
(2015) 09 BOM CK 0169
In the Bombay High Court
Case No : Writ Petition No. 921 of 1991

Bansi	Vs	APPELLANT
Bhagchand and Others		RESPONDENT

Date of Decision : 16-09-2015

Acts Referred:

Citation : (2015) 09 BOM CK 0169

Hon'ble Judges : N.W. Sambre, J.

Bench : Single Bench

Advocate : M.R. Sonawane, Advocate, for the Appellant; V.S. Bedre, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

N.W. Sambre, J.—The present petition is by the alleged tenant questioning the legality and validity of the order passed by the Member, Maharashtra Revenue Tribunal, Pune in Case No.MRT/AH-I/5/89 (TNC-B-7/89) on 6th July 1990, whereby the revision of the land owner questioning the legality and validity of the order passed by the Court of Tahsildar Pathardi dated 10th March 1987 in Case No.TNC/Case/71/85 (Court Reference No. 123/72) and the order passed by the Sub-Divisional Officer, Rahuri Division, Ahmednagar dated 25th October 1988 in Tenancy Appeal No. 5/87 came to be allowed.

2. The facts as are necessary for deciding the present petition are as under :

3. The suit property consists of land ad measuring 3.84 R i.e. 7.20 acres out of Gut No. 524 at village Miri, Taluka Pathardi, District Ahmednagar.

4. The present petitioner filed Regular Civil Suit No. 21 of 1969 in the Court of Civil Judge, Junior Division, Pathardi in relation to the suit property, praying decree for possession, damages. It was the case of the plaintiff that the land in question was mortgaged to the father of the present petitioner in December 1956 for a loan amount of Rs. 1,500/-. According to the parties, the land in question was given on lease for a period of seven years towards the repayment

of loan amount of Rs. 1,500/-. Based on the same, the plaintiff sought possession.

5. The claim was resisted by the present petitioner through his father alleging therein that the respondent is in possession of the property by virtue of his status as tenant since 1944-45 and has relied upon for the same on certain mutation entries. According to the petitioner, the alleged loan transaction was in addition to above referred tenancy rights and as such, claimed to be a protected tenant under the provisions of Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "B.T. & A.L. Act" for brevity).

6. In view of the rival claims, the Civil Court referred the matter to revenue Court for deciding the said issue. Learned Tahsildar, Pathardi, by his order dated 21st October 1987 declared the present petitioner as a tenant of the suit land which was confirmed by the learned Sub-Divisional Officer, Rahuri Division, Ahmednagar by his order dated 25th October 1988.

7. The respondent preferred revision referred to above before the Maharashtra Revenue Tribunal, Pune which came to be allowed by order dated 6th July 1990, as such, present petition.

8. Mr. Sonawane, learned Counsel for the petitioner, while questioning the legality and validity of the order passed by the Maharashtra Revenue Tribunal would urge that the learned Member of the Tribunal, by improper appreciation of evidence and pleadings has recorded perverse finding as against the petitioner. Mr. Sonawane would further urge that it was not open for the Tribunal to re-appreciate the entire evidence and reach to a different finding than that of arrived at by both the fact finding authorities. According to him, the suit for which the possession was sought, was already dismissed as abated and in view thereof, the present petition is liable to be allowed, as the claim of the respondent for possession no more survives and the status-quo and stay on the date of filing of the suit needs to be restored.

9. Learned Counsel for the respondent No. 1-A Mr. Bedre would urge that the findings arrived at by the Tribunal speak of entire appreciation of evidence in its true perspective and in the background of pleadings of the parties. According to him, learned Tahsildar and the learned Sub-Divisional Officer have not discussed and appreciated the evidence, which was brought before them while deciding the issue of tenancy, which was rightly done by the Maharashtra Revenue Tribunal. He would urge that the revenue authorities who are armed with the power to decide the issue of tenancy, in spite of the fact of dismissal of the suit, have jurisdiction to decide the issue of tenancy and as such, according to him, the proceedings are very much tenable and prayed for dismissal of the present petition.

