
(1979) 08 BOM CK 0011
In the Bombay High Court
Case No : Spl. C.A. No. 1679 of 1973

Antu Suklal Mali and another	Vs	APPELLANT
Sheikh Ismail Sheikh Mehtab		RESPONDENT

Date of Decision : 18-08-1979

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1980) MhLj 123

Hon'ble Judges : V.V. Joshi, J

Bench : Single Bench

Advocate : D.L. Dharmadhikari, for the Appellant; Shankur Anand, for the Respondent

Final Decision : Dismissed

Judgement

V.V. Joshi, J.—The petitioner No. 1 Antu was the landholder in respect of field survey No. 245/1, area 14 acres 39 gunthas, land revenue Rs. 4.25 of Darwha in Darwha taluq of Yeotmal district. This land was being cultivated by the tenant, the present respondent. The petitioner No. 1 the tenure-holder started proceedings for resumption of this land for his personal cultivation u/s 39A of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (hereinafter referred to as the Tenancy Act). The order of resumption u/s 39A was passed in favour of the petitioner No. 1, and the petitioner No. 1, the landlord, obtained possession of the suit land on 1-4-1963. Thereafter by a registered sale-deed dated 23-12-1954 the petitioner No. 1 sold this field to the petitioner No. 2 who was also placed in possession of the land. Thereafter the present respondent the original tenant filed an application on 12-6-1971 for possession of the suit land under the provisions of section 52 (1) read with section 36 (I) of the Tenancy Act. The main contention of the- present petitioners in those proceedings were that the transaction under the sale-deed dated 23-12-1954 was a loan transaction and that possession had not been delivered to the purchaser petitioner No. 2. The Tenancy Naib Tahsildar, Darwha by his order dated

27-3-1972 held that the transaction under the sale-deed dated 23-12-1964 was a transaction of loan and that the present respondent had failed to show that possession had been delivered to the purchaser, the petitioner No. 2. Therefore, the tenancy Naib Tahsildar, Darwha rejected the application of the present respondent for possession of the suit land u/s 52 (1) read with section 36 (1) of the Tenancy Act. The present respondent then preferred an appeal to the Sub-Divisional Officer, Darwha, who, by his order dated 18-11-1972 allowed the appeal holding that the petitioner No. 1 had committed breach of the conditions u/s 52 (1) of the Tenancy Act because he had ceased to cultivate the land personally, and had transferred possession to the petitioner No. 2, and therefore, the original tenant, the present respondent, was entitled to possession of the land. As regards the compensation payable to the present respondent he directed the Tahsildar to work out the same under the relevant provisions of the Act and to take action as contemplated u/s 52 (4) of the Tenancy Act. The present petitioners then filed a revision application before the Revenue Tribunal, which, by its order dated 29th September 1973 rejected the revision application. The petitioners by the present writ petition under Article 227 of the Constitution have challenged the orders of the Sub-Divisional Officer and the Maharashtra Revenue Tribunal.

2. The first point taken up by Mr. Dharmadhikari for the petitioners is that the Sub Divisional Officer and the Maharashtra Revenue Tribunal have gone wrong in holding that the possession of the suit land had been transferred to the petitioner No. 2. Now this is a finding of fact arrived at on reasonable evidence by the Sub-Divisional Officer, Darwha, which the Revenue Tribunal did not think it fit to interfere with, and in the circumstances of the present case it would seem to me this point cannot be made a point of challenge in this writ petition as it is a finding of fact on evidence in the case and which finding cannot be said to be a perverse finding.

3. The second contention that was taken up before me, as also, it would seem, before the Revenue Tribunal, was that the application of the tenant respondent u/s 52 (1) read with section 36 (1) of the Tenancy Act was barred by limitation as filed beyond three years from the date of the sale deed 23 12-1964, on which date the right to possession accrued to the respondent. The short answer to this contention is that section 36 (I) of the Tenancy Act would govern the case of a person who is a tenant on the land and has been dispossessed therefrom, or is otherwise entitled to possession, and after the orders of resumption u/s 39A of the Tenancy Act, were passed and possession taken from the original tenant and handed over to the landlord, the ex-tenant could no longer be considered to be a tenant for the purposes of section 36 (I) of the Tenancy Act. It is interesting to note that even section 52 (1) refers to the ex-tenant in specific terms "the tenant whose tenancy was terminated by him", and the subsequent reference or use of the term "the tenant" in section 52 (4) must, therefore, be referable to the ex-tenant referred to earlier as "the tenant whose tenancy was terminated" under sub-section (1) of section 52 of the Tenancy Act. Moreover, section 52 (1) of the

Tenancy Act puts an obligation on the landlord who has committed a contravention of the condition u/s 52 (1) to forthwith restore possession to the original tenant whose tenancy has been earlier terminated, and only when the landlord fails to do that within a reasonable time is the original tenant required to make an application to the Tahsildar for possession under the provisions of section 52 (4) of the Tenancy Act. Even this sub-section (4) makes it clear that the ex-tenant may make the application "at any time". Therefore, it is the provision of section 52 (4) of the Tenancy Act, which will govern the application by the original tenant for possession of the land u/s 52 (1) of the Tenancy Act, and for this no period of limitation would seem to be prescribed in view of the circumstance that section 52 (1) itself prescribes the period of 12 years. In this respect the observations in the Full Bench case Vasant Hariba v. Jagannath 1969 Mh.L J 249 in paragraph 50 of the reported judgment at page 267 would seem to me to be in point. In any case, as rightly contended by Mr. Shankar Anand, the provisions of section 52 (4) being special provisions in respect of making an application for possession of land u/s 52 (1) of the Tenancy Act, would override the general provisions of section 36 (1), even were it to be held that the ex-tenant could also be considered to be a "tenant" to whom the provisions of section 36 (1) could be said to be applicable. In this view it would seem that no period of limitation is prescribed for making an application u/s 52 (1) read with section 52 (4) of the Tenancy Act.

4. Finally Mr. Dharmadhikari contended that the original application by the landlord, present petitioner No. 1, for resumption of land for personal cultivation was made u/s 39A read with section 36 (2) of the Tenancy Act, and therefore, it could not be said that the tenancy of the respondent was terminated solely u/s 39A, but u/s 39A read with section 36 (2) of the Tenancy Act. Therefore, Mr. Dharmadhikari contends that the application u/s 52 (1) could not be maintainable at all. Essentially the termination was u/s 39A, the provisions u/s 36 (2) were ancillary, merely for the purposes of obtaining possession from the tenant after the tenancy was terminated u/s 39A. It could not, therefore, be said that merely because the application was also made u/s 36 (2) of the Tenancy Act, it could not be said that the tenancy had been terminated u/s 39A or that section 52 (1) would not be applicable.

5. There is no substance in the writ petition which is, therefore, dismissed with costs.