

(2011) 02 BOM CK 0109

In the Bombay High Court

Case No : Writ Petition No. 4951 of 1991 and Civil Application No. 2295 of 2007
in Writ Petition No. 4951 of 1991

Anant Chintaman Oze since deceased through his heirs (Dilip Anant Oze and Pushpakant alias Pushpasheel Anant Oze) and Kashinath Chintaman Oze represented by their Constituted Attorney Kuntlal Chandmal Muthiyan APPELLANT

Vs

Laxman Mahadu Nigrose and Maharashtra Revenue Tribunal RESPONDENT

Date of Decision : 21-02-2011

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 70
Constitution of India, 1950 — Article 227

Citation : (2011) 3 ALLMR 56 : (2011) 6 BomCR 462 : (2011) 3 MhLj 324

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

Bench : Single Bench

Advocate : C.P. Deogirikar, for the Appellant; S.M. Kamble, for Respondent Nos. 1 and 2 in WP. No. 4951 of 1991, for the Respondent

Judgement

V.M. Kanade J.

1. Since both these matters are clubbed by virtue of order passed by the Hon''ble Chief Justice dated 31st January, 2011, both these matters are directed to be placed before me for disposal after clubbing the matters together.

2. Brief facts are as under:

The Petitioners in Writ Petition No. 4951 OF 1991 are the original landlords and the Respondent No. 1 is the tenant. The Respondent -Tenant filed an application u/s 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948 for a declaration that he is the tenant in respect of Gat No. 79/15 admeasuring 4 acre 19 gunthas and 4 annas and part of Gat No. 68 admeasuring 2 acres 11 gunthas and 3 annas. There is a chequered history about the said proceedings. Initially, the application was rejected by the Tahasildar on 30.11.1981. Thereafter Respondent No. 1 preferred an appeal before the Sub-Divisional Officer and the

appeal was allowed and the matter was remanded back to the Tahasildar. Thereafter, again the Tahasildar dismissed the appeal for want of prosecution on 10.1.1984 against which the Respondent No. 1 preferred an appeal which was allowed and again it was remanded to the Tahasildar for fresh inquiry by order dated 1.9.1986. The Tahasildar then recorded the evidence of the Respondent No. 1 and his witnesses and by order dated 31.3.1987, the Respondent's application u/s 70(b) was allowed. Against this order, the Petitioners preferred an appeal before the SDO, who was pleased to dismiss the appeal No. 26 of 1989 by order dated 5.10.1990 and confirmed the order of the Tahasildar. Against this order, the Petitioners preferred the Revision Application No. 135 of 1990 which was also dismissed by order dated 17.9.1991.

3. The learned Counsel appearing on behalf of the Petitioners submitted that the Respondent did not prove either contractual tenancy or deemed tenancy in respect of the suit lands. He submitted that there was no entry in the record of rights up to the year 1981 and, thereafter, on the basis of its pencil entry in 1981, the Respondent No. 1 claimed possession. It was further submitted that the Respondent did not prove possession and cultivation of the suit lands. It was submitted that therefore, all the Courts below had committed an error of law which is apparent on the face of record.

4. On the other hand, the learned Counsel for the Respondents submitted that in view of the concurrent finding given by all the authorities, no case is made out for interfering with the impugned orders passed by the Lower Authorities.

5. In my view, after hearing both the counsel appearing on behalf of the Petitioners and the Respondents at length, no case is made out for interfering with the concurrent finding recorded by the three authorities below. All along, the stand of the Petitioners /landlord was that the suit lands were fallow lands. On the other hand, the tenant contended that he cultivated paddy crops in the suit lands and relied on the crop cultivation column and the entries which were made from the year 1981-1982 to the year 1986-1987, which indicated that paddy crops were grown on some portion of the disputed land. The Respondent No. 1 examined himself and also other witnesses, who supported the case of the Respondent No. 1 and in view of this evidence, the authorities came to the conclusion that the Respondent No. 1 was cultivating the land even prior to 1957. The Authorities also have noted that the Petitioners herein did not lead any evidence whatsoever.

6. This being the position, in my view, there is no infirmity in the orders passed by the Authorities below. No case is made out for interfering with the impugned orders while exercising a writ jurisdiction under Article 227 of the Constitution of India. The Apex Court in the case of Surya Dev Rai Vs. Ram Chander Rai and Others, has laid down the guidelines as to the circumstances under which High Courts should exercise the writ jurisdiction 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 above said 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.

Keeping in view the ratio of the judgment of the Apex Court, in my view, the submissions made by the learned Counsel for the Petitioners cannot be accepted. Writ petition is, therefore, dismissed. Rule is discharged. Civil application does not survive and is also disposed of.

7. So far as the First Appeal No. 375 of 1992 is concerned, the Appellant is the original landlord, who is aggrieved by the order passed by Civil Judge, Senior Division, Raigad in Land Acquisition Reference No. 2 of 1996, who had ordered that 68% of the total amount of compensation should be paid to the landlord and 32% should be paid to the tenant. During the pendency of the appeal in Revision Application No. 691 of 1990, consent terms were filed and it was agreed that after the final disposal of the Tenancy Appeal No. 26 of 1989 by the SDO, Panvel, the stay granted shall stand automatically vacated. Accordingly, after the SDO confirmed the order of the Tahasildar, the stay was vacated and the money has now been apportioned as per the order passed by the City Civil Judge, Senior Division, Raigad in Land Acquisition Reference No. 2 of 1986. In my view, in view of the dismissal of the writ petition filed by the landlord -Appellant herein, the First Appeal has become in fructuous since this Court has confirmed the order passed by the MRT, who in turn, has confirmed the order of Tahasildar and SDO declaring the Respondent is the tenant in respect of the suit land. The order passed by the Reference Court, therefore, is confirmed. First Appeal, therefore, is disposed of. Civil Application does not survive and is also disposed of.