10. With the assistance of learned Counsel for respective parties, I have perused the record and proceedings made available before this Court along with the documents which were tendered by learned Counsel for the parties during course

of the day. It is required to be noted here that on 19th December 1956, the parties claimed that a deed of mortgage was executed in relation to the suit property, wherein there is a specific mention about the mortgage amount of Rs. 1,500/-, which was required to be returned as and when sought for by the present petitioner. It was also agreed in the said mortgage deed that if the amount is not paid, it be recovered through the Court.

11. Pursuant thereto the present respondent has filed Regular Civil Suit No. 21/1969 in the Court at Pathardi, wherein it is specifically mentioned that the transaction in question which has prompted the handing over the possession of suit property to the present petitioner was mortgage deed and there were no tenancy rights. In view of said mortgage deed from 1958-59, the possession of the suit property remained with the father of the present petitioner.

12. It is required to be noted here that the present petitioner has examined two witnesses so as to establish his case as regards tenancy. The evidence of both the witnesses has not been discussed by the Tahsildar in detail, however, it is required to be noted that the learned Sub-Divisional Officer, while dealing with the appeal of the respondent has considered the said evidence so as to endorse the finding recorded by the Tahsildar in favour of the present petitioner. What prevailed before the learned Sub-Divisional Officer for endorsing the finding in favour of present petitioner was the mutation entry Nos. 1867 and 1671. The said entries speaks of mutation in the name of present petitioner, however, it is required to be noted that the Maharashtra Revenue Tribunal has directed the present petitioner to seek declaration under Section 70-B of the Bombay Tenancy and Agricultural Lands Act from the competent authority. Admittedly, the said declaration was not obtained by the present petitioner. So far as the above referred mutation entries are concerned, it was claimed by the present respondent that mutation entries were recorded without notice to the present respondent, however, mutation entry No. 1671 was for a period of 1944 to 1951. So far as the said mutation entry No. 1671 for the above referred period is concerned, it is observed by learned Member of the Tribunal that the said mutation entry was subsequently cancelled. The subsequent mutation entry for the years 1952-54 though was supported by the witnesses of the present petitioner, the same was disbelieved in view of the oral evidence that was brought on record.

13. Learned Member of the Tribunal, while appreciating the case of the parties has noted that the mutation entry No. 1671 was deleted in the year 1951. The another mutation entry No. 1867 pursuant to the mortgage deed was only for a period of seven years, i.e. till recovery of amount of mortgage. Learned Member of the Tribunal then noted the fact of influential position of father of the petitioner as Police Patil and has given finding that said mutation entry No. 1671 was out of influence exerted by the present petitioner's father. Learned Member of the Tribunal then proceeded to disbelieve the oral testimony of the evidence and has noted that the evidence brought on record by the present petitioner,

particularly of the evidence of original non-applicant No. 2 about the tenancy rights on the ground that the tenancy was created in 1950, whereas the marriage of original non-applicant No. 2 in the family of present respondent No. 1-A took place in 1957. Learned Member then has noticed that the tenancy rights are claimed by the present petitioner only after the present respondent filed suit for recovery of possession, though earlier there was opportunity given to the petitioner to seek declaration in his favour as regards the tenancy right. The Learned Member then proceeded to consider the issue as regards tenancy right of present petitioner prior to 1st April 1957 and noticed that the entry as Vahiwatdar in the record of rights from 1951-52 to 1958-59, if analysed in the light of the evidence of the petitioner as regards the execution of Thevpatra, standing crop, the possession taken by the father of the petitioner in 1956 goes to demonstrate that before 1956, the present petitioner or his father was not in possession of the suit property. It is only by virtue of the Thevpatra, the possession of the land in question was delivered to the father of the present petitioner and as such, recorded finding that the petitioner became Vahiwatdar from year 1956. The Tribunal also noticed that the mutation entries in the record of rights in favour of the petitioner were without notice to the land owner and as such, ignored the same.

