

GENDA SINGH

v.

BALAK RAM

[SUPREME COURT, 1963 (Knox-Mawer Ag. P.J.),

1st November, 12th December]

Appellate Jurisdiction

Crops—sharefarming—validity of agreement—Native Land Trust Ordinance (Cap. 104) s. 12 (1).

Native land—sharefarming agreement—validity—alienation or dealing with land.

Section 12 (1) of the Native Land Trust Ordinance renders null and void any alienation or dealing with native land without the consent of the Native Land Trust Board. In the case of the type of agreement known as "sharefarming" agreements the validity of each must be decided upon its own particular facts.

*Held.*—An agreement to work land for a percentage of the cane proceeds whereby the worker obtained no sort of interest in the land itself did not offend against the section.

*Appeal from judgment of the Magistrate's Court.*

*Ramrakha* for the appellant.

*Sharma* for the respondent.

KNOX-MAWER Ag. P.J. [12th December, 1963]—

This is an appeal against a decision of the Magistrate's Court of the First Class, Nadroga.

The action arose in this way. The respondent/plaintiff claimed that he had worked as a labourer on the appellant/defendant's farm from 1957 to 1961, under an agreement whereby the respondent was to be paid by the appellant a two-thirds share of the net proceeds of cane sold by the appellant from the farm. A dispute having arisen as to what was due to the respondent, the parties referred the matter to arbitration. The arbitrators awarded the respondent £169 1s. 5d. in full and final satisfaction. The respondent was subsequently obliged to institute these proceedings in order to enforce, against the appellant, the arbitration award.

It was agreed between counsel in the lower Court that the sole issue was whether the agreement between the parties was an illegal contract, by reason of section 12 (1) of the Native Land Trust Ordinance, Cap. 104. This reads as follows:—

" 12.—(1) Except as may be otherwise provided by regulations made hereunder, it shall not be lawful for any lessee under this Ordinance to alienate or deal with the land comprised in his lease or any part thereof, whether by sale, transfer or sublease or in any other manner whatsoever without the consent of the Board as lessor or head lessor first had and obtained. The granting or withholding of consent shall be in the absolute discretion of the Board, and any sale, transfer, sublease or other unlawful alienation or dealing effected without such consent shall be null and void:

Provided that nothing in this section shall make it unlawful for the lessee of a residential or commercial lease granted before the 29th day of September, 1948, to mortgage such lease."

The learned Senior Magistrate held that the agreement did not offend this subsection, and awarded judgment in favour of the respondent. Against this decision the appellant has now appealed.

The agreement between the parties is described as a "share farming" agreement. As the trial Magistrate correctly stated, the expression "share farming" is not a term of art. It is thus necessary for the Court to decide upon the facts of each particular case whether the agreement in question offends section 12 (1) of the Ordinance, Cap. 104, or not.

In his judgment the learned Magistrate stated as follows:—

Court must decide whether this arrangement between plaintiff and defendant was an alienation or dealing by sale, transfer or sublease or in any other manner whatsoever. Plaintiff did not live on the land. He had no house there. Defendant did still live on the land. He had his house there. Plaintiff paid no part of the rent. He had no security that he could continue to work the farm for any particular period. To that extent at least defendant maintained control. Plaintiff worked the land and was repaid by a percentage of the cane proceeds he grew there. He obtained no sort of interest in the land itself and this Court quite fails to see that there was any dealing with the land itself of any sort whatever. It follows there was nothing unlawful about the agreement or the arbitration.

In my view these conclusions were entirely justified upon the evidence adduced before the Court below. It follows that the agreement was a valid one, and the arbitration award properly enforceable.

This appeal is accordingly dismissed, with costs in favour of the respondent.

*Appeal dismissed.*

Solicitor for the appellant: *R. Nath.*

Solicitor for the respondent: *D. S. Sharma.*