

(2012) 06 GUJ CK 0023
In the Gujarat High Court
Case No : Second Appeal No. 43 of 1987

Bhanabhai Haribhai Patel

APPELLANT

Vs

Mangabhai Mithabhai Halpati and Others

RESPONDENT

Date of Decision : 18-06-2012

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 29, 32, 32(1B), 68(c), 70(n)
Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2012) 53 GLR 2391

Hon'ble Judges : Mukesh R. Shah, J

Bench : Single Bench

Advocate : Dhirender Mehta, Nos. 1.2.1, 1.2.2, 1.2.3, 1.2.4, for the Appellant; Y.H. Motiramani, for Defendant Nos. 2 and 6, for the Respondent

Final Decision : Dismissed

Judgement

Mukesh R. Shah, J.—Present Second Appeal under Sec. 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as "C.P.C.") has been preferred by the appellant herein-original defendants to quash and set aside the impugned judgment and decree dated 26-12-1984 passed by the learned Civil Judge (Senior Division), Navsari in Regular Civil Suit No. 127 of 1971 by which the learned trial Court decreed the said suit in favour of the plaintiffs and passed the decree for possession and held that the plaintiffs to recover from the defendants" peaceful possession of the suit agricultural lands as well as the impugned judgment and order passed by the learned Appellate Court - learned District Judge, Valsad @ Navsari in Regular Civil Appeal No. 31 of 1985 by which the learned Appellate Court has dismissed the said Appeal confirming the judgment and decree passed by the learned trial Court. That the original plaintiffs instituted the Regular Civil Suit No. 127 of 1971 in the Court of learned Civil Judge (Senior Division), Navsari against the appellants herein-original defendants for recovery of the possession of the suit lands/agricultural lands and for damages. It was the case on behalf of the plaintiffs that the lands were being cultivated by the

plaintiffs and their forefathers as koshias since last three generations. It was also the case on behalf of the plaintiffs that though the suit land did not belong to any private person or trust, it was got registered under the Bombay Public Trust and behind the back of the plaintiffs and without their knowledge. It was also the case on behalf of the plaintiffs that they have also got their huts on the suit lands and residing in those huts. It was the case on behalf of the plaintiffs that they were also paying the land revenue of the suit lands upto 1966. It was also the case on behalf of the plaintiffs that defendants forcibly took away the possession of the suit land from the plaintiffs in the year 1966 which was absolutely illegal and unauthorized. It was the case on behalf of the plaintiffs that in case they are considered to be the tenant of the suit land in view of their cultivating the same since the time of their forefathers, they have become the owners of the suit lands under the law as well as by adverse possession. Therefore, the plaintiffs instituted the suit for aforesaid relief of possession. They have also prayed for damages/mesne profit of Rs. 1,000/- for use and occupation of suit land for last three years.

1.1. That the suit was resisted by the defendants by filing written statement at Exh. 10 denying the allegations in the plaint. It was also denied that the plaintiffs were the tenants of the suit land and that they have become the owners of the suit land under the Tenancy Act or by adverse possession as alleged. That the learned trial Court framed following issues at Exh. 12 :

1. Do plaintiffs prove that Ex. Baroda Government gave suit lands to them since last 3 generation for deriving their income, for rendering service to the said Government by way of filing in the cattle through at village Kolasna with water?
2. Do they prove that they have become owners of suit lands on abolition of service income?
3. Do they further prove that they have become owners of the suit land on the Tiller's day under the provisions of Bombay Tenancy and Agricultural Lands Act?
4. Do they further prove that the defendants took forcibly possession of suit lands from them in 1966?
5. Do they prove that they are entitled to the income of the suit lands? If so, what amount?
6. Is the suit filed within time?
7. Is the present suit, barred on account of the provisions of Bombay Revenue Jurisdiction Act?
8. Is the present suit barred on account of the provisions of Bombay Tenancy and Agricultural Lands Act, insofar as it claims to recover possession of the suit lands?

1.2. It appears that in view of Sec. 85 of Bombay Tenancy and Agricultural Lands Act (hereinafter referred to as "Bombay Tenancy Act"), issue whether the plaintiffs have become the owners of the suit land on the Tiller's day under Sec.