14. In view thereof, upon re-appreciating the evidence, the Tribunal has allowed the revision preferred by the present respondent. The entire perusal of the analysis made by the Tribunal resulted into re-appreciating of the evidence and learned Counsel for the petitioner has canvassed that the re-appreciation of evidence was not permissible and has placed reliance upon the judgment of this Court in the matter of Smt. Durgabai Ghatge (Since deceased by the following heirs:- Abasaheb Dattajirao Ghatge (since deceased by his sons: Vikram Abasaheb Ghatge and Jayant Abasaheb Ghatge), Nanasaheb Dattajirao Ghatge, Vijaysingh Dattajirao Ghatge, Ajithsingh Dattajirao Ghatge, Vimalabai Dattajirao Ghatge, Sou. Lilabai Annasaheb Malik, Smt. Vijaymala Ramrao Halgekar and Sau. Nirmala Jayawantrao Patil) Vs. Yesaba Santu Kamble (since deceased by his heirs and legal representatives Bhau Yesaba Kambale (since deceased through his heirs and legal representatives: Smt. Muradevi Kambale, Shri Shashikant Bhau Kambale, Kum. Pralhad Bhau Kamble, Kum. Kamlakar Bhau Kamble, Kum. Fulaji Bhau Kamble and Kum. Lalita Bhau Kamble)), Devu Yesaba Kambale (since deceased by his heirs and legal representatives Smt. Aubai Devu Kamble and Mohan Devu Kambale) and Bhima Yesaba Kamble (since deceased by his heirs and legal representatives Smt. Indubai Bhima Kambale, Keraba Bhima Kamble, Anil Bhima Kambale and Shobha Bhima Kambale), so as to canvass that in revisional jurisdiction, the findings concurrently given by both the lower authorities are not open for challenge based on re-appreciation of evidence, however, in the present case, as this Court has already observed that the perusal of the order passed by the Tahsildar reflects that the Tahsildar has not at all appreciated the evidence in its true perspective, particularly in the light of the pleadings which were brought on record. The Tahsildar has proceeded to analyse

the evidence as it is without considering the pleadings of the parties. Similar appears to be the case before the learned Sub-Divisional Officer, as the Sub-Divisional Officer has not gone into the depth of appreciation of evidence and has appreciated the revenue entries as it is and has ignored the other documentary evidence, particularly in the background of the facts of the case.

15. In view thereof, it was open for the learned Tribunal to re-appreciate the evidence so as to examine the perverse finding recorded. In view thereof, in my opinion, the judgment relied upon by learned Counsel for the petitioner will be of hardly any assistance. Learned Counsel for the respondent No. 1-A has relied upon the judgment of this Court in the matter of Bansrajidevi and others Vs. M/s Byramjee Jeejeebhoy Pvt. Ltd. and others, so as to canvass that the petitioner having failed to establish his lawful entry in 1944-1945 over the land, his claim for tenancy cannot be sustained. In addition to above, he has also relied upon the judgment of this Court in the matter of Rita Premchand and Another Vs. State of Maharashtra and Others, so as to canvass that the revenue entries cannot be conclusive on the question of title.

16. So far as the above referred defence raised by learned Counsel for the respondent No. 1-A is concerned, in my opinion, the Tribunal has rightly re-appreciated the entire evidence in the background of the pleadings and has reached to a conclusion that the present petitioner has failed to demonstrate the tenancy right over the suit property. Apart from above, it is required to be taken note of that the dismissal of the original suit will be of hardly any assistance to the petitioner, as the findings recorded by the revenue Court will be binding within its jurisdiction and the consequences of such findings, as are available in law will follow.

17. In view thereof, in my opinion, no case for interference is made out in the present petition. As such, petition fails, stands dismissed. Rule discharged.