
(1960) 04 BOM CK 0026

In the Bombay High Court

Case No : Civil Revision Application No's. 556 and 557 of 1959

Balmukund Rampratap

APPELLANT

Vs

Demaji Suryabhanji

RESPONDENT

Date of Decision : 20-04-1960

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958
— Section 125

Citation : (1961) 63 BOMLR 41 : (1960) NLJ 43

Hon'ble Judges : Kotval, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kotval, J.—The judgment in this civil revision application shall also govern the disposal of Civil Revision Application No. 557 of 1959. Both these civil revision applications raise a common question of some importance. In both the cases, the landlords have filed suits for recovery of arrears of rent.

2. Civil Suit No. 55 of 1959 out of which arises C.R.A. No. 556 of 1959 was for recovery of rent of two fields Nos. 46 and 38/2 of mouza Sukali, tahsil Murtkapur. Field No. 46 has a land revenue of Rs. 28 fixed and field No. 38/2, Rs. 15. The plaintiffs who cannot now under law claim more than ten times the amount of the yearly land revenue as their rent have confined their claim to that amount in both the suits. Thus in respect of field No. 46, they have claimed rent at ten times the annual land revenue ($28 \times 10 = 280$) for three years, namely, 1955-56, 1956-57 and 1957-58, that is to say, Rs. 840. In respect of field No. 38/2, they have claimed rent at ten times the annual land revenue ($15 \times 10 = 150$) for the two years 1956-57 and 1957-58, that is to say Rs. 300. Thus their total claim in the suit was Rs. 1,140 as rent for fields Nos. 46 and 38/2.

3. In the suit out of which arises C.R.A. No. 557 of 1959, the rent claimed was of field No. 79 of mouza Bhasla, tahsil Murtizapur. The land revenue of this field was Rs. 15 and so the plaintiffs claimed ten times the amount of the land revenue.

Thus the plaintiffs claimed Rs. 150 per year as rent for three years, namely, 1955-56, 1956-57 and 1957-58. In all the plaintiffs claimed Rs. 450 in this suit.

4. In both the suits, the plaintiffs were met with a plea u/s 125 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958. According to the defendant in the civil suit out of which C.R.A. No. 556 of 1959 arises, for part of the period for which the plaintiffs claimed rent, the plaintiffs had dispossessed the defendant and, therefore, they were not entitled to claim rent. The defendant further alleged that he approached the revenue authorities for restoration of possession of the fields to him. It is also not in dispute that the landlords have filed a counter application for ejectment before the revenue authorities. In the civil suit out of which C.R.A. No. 557 of 1959 arises there is no proceeding pending before the revenue authorities between the parties. In that suit, the defendant pleaded that the full rent had been paid.

5. Now, the trial Judge has stayed the suits and referred the questions raised before him in both the suits to the revenue authorities and the plaintiffs come up in revision against the orders staying the suits. According to the trial Judge, issue No. 1 in each of the suits raises a matter which falls exclusively within the jurisdiction of the revenue authorities which cannot be tried by the civil Court. Issue No. 1 in Civil Suit No. 55 of 1959 out of which arises C.R.A. No. 556 of 1959, was: "Is defendant not liable for the rent of the land in suit, Survey No. 46, as alleged?" and in Civil Suit No. 53 of 1959 out of which arises C.R.A. 557 of 1959, it was "What rent is plaintiff entitled to for the suit years?"

6. In Civil Revision Application No. 557 of 1959, the defendant has not cared to put in appearance. But Mr. Dixit appearing for the defendant in Civil Revision Application No. 556 of 1959 has argued the common question involved. According to the trial Judge, Section 125 read with Section 100 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act shows that the issue is one triable by the revenue authorities and that, therefore, u/s 125 it must be referred for decision by them. Section 100 contains as many as 19 clauses and it is difficult to understand from the cryptic judgment of the trial Judge which clauses he intended to refer to. It would have been better if he had been more specific. Presumably, -and that is also what Mr. Dixit for the defendant urged- he intended to rely upon Clause (3) and Clause (12). These clauses dealing with the duties and functions to be performed by the Tahsildar are as follows:

(3) to decide a dispute regarding rent u/s 12; ...

(12) to decide an application for possession u/s 36.

Mr. Dixit urged that here was a dispute regarding rent u/s 12, and so far as Civil Revision Application No. 556 of 1959 is concerned, the tenant had also applied for restoration of possession and the landlord for ejectment, to the revenue authorities, and that, therefore, these proceedings must be deemed to be proceedings u/s 36 by virtue of the provisions of Section 132(3) (a) of the Act,

While this is not conceded on behalf of the applicants-plaintiffs, I will assume for the purposes of deciding the point before me that questions u/s 100(3) and Section 100(12) have arisen in the suit. If that be so, it is clear that the present suit would involve issues which require to be settled, decided or dealt with by a revenue authority within the intendment of Section 125(1). To that extent, the trial Judge, in my opinion, was right.