32 of the Bombay Tenancy Act was referred to the Mamlatdar, Navsari Taluka for his decision under Sec. 85A of the Bombay Tenancy Act and till then the learned trial Court stayed the suit till final decision of tenancy authorities under Sec. 85A of the said Act. It appears, that thereafter, the Mamlatdar & A.L.T., Navsari held against the plaintiffs that the plaintiffs are not the deemed purchasers under Sec. 32 of the Bombay Tenancy Act. However, it appears that against the order passed by the Mamlatdar & A.L.T., Navsari under Sec. 74 of the Bombay Tenancy Act, plaintiffs preferred Tenancy Appeal Nos. 59 and 152 of 1975 before the Deputy Collector, Navsari and the Deputy Collector by judgment and order dated 26-8-1975 allowed the said appeals quashing and setting aside the orders passed by the Mamlatdar & A.L.T., Navsari by declaring that the plaintiffs have become the owners of the suit lands on the Tiller's day under Sec. 32 of the Bombay Tenancy Act and the Civil Court may be informed accordingly. It appears from the order passed by the Deputy Collector, Navsari in aforesaid Tenancy Appeals that the Deputy Collector gave specific findings that plaintiffs remained on the land till 1965 when they were evicted forcibly. It appears that the order passed by the Deputy Collector, Navsari dated 26-8-1975 passed in aforesaid Tenancy Appeal Nos. 59 and 152 of 1975 came to be confirmed by this Court by judgment and order dated 7-3-1983 in Special Civil Application No. 1658 of 1977. Therefore, the order passed by the Deputy Collector declaring the plaintiffs to be the owners of the suit land on Tiller's day under Sec. 32 of the Bombay Tenancy Act came to be confirmed by the High Court. Thereafter, the said decision was send to the Civil Court and thereafter, the learned trial Court by impugned judgment and decree has decreed the suit directing the defendants to hand over the possession of the suit agricultural lands to the plaintiffs. Feeling aggrieved and dissatisfied with the judgment and decree dated 26-12-1984 passed by the learned Civil Judge (Senior Division), Navsari in Regular Civil Suit No. 127 of 1971 decreeing the suit for possession, the defendants preferred Regular Civil Appeal No. 31 of 1985 before the learned District Court, Valsad, at Navsari and by impugned judgment and order dated 10-10-1986, the Appellate Court has dismissed the said Appeal confirming the judgment and decree passed by the learned trial Court.

1.3. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by both the Courts below in decreeing the suit for possession and directing the defendants to hand over the peaceful and vacant possession of the agricultural lands to the plaintiffs, the appellants herein-original defendants have preferred the present Second Appeal under Sec. 100 of the C.P.C.

1.4. While admitting the present Second Appeal, the learned Single Judge has framed the following substantial question of law to be considered in the present Second Appeal :

Having regard to the provisions of Sec. 32(1B) and Sec. 68(c) and Sec. 70(n) read with Sec. 85 of the B.T. & A.L. Act, 1948, whether Civil Court has jurisdiction to take measures for putting the tenant into possession of the

agricultural lands and/or whether where a tenant who has been dispossessed as stated in Sec. 32(1B) of the said Act, whether Civil Court has jurisdiction to hold an inquiry and to direct that such land shall be restored to the tenant?

2. Shri Dharendra Mehta, learned Advocate appearing on behalf of the appellants-original defendants has made only one submission that despite the fact that Mamlatdar & A.L.T. who is the competent authority under the Bombay Tenancy Act declared the original plaintiffs has tenant/deemed tenant/owner under Sec. 32 of the Bombay Tenancy Act, still for recovery of the possession, the plaintiffs have to approach the authority under the Bombay Tenancy Act only as provided under Sec. 32(1B) and Sec. 70(n) of the Bombay Tenancy Act, and therefore, in view of bar under Sec. 85 of the Bombay Tenancy Act, the Civil Court would not have any jurisdiction to pass the decree of possession and directing the defendants to hand over the possession of the suit agricultural lands to the plaintiffs.

