
(1999) 04 BOM CK 0031
In the Bombay High Court
Case No : Writ Petition No. 4 of 1987

Anil Shripatrao Badge

APPELLANT

Vs

Sundrabai Mahada Mali since deceased through L.Rs. and
Others

RESPONDENT

Date of Decision : 28-04-1999

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2000) 1 BomCR 893

Hon'ble Judges : R.G. Deshpande, J

Bench : Single Bench

Advocate : S.S. Choudhary, for the Appellant; V.G. Mete, Smt. Geeta Deshpande, A.G.P., for the Respondent

Judgement

R.G. Deshpande, J.—Heard Shri S.S. Choudhary, learned Counsel for the petitioner, Shri V.G. Mete, Advocate for the respondent No. 1 and Smt. Geeta Deshpande, Assistant Government Pleader for the respondent No. 3. The respondent No. 2, though served, preferred to remain absent.

2. The judgment and order dated 20-11-1986 passed by the learned Member of the Maharashtra Revenue Tribunal, Aurangabad, in the Appeal No. 102/A/85 Osmanabad is under challenge in the present writ petition.

3. The facts to be narrated in the nut shell, for the purposes of the present dispute, are as under ; On Mahadu Mali resident of Washi, Taluka Bhoom, District Osmanabad, happened to be the original owner and possessor of land Survey No. 988/A, having an area of 2 acres 12 gunthas, situated at the above said village. There does not appear to be any dispute that Mahadu cultivated this land during his life time. However, after his death, name of one of his sons - Savata, came to be recorded as owner of the land in question, inspite of the fact that there being other legal representatives of Mahadu. Those other representatives, as can be read from the record, were Sundrabai wife of Mahadu and two other sons, namely, Gokul and Pandu. However, as narrated earlier, Revenue record indicated

name of Savata only. At this stage, this Court is not concerned as to how the name of Savata alone was taken on the record bypassing the names of other legal representatives. The fact remains that Savata was shown to be the owner of land in question.

4. The record further indicates that Savata executed the Kaulnama on 16-10-1967 in favour of one Sukhadeo i.e. respondent No. 2 in this petition. This Kaulnama, it is alleged, was executed by Savata on obtaining Rs. 1,250/-from Sukhadeo.

5. There appears to be certain civil litigation, which was required to be initiated by Sunderabai and other two sons of Mahadu in the shape of Civil Suit No. 74 of 1978 for perpetual injunction against Sukhadeo. However, the said civil suit was dismissed by the learned Civil Judge, Junior Division, Bhoom, on 30-9-1975. Naturally, Regular Civil Appeal No. 114 of 1975 was filed at the instance of the present respondent - Sunderabai and her two sons in the Court of learned District Judge, Osmanabad, in which the learned District Judge had passed an order of injunction against Sukhadeo, restraining him from disturbing the alleged possession of Sunderabai, Gokul and Pandu. With all the curiosity, I have gone through the judgment of the learned District Judge and I have specifically noted that though the matter related to possession, there was no decision whatsoever, on the point of ownership. While the proceedings were going on through one channel, simultaneously, parties had opened another channel, by way of Revenue proceedings, which are material for the purposes of the decision in the present writ petition.

6. Since Savata was shown to be owner of the land in question and as he had executed Kaulnama, the proceedings u/s 38 of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (for the sake of brevity, hereinafter, referred to as the "Act"), were initiated on the basis of an application by Sukhadeo and Savata, in which, a certificate u/s 38-A of the Act was issued in the name of Sukhadeo Mahadeo Chede - respondent No. 2 in the present writ petition, on 17-2-1975. It will not be out of place to mention at this stage itself that, though the present respondents Nos. 1 and 1(a) to (g) were aware about the issuance of said certificate in favour of Sukhadeo, at no point of time, neither they challenged the validity thereof, nor the declaration was sought in that respect that the said certificate was illegally obtained and not binding on the present respondent No. 1 Sunderabai and her two sons.

7. On having obtained the said certificate u/s 38-A of the Act, an application was moved before the learned Tahsildar, Bhoom, by Sukhadeo, who had become owner in pursuance of the certificate u/s 38-A of the Act, for permission u/s 50-B of the Act for transfer of the land which was purchased by him, in his favour. The said application was considered by the learned Deputy Collector, Land Reforms, Osmanabad and the learned Revenue Authority, by his judgment and order dated 28-6-1982 granted permission u/s 50-B of the Act, observing that, since Sukhadeo was declared to be owner u/s 38-A of the Act and the certificate was

issued in his name, and having satisfied about the reasons for transfer, necessary permission was granted to Sukhadeo to transfer the land. This order is at page 11 (Exhibit P/3) in the present writ petition.

8. Being aggrieved by the above said order, present respondent -Sunderabai had filed an appeal bearing No. 102/A/1985 Osmanabad before the Maharashtra Revenue Tribunal, Aurangabad. Needless to mention that, since in the intervening period Sukhadeo had transferred the land in favour of Anil Shripatrao Badge present petitioner, he was joined as respondent No. 2 in the said appeal before the Maharashtra Revenue Tribunal.

9. The learned Member of the Maharashtra Revenue Tribunal, Aurangabad, who dealt with the matter, by his judgment and order dated 28-11-1986 allowed the appeal, and quashed and set aside the order passed by the Deputy Collector, dated 28-6-1982 granting permission u/s 50-B of the Act, in relation to Survey No. 988. The learned Member of the Revenue Tribunal, further, without there being any case before him or without there being any relief sought to that effect, ordered the Tahsildar Bhoom, who also happened to be the President of Agricultural Lands Tribunal, Bhoom, District Osmanabad, to cancel the certificate dated 17-2-1975 issued u/s 38-A of the Act in favour of Sukhadeo. It is this judgment and order, which is subject matter of challenge in the present writ petition.

