
(1997) 04 BOM CK 0009

In the Bombay High Court

Case No : Writ petition No. 3089 of 1991 and Civil Application No. 4584 of 1995

Aziz Turab Inamdar

APPELLANT

Vs

Ganu Bala Daswant and Others

RESPONDENT

Date of Decision : 04-04-1997

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1997) 99 BOMLR 633(1)

Hon'ble Judges : A.Y. Sakhare, J

Bench : Single Bench

Judgement

A.Y. Sakhare, J.—Present writ petition under Article 227 of the Constitution of India challenges the order passed by the Maharashtra Revenue Tribunal, Pune in Revision Application No. MRT/NS/II/6/90. The said Revision Application was filed by the petitioner herein.

2. The facts relevant for the disposal of the present writ petition are as under: One Amirbi Akbar Khoji was the landlady of the agricultural land bearing survey No. 302/3, area 4 acres 12 gunthas situated at village Karad, Dist. Satara. The deceased Amirbi after obtaining exemption certificate u/s 88(c) of the Bombay Tenancy & Agricultural Land Act, 1948 (hereinafter referred to as the Act for short) applied for possession u/s 33(b) of the Act. By the said application she prayed for possession of the suit land for personal cultivation. Application u/s 33(b) of the Act was granted and deceased Amirbi was put in possession of the suit land for personal cultivation on 30th March, 1973.

3. It appears from the record that the deceased landlady transferred the suit land on 1st November, 1976 in favour of present petitioner by way of gift. The said gift is reflected in unregistered document. As there was a breach, the respondent No. 1 herein, heir of original tenant applied for restoration u/s 37r.w. Section 39 of the Act. The said application was numbered as Tenancy Case No. 3/78. The Tenancy Awal Karkun, Karad by his order dated 4th August, 1983 dismissed the application. The Tenancy Awal Karkun came to the conclusion that

there was no transfer of the suit land. Consequently, the tenant was not entitled for restoration u/s 37 of the Act.

4. Judgment and order passed by the Tenancy Awal Karkun was challenged by the respondent No. 1 in Tenancy Appeal No. 95 of 1983. The Appellate Court by his judgment and order dated 27th December, 1989 allowed the appeal, set aside the order passed by the Tenancy Awal Karkun and directed the restoration of the suit land.

5. Petitioner herein challenged the judgment and order dated 27th December, 1989 by way of revision application before the Maharashtra Revenue Tribunal who by its judgment and order dated 26th February, 1991 dismissed the Revision Application and confirmed all findings recorded by the Appellate Court.

6. The Maharashtra Revenue Tribunal while dismissing the revision application has recorded the following findings :

(a) It is clear from the record that the gift deed dated 1st November, 1976 was acted upon as on that basis mutation entry No. 16835 was taken and name of present petitioner came to be recorded.

(b) It cannot be said that the land lady after obtaining possession of the suit land till her death was in possession of the suit land. (c) That the present petitioner is claiming title qua the suit land on the strength of gift deed dated 1st November, 1976.

(d) All these facts collectively go to show that there was a physical transfer of the suit land in favour of the present petitioner on the basis of the gift deed dated 1st November, 1976.

7. These findings of fact recorded by the authorities below are tried to be assailed in the present writ petition under Article 227 of the Constitution of India. In my judgment, the Appellate Court as well as the Revisional Court have rightly appreciated the evidence on record and have rightly recorded the findings as mentioned above, There is no error in appreciation of evidence nor it will be open for me to re-appreciate the evidence under writ jurisdiction and come to a different conclusion.

8. Mr. Hombalkar, learned advocate appearing for the petitioner then submitted that even though there was a gift deed in favour of the petitioner, herein, the land was used for cultivation only and therefore the provisions of Section 37 of the Act are not attracted. To support this submission he has placed reliance upon the decision of this Court in the case of Narayan Ganpat Raut v. Habiba Yusuf and Ors. reported in 1981 M.L.J. 261 Mr. Hombalkar further contends that even though original landlady has created title in favour of third person as the land are cultivated for agricultural purpose only, there is no change in the user of the land. Therefore, the tenant will not be entitled for possession u/s 37 of the Act. Paragraph 20 of the judgment cited supra reads as under :

20. In the present case, a contention was raised that though the land was sold by Habiba to respondents Chavan, the intention was not to part with the land and part with the possession. Notwithstanding the recitals in the document, a case was made out that possession was not actually parted. In any event, possession of Habiba was restored on the 29th of June, 1973. Therefore, even assuming that possession was handed over to Chavan on the 9th April 1973 the loss of possession was only for a period of two months and 17 days. Now agricultural operations and even for that matter personal cultivation, does not require day in and day out work on the land depending on the character of the land and the type of crops which are grown. In case of dry lands, it is common that during the summer months there is no agricultural operation carried on the land. A reasonable view, therefore, has to be taken of the provisions of Section 37. It does not mean continuance and daily use for the purpose for which the possession of the land is obtained, but only for the purpose for which it is obtained. If, therefore, between the period of 9th April, 1973 to 29th June, 1973 there was no agricultural operations carried on or contemplated, then even if during that period possession was with Ganpat Chavan, it cannot be said, since nobody carried out any agricultural operations that the owner or ex-landlord Habiba had ceased to continue to use the land for the purpose for which she obtained possession. On the 29th June, 1973 she has resumed back to herself not only the right to the land but the right to continue to use the land for any purpose which she may have wanted.

9. In my judgment, reliance placed on the aforesaid authority by Mr. Hombalkar is misconceived. The facts of the present case and the facts of the judgment cited supra are totally different. In the present case, the finding is recorded by the Appellant Court as well as the Revisional Court that on the date of the gift deed possession was transferred in favour of the petitioner and till the death of the original landlady, she never took possession of the suit land. In view of the aforesaid finding, provisions of Section 37 are clearly attracted to the present case and the order of restoration passed in favour of the respondent No. 1 tenant is legal and proper and no interference is called for from this Court. In the result, rule is discharged with costs. Interim order dated 26th July, 1991 is vacated.

10. Respondent No. 1 in original Writ Petition has filed Civil Application No. 4595 of 1995. By the said Civil Application, he wants to add one agricultural land to his original application filed in 1978 for restoration u/s 37 of the Act. I am afraid that such type of prayer cannot be granted at this stage and will not be open for me to go into the question as to whether the said land was the subject matter of Section 33(b) proceedings and whether the respondent No. 1 in writ petition was tenant of the said land or not. I, therefore, dismiss the said Civil Application with the observation that if the respondent No. 1 in the writ petition has any right or legal remedy he can peruse the same before the Appropriate Forum. Civil Application No. 4595 of 1995 is dismissed with no order as to costs. Issuance of certified copy is expedited.