7. But what the trial Judge overlooked were the provisions of Section 132. Sub-section (1) of Section 182 repeals certain enactments as specified in Schedule I. Sub-sections (2) and (3) then provide as follows:

(2) Nothing in Sub-section (1) shall, save as expressly provided in this Act, affect or be deemed to affect-

(i) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act, or

(ii) any legal proceeding or remedy in respect of any such right, title, interest, obligation or liability or anything done or suffered before the commencement of this Act,

and any such proceedings shall be instituted, continued and disposed of, as if this Act had not been passed.

(3) Notwithstanding anything contained in Sub-section (2)-

(a) all proceedings for the termination of the tenancy and ejectment of a tenant or for the recovery or restoration of the possession of the land under the provisions of the enactments so repealed, pending on the date of the commencement of this Act before a Revenue Officer or in appeal or revision before any appellate or revising authority shall be deemed to have been instituted and pending before the corresponding authority under this Act and shall be disposed of in accordance with the provisions of this Act, and

(b) in the case of any proceeding under any of the provisions of the enactments BO repealed, pending before a civil Court on such date, the provisions of Section 125 of this Act shall apply.

The effect of Clause (i) of Sub-section (2) of Section 132 is that if the landlord has in the present case acquired any right or any right has accrued to him before the commencement of the Act, then nothing in Sub-section (1) shall affect these rights and "any such proceedings shall be instituted, continued and disposed of, as if this Act had not been passed". Therefore, the present suit of the landlords for rent which was in regard to the right to recover rent which had accrued to them before the commencement of the Act could be continued by the landlords.

8. Mr. Dixit referred to the provisions of Sub-section (3) of Section 132. But having regard to the fact that both the suits were for recovery of rent, I am unable to see how either Clause (a) or Clause (6) of Sub-section (3) of Section 132 can possibly apply. Clause (a) refers to all proceedings for the termination of

the tenancy and ejectment of a tenant or for the recovery or restoration of the possession of the land under the provisions of the enactments so repealed. It is clear that a suit for recovery of rent is not a proceeding for the termination of the tenancy and ejectment of a tenant, nor for the recovery or restoration of the possession of the land. With the proceedings before the revenue authorities, I am not here concerned. Therefore, el. (a) would not be attracted in the instant case. So far as Clause (b) is concerned, it refers to the case of "any proceeding under any of the provisions of the enactments so repealed". The provisions of the enactments so repealed referred to in Schedule I of the Act are the whole of the Berar Regulation of Agricultural Leases Act, 1951, the whole of Chapter XIV of the M. P. Land Revenue Code, 1954, and the whole of the Bombay Vidarbha Region Agricultural Tenants (Protection from Eviction and Amendment of Tenancy Laws) Act, 1957. It seems to me that all that the plaintiffs claimed in the present suits was the enforcement of their right to recover rent from their tenant, which is not "any proceeding under any of the provisions of the enactments so repealed". The right to recover rent does not arise out of the provisions of any of these Acts, nor is the suit a "proceeding under any of the provisions of the enactments so repealed". Therefore, in my opinion, Clause (6) would not be attracted.

9. It was argued that there is a conflict between the provisions of Section 125(1) on the one hand and the provisions of Section 132(2) on the other. Section 132(2) saves to the landlord his right to recover rent which had accrued to him before the commencement of the Act, while on the other hand, Section 125 affects that right by saying that if any suit is instituted in any civil Court and it involves an issue which is required to be decided or dealt with by a revenue authority, the suit shall be stayed. It seems to me that this apparent conflict can only be resolved by holding that Section 125 must be read subject to Section 132 of the Act. I say so because Section 132 deals with only a special class of cases which are affected by the repeal of the enactments in Schedule I, whereas Section 125 applies to all suits. Since there is a special provision in regard to suits and rights of a special class viz., suits and rights affected because of the repeals, the provisions of Section 132 must prevail in such cases. The decision reached by the trial Judge was without advertence to the provisions of Section 132. In my opinion, having regard to those provisions the two suits involved in these civil revision applications could not have been stayed, I set aside the order dated August 14, 1959 in Civil Suit No. 53 of 1959 and the order dated September 22, 1959 in Civil Suit No. 55 of 1959 of the Civil Judge, Junior Division, Murtizapur, and order that the suits shall now be proceeded with and disposed of early.

10. Both the applications for revision are allowed, but in the circumstances there will be no order as to costs.