

(1955) 10 BOM CK 0040
In the Bombay High Court
Case No : Second Appeal No. 544 of 1953

Bacharbhai Narabhai

APPELLANT

Vs

Mohanlal Ranchhoddas

RESPONDENT

Date of Decision : 06-10-1955

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 85, 89(2)
Civil Procedure Code, 1908 (CPC) — Order 20 Rule 12, 100, 101
Evidence Act, 1872 — Section 65

Citation : AIR 1956 Bom 196

Hon'ble Judges : Shah, J

Bench : Single Bench

Advocate : S.B. Vakil and N.R. Oza, for the Appellant; N.V. Karlekar, for the Respondent

Judgement

Shah, J.—The plaintiff filed suit No. 192 of 1948-49 on 28-4-1949 in the Court of the Civil Judge, Junior Division, at Savli, for a decree for injunction restraining the defendant from interfering with his possession. By a subsequent amendment the plaintiff converted the suit into a suit for possession on the allegation that he had been dispossessed by the defendant on 26-4-1949.

The defendant contended that he was the tenant of the plaintiff and that he had not surrendered possession to the plaintiff as alleged by the latter. The learned trial Judge held that the defendant had surrendered possession of the suit land as alleged by the plaintiff, and that the plaintiff was entitled to a decree for possession. The learned trial Judge accordingly passed a decree for possession in favour of the plaintiff and for mesne profits from the date of possession till recovery to be ascertained under Order 20, Rule 12, C. P. C.

2. Against the decree an appeal was preferred to the District Court at Baroda; and in appeal the learned Assistant Judge confirmed the decree passed by the trial Court. The defendant has come to this Court in second appeal.

3. It was urged before me by Mr. Vakil on behalf of the defendant that the civil

court had, no jurisdiction to decide the suit, once the defendant contended that he was a tenant in respect of the agricultural land, and the learned trial Judge should have given an opportunity to the defendant to obtain a declaration from the Mamlatdar on the plea raised by him u/s 70, Bombay Tenancy and Agricultural Lands Act, 1948.

In my view there is no substance in that contention. The suit was filed in April 1949 and at that time the Bombay Tenancy and Agricultural Lands Act of 1948 was not made applicable to the area in which the land in dispute is situate. It is conceded before me that the Act was made applicable to the area in which the land in question is situate on 30-7-1949.

4. Mr. Vakil then contended that in view of the provisions of Section 85 of the Act of 1948 which excludes the jurisdiction of Civil Court to decide, settle, or deal with all question a which are required by the provisions of the Act to be decided, dealt with or settled by the Mamlatdar, that section excludes the Jurisdiction of the Civil Courts to decide, deal with or settle those questions in respect of pending suits.

In my view Section 85 of the Act has no application to suite which were pending at the date when the Act was made applicable and that is the effect of Section 89 (2). It Is provided In Sub-section. (2) of Section 89 in so far as it Is material that nothing in this Act or any repeal effected thereby shall save as expressly provided in this Act, affect or be deemed to affect, any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act, or any legal proceeding or remedy in respect of any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of the Act, and as the provisions of the Act do not apply, Section 85 being one of those provisions can have no application to the present case.

5. It is then urged by Mr. Vakil that there was in operation at the relevant date an Ordinance II of 1949 Issued by the Baroda State which enables tenants who had been evicted from lands before 30-4-1949 by an application to the Mamlatdar to be restored to possession.

It is true that it was the plaintiff's case that the defendant had delivered possession on 1-3-1949. But therefore it cannot be said that the defendant was "evicted" from the land. On the findings of the Courts below It is clear that the defendant voluntarily surrendered possession to the plaintiff and to such a surrender Ordinance II of 1949 of the former Baroda State can have no application.

6. Then Mr. Vakil contended that the suit was not maintainable because the plaintiff purported to file the suit on the strength of a power of attorney which was not produced in Court. No such question was raised in the courts below. It appears that in the trial Court the attorney of the plaintiff stated that he had power of attorney which authorized him to institute the suit. That evidence does

not appear to have been challenged.

Secondary evidence of a document can always be given if for reasons original document cannot be produced and the failure to produce the original document is supported by proper reasons. The defendant having in the present case waived proof of circumstances which justified the plaintiff in leading secondary evidence, it is not now open to him to raise a contention that the secondary evidence of the contents of the document was inadmissible.

7. In my view there is no substance in the appeal. The appeal therefore fails and is dismissed with costs.

8. Appeal dismissed.