2.1. In support of his above submissions, Shri Mehta, learned Advocate appearing on behalf of the appellants has heavily relied upon Sec. 32(1B) of the Bombay Tenancy Act and has further submitted that where a tenant who was in possession of the land on the pointed day and who has been dispossessed by the landlord at any time before the specific date otherwise than in the manner provided in Sec. 29 or any other provision of the said Act, in that case, the Mamlatdar shall, notwithstanding anything contained in the said Sec. 29 or any other provision of the Bombay Tenancy Act either suo motu or on an application of the tenant made within the prescribed period hold the inquiry and direct that such land or as the case may be, part thereof shall be taken from the possession of the landlord or as the case may be, in succession in interest, and shall be restored to the tenant. Therefore, it is submitted that it is the duty of the Mamlatdar to restore the possession to such a tenant who has been dispossessed by the landlord, and therefore, the plaintiffs were required to approach the Mamlatdar & A.L.T. for restoration of the possession as provided under Sec. 32(1B) of the Bombay Tenancy Act.

2.2. Shri Mehta, learned Advocate appearing on behalf of the appellants-original defendants has also relied upon Sec. 70(n) of the Bombay Tenancy Act by submitting that a duty is cast upon the Mamlatdar as provided under Sec. 70(n) of the Bombay Tenancy Act to take measures for putting the tenant or landlord or the agricultural labourer or artisan into the possession of the land, and therefore also, considering bar under Sec. 85 of the Bombay Tenancy Act, the Civil Court shall not have any jurisdiction to pass an order to restore the possession to the plaintiffs as tenants/who are declared to be the owners of the land under Sec. 32 of the Bombay Tenancy Act.

2.3. In support of his above submissions, Shri Mehta, learned Advocate appearing on behalf of the appellants has heavily relied upon the decision of the Hon"ble Supreme Court in the case of Parmar Kanaksinh Bhagwansinh (Dead) by Lrs. Vs. Makwana Shanabhai Bhikhabhai and Makwana Prabatbhai Bhikhabhai, .

Making above submissions and relying upon above decision, it is requested to allow the present Second Appeal quashing and setting aside the impugned judgment and decree passed by the learned trial Court decreeing the suit for possession filed by the plaintiffs.

3. Present Second Appeal is opposed by Shri Motiramani, learned Advocate appearing on behalf of the respondents-original plaintiffs. It is submitted that at the relevant time when the plaintiffs instituted the suit, there was no provision under Sec. 32(1B) of the Bombay Tenancy Act. It is submitted that in any case, and even otherwise, the plaintiffs instituted the suit for recovery of the possession on the ground that they are the owners of the agricultural lands and in the alternative they prayed that as they were cultivating the agricultural lands upto 1965 and they were dispossessed forcibly, they have become the tenants/owners under Sec. 32 of the Bombay Tenancy Act and considering bar under Sec. 85 of the Bombay Tenancy Act, the learned Civil Court referred the issue with respect to tenancy to Mamlatdar & A.L.T. and the order passed by the Revenue authority declaring the plaintiffs as tenants/owners under Sec. 32 of the Bombay Tenancy Act came to be confirmed by the High Court and the reference was accordingly answered to the learned Civil Court, and therefore, when it was found that the plaintiffs were dispossessed forcibly and that they were held to be the owners under Sec. 32 of the Bombay Tenancy Act by Revenue authorities under the Bombay Tenancy Act, no illegality has been committed by the learned Civil Court decreeing the suit for possession and directing the defendants to hand over the peaceful and vacant possession to the plaintiffs. It is submitted that as such provision of Sec. 32(1B) of the Bombay Tenancy Act which has been inserted subsequently confers additional right upon the tenant who was found to be in possession and cultivating the same on a particular date to declare that he is the deemed purchaser/tenant and for restoration of possession. It is submitted that the bar under Sec. 85 of the Bombay Tenancy Act would be applicable with respect to any dispute of tenancy which are required to be determined by the tenancy authorities. It is submitted that once the same is answered by the tenancy authority in favour of the tenant, there would not be any bar of the Civil Court to grant the relief of possession. It is submitted that at the most it can be said that the powers of the Mamlatdar to restore the possession would be over and above the powers of the Civil Court.

3.1. Now, so far as the reliance placed upon the decision of the Hon^{ble} Supreme Court in the case of Parmar Kanaksinh Bhagwansinh (Dead) by Lrs. Vs. Makwana Shanabhai Bhikhabhai and Makwana Prabatbhai Bhikhabhai, by the learned Advocate appearing on behalf of the appellants is concerned, it is submitted that as such the aforesaid decision would not be applicable to the facts of present case. It is submitted that on the contrary the same supports the case of the plaintiffs that once the issue is answered by the tenancy authorities, on a reference made by the Civil Court, thereafter the Civil Court has to proceed further with the suit accordingly.

