the execution of the 'Kabuliyat' dated August 24, 1956. It follows from this finding that the defendants were not tenants on the 'tillers' day' mentioned in s. 32 of the Act. The other question which arises in this connection is whether the defendants became statutory owners because of the provisions contained in the first proviso to s. 88 of the amended Act. The High Court has found that the defendants were not subsisting tenants on May 11, 1958 which was the date on which there was a cessation of the management. The reason was that the 'Kabuliyat' dated August 24, 1956 was for a period of one year and having regard to the fact that the Act was not applicable to the plaintiff's estate from August 1, 1956 to May 11, 1958, the tenancy would expire on May 31, 1957 as provided for in the 'Kabuliyat' itself. The High Court therefore found that on the basis that the tenancy was created by the 'Kabuliyat' dated August 24, 1956, the tenancy came to an end on May 31, 1957, so that there was no subsisting tenancy on the date of the cessation of the management. If there was no subsisting lease on May 11, 1958, the High Court was right in taking the view that the defendants had failed to establish that they had become statutory owners of the land by virtue of the first proviso to s. 88 of the new Act.

We proceed to consider the next question arising in this case, namely, whether the Civil Court had jurisdiction to decide the question whether the defendants were tenants of the suit lands on July 28, 1956 or on May 11, 1958 and whether the lease was created in favour of the defendants on July 28, 1956 as claimed by them or on August 24, 1956 as claimed by the plaintiff. Mr. Hathi addressed the argument that the question whether the defendants were tenants with effect from July 28, 1956 or thereafter was an issue which was expressly triable by a Revenue Court under s. 70 of the Act and the jurisdiction of the Civil Court was barred. It was argued that the issue of ownership was not the primary issue before the High Court and the main question was whether the defendants were or were not the tenants of the suit lands on the material date, namely, July 28, 1956 or on May 11, 1958 and such a question lay within the scope of the jurisdiction of the Revenue Authorities. In other words, it was argued that the determination of the question whether the lease was created which subsisted after August 1, 1956 or which subsisted also on May 11, 1958 was not a matter within the scope of the jurisdiction of the High Court. We are unable to accept the argument put forward by Mr. Hathi as correct. Section 70 (b) of the Act imposes a duty on the Mamlatdar to decide whether a person *is a tenant*, but the sub-section

A does not cast a duty upon him to decide whether a person was or *was not a tenant in the past*—whether recent or remote. The main question in the present case was the claim of the defendants that they had become statutory owners of the disputed lands because they were tenants either on the 'tillers' day' or on the date of the release of the management by the Court of Wards. In B either case, the question for decision will be not whether the defendants were tenants on the date of the suit but the question would be whether they were or were not tenants in the past. The question whether the defendants were tenants on July 28, 1956 or on May 11, 1958 was not an independent question but it was put forward by the defendants as a reason for substantiating their plea of statutory ownership. In other words, the plea of tenancy C on the two past dates was a subsidiary plea and the main plea was of statutory ownership and the jurisdiction of the Civil Court cannot therefore be held to be barred in this case by virtue of the provisions of s. 70 of the Act read with the provisions of s. 85 of the Act.

D We are accordingly of the opinion that s. 85 read with s. 70 of the Act does not bar the jurisdiction of the Civil Court to examine and decide the question whether the defendants had acquired the title of statutory owners to the disputed lands under the new Act. In this context, it is necessary to bear in mind the important principle of construction which is that if a statute pur- E ports to exclude the ordinary jurisdiction of a Civil Court it must do so either by express terms or by the use of such terms as would necessarily lead to the inference of such exclusion. As the Judicial Committee observed in *Secretary of State* v. *Mask & Co.*(1)

> "It is settled law that the exclusion of the jurisdiction of the civil courts is not to be readily inferred, but F that such exclusion must either be explicitly expressed or clearly implied."

In our opinion, there is nothing in the language or context of s. 70 or s. 85 of the Act to suggest that the jurisdiction of the Civil Court is expressly or by necessary implication barred with G regard to the question whether the defendants had become statutory owners of the land and to decide in that connection whether the defendants had been in the past tenants in relation to the land on particular past dates. We are also of the opinion that the jurisdiction of the Civil Court is not barred in considering the question whether the provisions of the Act are applicable or not applicable to the disputed land during a particular period. We H accordingly reject the argument of Mr. Hathi on this aspect of the case.

(1) 67 I.A. 222, 236.

The next contention on behalf of the plaintiff is that the High Court was in error in referring to the Mamlatdar under s. 85A of the Act, the issue whether "the defendants were tenants of the land in suit". It was pointed out by Mr. S. T. Desai that the High Court had rejected the contention of the defendants that the tenancy was created on July 28, 1956 but the defendants were tenants only with effect from August 24, 1956. The High Court has further found that there was no subsisting tenancy on May 11, 1958 when there was a cessation of the management of the Court of Wards. The suit was brought by the plaintiff on July 11, 1958 and the argument put forward on behalf of the plaintiff is that there was no plea on behalf of the defendants that there was any intervening act, event or transaction between May 11, 1958 and July 11, 1958 under which a fresh tenancy was created. In other words, the argument on behalf of the plaintiff was that the only plea set up on behalf of the defendants was the plea of tenancy on July 28, 1956 which was the basis of the plea of statutory ownership. It was said that there was no other plea of tenancy set up by the defendants subsequent to May 11, 1958 when the management of the Court of Wards ceased. In our opinion, the argument is well-founded and must be accepted as correct. On behalf of the defendants Mr. Hathi referred to paragraphs 4 and 6 of the written statement of the first defendant dated September 18, 1958, but, in our opinion, both these paragraphs must be read together and the plea of tenancy in para 4 is based upon the claim of the defendants that they were "lawful tenants of the suit lands and they got this right before August 1, 1956". The plea of tenancy is therefore based upon the alleged lease of July 28, 1956 which is rolled up in the plea of substantive claim of statutory ownership. On a proper interpretation of the language of paragraphs 4 and 6 of the written statement we are satisfied that there is no independent plea of tenancy set up by the defendants as subsisting on the date of the suit and there was no issue which survived for being referred for the decision of the Mamlatdar under s. 85A of the Act. We are accordingly of the opinion that the High Court was in error in referring any fresh issue to the Mamlatdar but instead should have granted a decree to the plaintiff for recovery of possession of the lands and also as to damages and mesne profits as decreed by the trial court.

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For the reasons expressed we hold that Civil Appeal No. 312 of 1966 must be allowed and the judgment of the High Court dated February 5, 1963 should be set aside and the decree of the 5th Joint Civil Judge, Senior Division at Ahmedabad dated July 30, 1960 should be restored. Civil Appeal No. 313 of 1966 is dismissed. The plaintiff will be entitled to the costs of

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A this Court (one set of hearing fees) but we do not propose to make any order with regard to the costs incurred by the parties in the High Court.

The application filed by the defendants for leave to produce additional evidence in this Court is rejected.

B V.P.S.

C.A. 312 *of* 1966 *allowed.*
C.A. 313 *of* 1966 *dismissed.*