
(1999) 07 BOM CK 0095

In the Bombay High Court

Case No : Writ Petition No. 2317 of 1986

Appalal Alias Ismail Ibrahim

APPELLANT

Vs

Shaba Shiraj Mulla and Others

RESPONDENT

Date of Decision : 07-07-1999

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 4

Citation : (1999) 101 BOMLR 388

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.G. Deshpande, J.—Heard Mr. M.R. Suryavanshi for the petitioner and Mr. R.D. Suryavanshi i/b Mr. S.G. Deshmukh for respondent Nos. 1 to 3.

2. Respondent Nos. 1 to 3 filed a civil suit in 1962 for possession of certain land, namely, Survey No. 169 1 /A and 1 /C. In that suit the present petitioner was defendant No. 3, his wife Masayabi was defendant No. 2 and his sister-in-law Jamulabi was defendant No. 1. In that suit the petitioner raised a plea that he was a tenant of the suit land from the landlords Jamulabi and Masayabi i. e. his sister-in-law and his wife. The Civil Court, Kurundwad, therefore framed a issue and referred it to the Tenancy Aval Karkun for decision. The Tenancy Aval Karkun recorded evidence and answered the issue in affirmative and in favour of the petitioner by his order dated 31.7.1982. The respondents filed an appeal before the Deputy Collector (Special Land Acquisition Officer, Kolhapur). That appeal was allowed and order of the Tenancy Aval Karkun was set aside and the reference was answered in the negative. This order was challenged by the petitioner before Maharashtra Revenue Tribunal, Kolhapur (MRT), but he lost there also. Hence, this petition.

3. It was strenuously urged by counsel for the petitioner that petitioner has by his oral evidence as well as documentary evidence proved his status as a tenant

of the suit land and his wife and as well as his sister-in-law as landlord. He contended that the case of the petitioner was supported by document, namely, Kabulayat and also from the evidence of the scribe of Kabulayat. (The Kabulayat is at record page 133 and evidence of the scribe is on record page 139). He also urged that the 7/12 extract in respect of the suit land for the year 1961-62 was in the name of the petitioner and all these circumstances coupled with the oral evidence of actual possession, proved the case of the petitioner completely. He pointed out that the MRT had rejected the case of the petitioner on the wrong assumption that a lease deed or Kabulayat in respect of the agricultural land was required to be registered. He also pointed out that the appreciation of facts and circumstances and evidence by the MRT and the Appellate Court were contrary to the legal provisions and therefore both the orders were perverse and were liable to be set aside.

4. On the other hand counsel for the respondents submitted that the petitioner could not claim any tenancy right in respect of the suit land because the landlord was none else but his wife i. e. defendant No. 2 in the civil suit. According to him other defendant was the sister-in-law of the petitioner and there also petitioner could not claim any tenancy right by virtue of the provisions of Section 4 of the Bombay Tenancy and Agricultural Land Act, 1948 (hereinafter referred to as "Tenancy Act of 1948"). It was further contended by the counsel for the respondents that the Appellate Court as well as the MRT rejected the claim and contentions of the petitioner after considering not only the provisions of Section 4 of the Tenancy Act of 1948 but also on scrutiny of the evidence adduced by the petitioner. It was also pointed out by him that if at all according to the petitioner he was the tenant of the suit land then the sale of the suit land initially by Jamulabi original defendant No. 1 in favour of one Mr. Chougule and repurchase of the suit land by the petitioner from Chougule disprove the contention of the petitioner that he was a tenant. Lastly, it was contended by counsel for the respondent that neither MRT nor the Appellate Authority had committed any error in appreciating the facts and at any rate both these orders could not be called perverse and hence no interference was called for.

5. So far the legal position is concerned, admittedly the petitioner cannot become a tenant of his wife- original defendant No. 2 Masayabi because he is the husband. Section 4A of the Tenancy Act of 1948¹ specifically provides that "If a person is member of owner's family then he cannot be deemed to be a tenant." Section 2 of Sub-section 17 of the Tenancy Act of 1948 has defined "Tenancy" as a relationship of landlord and tenant, and Sub-section 18 defines the word "Tenant" which means a person who holds land on lease and includes (a) a person who is deemed to be a tenant u/s 4. Therefore, according to counsel for the petitioner the petitioner has satisfied by clear, cogent and consistent evidence that there was a relationship of landlord and tenant between him and the original defendant Nos. 1 and 2 and therefore even though he was a member of the family, he is to be regarded as tenant as was done by the Tenancy Aval Karkun.

6. It is true that as per Sub-section 17 of Section 2 tenancy means a relationship of landlord and tenant. It is also equally true that this relationship can be a creation of an agreement between the parties. However, so far as the facts of the case are concerned, the claim and contention of the petitioner even on facts has been rejected by the Appellate Court and the MRT.

7. For the purpose of appreciating this contractual relationship of landlord and tenant petitioner has heavily relied upon Kabulayat, which is on record page 133. It is true that so far as lease of agricultural lands are concerned, the provisions of Transfer of Property Act are not strictly applicable and consequently non registration of that lease cannot be considered as a circumstance against the petitioner. However, MRT after considering the background and circumstance in which those documents came to be executed, has rightly observed in para 6 of its order that the document as a whole does not inspire confidence about any kind of relationship of landlord and tenant between the petitioner and his wife and Jamulabi defendant No. 1 in the suit.

8. Apart from this, the Appellate Court has observed and noted that Jamulabi has in written statement filed before the Civil Court denied the relationship of landlord and tenant and as such it was necessary for the petitioner to prove his relationship as tenant of Jamulabi by independent evidence. Since document has been rejected and which has to be rejected as the outcome of the earlier litigation between the real owners. The petitioner should have adduced some convincing and cogent evidence for proving the relationship.

9. It was contended by counsel for the petitioner that the scribe of the Kabulayat was examined by the petitioner. However, the record does not support this contention. It is true that at record page No. 139 there is statement of Shivram Gundo Joshi, who was the scribe of this Kabulayat. However, this statement is not a statement recorded by the Tenancy Aval Karkun in the reference pending before him but it is the statement recorded in some proceedings in 1963. Such a statement is not admissible in evidence unless the petitioner proves that when his reference was pending before the Tenancy Aval Karkun, the said Shivram Gundo Joshi was dead.

10. The petitioner therefore cannot claim to be tenant of his wife by virtue of provisions of Section 4 and so far as the relationship of landlord and tenant between him and Jamulabi is concerned, the petitioner has not proved that relationship. Kabulayat has been rightly rejected by the Appellate Court and the MRT. No independent evidence for establishing; the relationship is adduced and as rightly observed by the MRT this document is a suspicious document brought Into existence by the parties with a view to frustrate any admission of possession, the original contestants would have regarding the suit property. It is a matter of record that mother-in-law of the petitioner or mother of his wife Fatmabi was murdered in the dispute regarding possession of the suit property.

11. It was contended by the counsel for the petitioner that if his wife is the

absolute owner of the suit property then nothing prevents her from creating a contractual relationship of landlord and tenant. He also contended that if the wife had a right to dispose of the property then certainly her right to create lease in favour of the property could not be questioned. This argument on the face of it appears to be carrying some weight, however, it is in contrast with the provisions of Section 4 of the Tenancy Act of 1948 and hence the same has to be rejected.

12. MRT as well as Appellate Court has considered all the questions involved and raised by the petitioner and I do not find any perverseity in those orders. Consequently, the following order :

ORDER

Petition dismissed. Rule discharged. Stay, if any, vacated. Consequently reference stands answered in the negative and against the petitioner. This order to be communicated to the Civil Court. No order as to costs.