

(2011) 01 BOM CK 0103

In the Bombay High Court

Case No : Writ Petition No's. 2704 and 2707 of 1992

Allauddin Bapubhai Mulla

APPELLANT

Vs

Khanderao Ramrao Gaikwad since deceased represented
though L.Rs. (Mrs. Chayadevi Khanderao Gaikwad,
Ranjeetsingh Khanderao Gaikwad, Ajjetsingh Khanderao
Gaikwad and Deepali Khanderao Gaikwad) and Others

RESPONDENT

Date of Decision : 11-01-2011

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32
Constitution of India, 1950 — Article 227

Citation : (2011) 5 BomCR 631 : (2011) 2 MhLj 793

Hon'ble Judges : V.M. Kanade, J

Bench : Single Bench

Advocate : A.R.S. Baxi, for the Appellant; K.Y. Mandlik, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Kanade, J.—Both these petitions can be disposed by a common judgment & order since the parties are same and the dispute is in respect of two different Gat numbers situated at village Degaon, taluka North Solapur, district Solapur. Though the subject matter of the two writ petitions are in respect of two different lands, the arguments and the submissions made in both the petitions are same.

2. Heard the learned Counsel appearing on behalf of the Petitioner and Respondent Nos. 1(a) to (d). The Petitioner was owner of lands Gat No. 44/3B/1A, admeasuring 3 Hectares & 40 Ares and Gat No. 40/1A, admeasuring 1 Hectare 23 Ares, both situated at village Degaon, taluka North Solapur, district Solapur. The Petitioner entered into an agreement with Respondent No. 1 on 14th January, 1980. According to the Petitioner, he was in need of money and though Respondent No. 1 was a money lender, he did not have money lending license and therefore, the said agreement was in reality a money lending agreement. According to the Petitioner, after five years said lands were to be

returned back to him. The agreement, therefore, was in essence a mortgage agreement. Respondent No. 1 issued notice to the Petitioner on 17-2-1984 u/s 320 of the Bombay Tenancy & Agricultural Lands Act 1948 (hereinafter referred to as the "Act"), expressing his intention to exercise the right to purchase the suit land. The Tahsildar suo-motu initiated the proceedings under the said provision and declared that Respondent No. 1 was the tenant and issued a certificate to that effect. The Petitioner preferred a revision application being Revision Application Nos. 8 of 1986 and 15 of 1986. Said revisions were allowed by the Sub Divisional Officer, Solapur Division, Solapur and the matters were remanded back to the Additional Tahsildar with a direction to decide the same afresh, in accordance with law. The Tahsildar after hearing both the parties passed the orders in favour of Respondent No. 1. This order was challenged by the Petitioner by filing an appeals before the Sub-Divisional Officer who also dismissed the appeals, filed by the Petitioner and confirmed the orders passed by the Tahsildar. Against this order, again Petitioner preferred revision applications before the Maharashtra Revenue Tribunal. The said revision applications were dismissed and the learned Tribunal confirmed the order passed by both the Courts below. Being aggrieved by the said orders, Petitioner has filed the present writ petitions. The writ petition were admitted on 22-7-1992 and rule was granted. No interim order relief was, however, granted in favour of the Petitioner.

3. The learned Counsel appearing on behalf of the Petitioner submits that all the Courts below have committed an error of law, apparent on the face of record in misinterpreting the agreement dated 14-1-1980. She further submitted that Clause (2) and (3) of the agreements stipulate that the said agreement were for a period of five years and on completion of five years, the lands were to be given back to the Petitioner. She submitted that the Courts below has misconstrued and misinterpreted the said agreements and had declared Respondent No. 1 as a tenant on the basis of the said agreements. It was submitted, therefore, that the said orders were liable to be set aside and quashed.

4. On the other hand, learned Counsel appearing on behalf of Respondent Nos. 1(a) to (d) submitted that Respondent No. 1 had filed an application before the Tahsildar claiming that he is a tenant of the said lands and the Tahsildar had visited the lands in dispute and had made an inquiry and had recorded the finding that Respondent No. 1 was actually cultivating the lands and was paying the rent in cash as well as in kind to the landlord. He submitted that though notice was served on the landlord, he remained absent. It is submitted that the orders were declaring Respondent No. 1 as a tenant as on 4-3-1983 and his name also came to be entered as a tenant in the land records. It is submitted that these orders were never challenged by the landlord and therefore, the orders declaring Respondent No. 1 as a tenant, passed by the Tahsildar had become final. Respondent No. 1/tenant on the basis of said order gave notice to the Petitioner within one year from the date of the said declaration on 17-2-1984 and thereafter all the Courts below had, after going through the evidence on record, held that Petitioner was tenant and entitled to purchase the said lands.

5. After having heard the counsel for the parties, in my view, no case is made out for setting aside the concurrent findings recorded by the lower authorities. The submissions made by the learned Counsel for the Petitioner that the said document/agreement was not properly interpreted, cannot be accepted. It is to be noted that all the Courts below have noted and it is an admitted position that Respondent No. 1 was declared as a tenant by the Tahsildar, after holding proper inquiry, contemplated under the Act and after giving notice to the Petitioner landlord. After the said orders were passed, on 4-3-1983 the name of the Petitioner was entered in the record of rights as a tenant. At no time thereafter, the Petitioner challenged the said orders. Apart from the fact that Respondent No. 1 was declared as a tenant by the Tahsildar and his name was entered into the revenue record, the Courts below have taken into consideration the admissions given by the Petitioner herein. It is also a matter of record that landlord used to accept the rent which was given by Respondent No. 1 in cash as well as in kind and used to sign the rent receipts. Respondent No. 1 has also produced the documentary evidence to show that he had paid the revenue of the lands and produced the receipts in support of having paid the taxes to the Municipal Corporation for the sewage water taken by him for the lands. He also produced receipts from Yoginath Seva Sangh, Solapur to prove that he had delivered sugarcane to the Society, grown in the lands.

6. All the Courts below have also taken into consideration the contentions of the said agreement dated 14-1-1980, apart from the taking into consideration the other facts mentioned hereinabove and on the basis of the said document, had come to a conclusion that the said documents cannot be said to be the mortgage-deeds. Under these circumstances, it is not possible to interfere with the finding of facts recorded by all the Courts below.

7. The power which has to be exercised by this Court in exercise of jurisdiction under Article 227 of the Constitution of India is very limited. The Apex Court in the case of - Surya Dev Rai Vs. Ram Chander Rai and Others, has laid down the circumstances under which High Courts can interfere with the order passed by the lower Court under Article 227 of the Constitution of India, as under-

12. In the exercise of certiorari jurisdiction the High Court proceeds on an assumption that a Court which has jurisdiction over a subject-matter has the jurisdiction to decide wrongly as well as rightly. The High Court would not, therefore, for the purpose of certiorari assign to itself the role of an Appellate Court and step into re-appreciating or evaluating the evidence and substitute its own findings in place of those arrived at by the inferior court.

38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:

(1) ...

...

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (iii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

8. In my view, no case is made out for interfering with the orders impugned in both the petitions. Though it is vehemently urged that perusal of the document dated 14-1-1980 in each case reveals that it is a document of mortgage and not the documents creating tenancy, it is not possible to re-appreciate the evidence and come to a different conclusion by substituting the finding other than, which is recorded by the lower Courts. Hence, there is no merit in the submissions made by the learned Counsel appearing for the Petitioner. Both the writ petitions are, therefore, dismissed. Rule in both the petitions is discharged.