10. Shri Choudhary, learned Counsel for the petitioner has assailed the order of the Revenue Tribunal, contending that the learned Member of the Revenue Tribunal, who dealt with the matter, while allowing the appeal, in over enthusiasm had granted all that which was not factually asked for and which could not have been granted in the said appeal, particularly when, there was no challenge to the certificate at any point of time by the present respondents before the Revenue authority. Shri Choudhary further argued that unless and until the validity of the certificate was challenged before the Revenue Tribunal or before any other authority, till then it was not open for the Maharashtra Revenue Tribunal to quash the said certificate granted u/s 38-A of the Act. Shri Choudhary specifically pointed out that, precisely a limited prayer is made in the appeal memo, which reads as under :---

"The appeal may kindly be allowed and the order passed by Deputy Collector, L.R. Osmanabad, in file No. 1983-Desk-TNC-424, dated 28-6-83 in respect of the land Sy.No. 988A adm. 2 Acres 12 gts. situated at village Vashi, Tq. Bhoom, Dist. Osmanabad, may kindly be set aside."

11. Shri Choudhary, learned Counsel, further argued that even assuming for the sake of arguments that this order dated 28-6-1983 is quashed and set aside as asked for by the respondent No. 1 Sunderabai and her two sons, even then, the certificate issued in the name of Sukhadeo would definitely stand as it was and that by no stretch of imagination could be said to have been nullified by setting aside the order dated 28-6-1983. Shri Choudhary, learned Counsel, further

vehemently urged that, in pursuance of the provisions of sub-section (6) of section 38 of the Act, the certificate issued u/s 38-A of the Act be held to be the conclusive evidence of sale as against the landholder and all other persons interested therein. According to Shri Choudhary therefore, unless and until the said certificate is quashed and set aside or has been otherwise nullified or repudiated in any other legal manner, till then the entries as made in the said certificate would stand as they are and would be conclusive in every respect against one and all i.e. the landlord and any person claiming interest in the said property through him. I find, no doubt a golden substance in this argument. Simultaneously, I also find that the learned Member of the Maharashtra Revenue Tribunal has not taken into consideration this aspect of the matter and therefore, has reached to an erroneous conclusion.

12. As against the arguments of Shri Choudhary, Shri Mete, learned Counsel for the respondent No. 1, vehemently urged that though the respondent No. 1 at no point of time challenged the illegality and validity of the certificate issued u/s 38-A, even then when it has been ordered to be cancelled by the Maharashtra Revenue Tribunal, by its judgment and order dated 28-11-1986, then in that case, according to Shri Mete, learned Counsel, it is not open for this Court, under Article 227 of the Constitution of India, to interfere in the same. Shri Mete further tried to suggest that when the initial entry itself, in the Revenue Record is in the name of Savata i.e. son of Mahadu, was wrong, then anything done in pursuance of that entry would be a nullity. Stretching this analogy further, Shri Mete argued that the transactions between Savata and Sukhadeo and Sukhadeo and Anil in that situation, will have to be declared as void-ab-initio.

13. Shri Mete, learned Counsel, while arguing in the above said manner, appears to have assumed certain things in favour of his client, and they are (1) that the entry in the name of Savata has been, as if, declared illegal; (2) that the transaction between Savata and Sukhadeo, which has resulted into certificate u/s 38-A of the Act is bad and hit by the provisions of the Act and; (3) the transaction between Sukhadeo and Anil, therefore is of no consequence or of any effect, so far as the rights of Sunderabai and her other two sons are concerned.

14. A pointed question was put to Shri Mete, the learned Counsel, on the basis of his own arguments, as to whether the entry in the name of Savata, in any manner, at any point of time, in any Revenue or civil proceeding, was set aside by the competent Revenue authority or any Court. Shri Mete, learned Counsel had fairly conceded that there is no such order in his favour. Another pointed question put to Shri Mete was, as to whether was there any order by any competent authority under the Revenue proceeding or the competent Court, declaring the certificate u/s 38-A of the Act to be invalid for any reason. Unfortunately Shri Mete, learned Counsel, also had to reply in the negative. If these are the things, this Court has no other go than to accept the certificate issued u/s 38-A of the Act to be valid, giving it its due value and importance as provided u/s 38(6) of the Act.

15. In view of what has been discussed above, this Court has to observe that the approach of the learned Member of the Revenue Tribunal, in the matter, appears to be totally wrong and in the circumstances, the order passed by the Revenue Tribunal cannot be sustained in the eye of law.

16. Before parting with the judgment, an important aspect, which needs to be referred to is that the learned Judge appears to have been unnecessarily swayed by the fact that the appellant before him, happened to be the wife of Mahadu. The present petitioner cannot be put into any prejudicial position, particularly, when the transaction between the present petitioner and Sukhadeo appear to be totally based on a valid document and the matter, in fact did not call for any interference at the hands of learned Member of the Revenue Tribunal.

17. In the circumstances, the present writ petition has to be allowed and it is accordingly allowed. Rule is made absolute in above-said terms. However, in the circumstances of the case, there is no order as to costs.

18. Shri Mete, learned Counsel for the respondent No. 1, at this stage pointed out that the civil suit between the parties is already pending for declaration and injunction. It is made clear that any observation made in this judgment shall not be an hurdle in the Civil Suit and the learned Judge of the trial Court in the matter, no doubt, is at liberty to decide the suit on its own merits.

19. Petition allowed.