Making above submissions, it is requested to dismiss the present Second Appeal.

4. Heard learned Advocates appearing for respective parties at length. At the outset it is required to be noted that the plaintiffs instituted the suit before the Civil Court for the decree of possession submitting that they are the owners of the suit agricultural lands in question and that their forefathers were cultivating the same since many years and that they cultivated upto 1965 and they were dispossessed by the landlord forcibly. It appears that in the alternative the plaintiffs also submitted that as they were cultivating the agricultural lands upto 1965 and they were dispossessed forcibly as such they have become the tenants/owners under Sec. 32 of the Bombay Tenancy Act. As the dispute whether the plaintiffs have become the tenants/deemed tenants/owners under Sec. 32 of the Bombay Tenancy Act could not have been decided by the Civil Court considering the bar under Sec. 85 of the Bombay Tenancy Act and the said issue was required to be referred to the Mamlatdar & A.L.T./Tenancy Act under Sec. 85 of the Bombay Tenancy Act, the said issue whether the plaintiffs have become the owners of the suit land on the Tiller's day under Sec. 32 of the Bombay Tenancy Act came to be referred to the Mamlatdar & A.L.T., Navsari. It appears that Mamlatdar & A.L.T. held against the plaintiffs, however, in appeals the Deputy Collector held that the plaintiffs were cultivating the suit land in question upto 1965 and that they were dispossessed forcibly by the landlord without following procedure as required under the Tenancy Act and consequently declared the plaintiffs as owners of the suit agricultural land under Sec. 32 of the Bombay Tenancy Act. That the said order passed by the Deputy Collector came to be confirmed by this Court in Special Civil Application No. 1658 of 1977. That thereafter, the Civil Court was answered the reference accordingly. Having found that the plaintiffs have become the owners under Sec. 32 of the Bombay Tenancy Act and that they were dispossessed by the landlord forcibly, the learned trial Court passed a decree for possession in favour of the plaintiffs and directed the defendants to hand over the peaceful and vacant possession to the plaintiffs. It is the case on behalf of the defendants that as the Mamlatdar & A.L.T. is conferred with the power to restore the possession to the tenants who have been dispossessed forcibly, in exercise of powers under Sec. 32(1B) of the Bombay Tenancy Act and/or it is the duty of the Mamlatdar to restore the possession to the tenant/owners as provided under Sec. 70(n) of the Bombay Tenancy Act, in view of Sec. 85 of the Bombay Tenancy Act, the Civil Court would not have any jurisdiction to pass the decree for possession and/or to restore the possession to the plaintiffs/tenants/owners. The aforesaid seems to be attractive but has no substance. On fair reading of Sec. 85 of the Bombay Tenancy Act, it appears to the Court that a substantive dispute with respect to the tenancy rights of the tenant and/or other rights are to be adjudicated and decided by the tenancy authorities only and the Civil Court would not have any jurisdiction and such an issue is required to be referred to tenancy authorities/Mamlatdar under Sec. 85 of the Bombay Tenancy Act. Once, such an issue is answered by the Revenue authorities, thereafter the Civil Court is required to proceed further with the suit.

Considering Sec. 85 of the Bombay Tenancy Act, it appears that Civil Court has no jurisdiction to decide the issue which the tenancy authorities are required to decide under the provisions of the Bombay Tenancy Act and if any such issue arises, the Civil Court is required to stay the proceedings of the suit and refer the said issue to the competent authority under the Bombay Tenancy Act, and thereafter, on the basis of the decision of the tenancy authority, the Civil Court is required to proceed further with the suit accordingly. Once, the issue is answered by the tenancy authorities and it is held that the plaintiffs are the tenants/owners under Sec. 32 of the Bombay Tenancy Act, thereafter the Civil Court is required to proceed further with the suit and can pass an order to restore the possession for which there will not be any bar under Sec. 85 of the Bombay Tenancy Act. It may be that under the Act, the Mamlatdar might have been conferred with the duty to restore the possession to the tenant but that does not mean that a Civil Court has no jurisdiction to pass a decree for possession once it is held by the competent tenancy authorities that the plaintiffs are the tenants/owners under the provisions of the Bombay Tenancy Act and that they were dispossessed forcibly and for restoration of the possession, the plaintiffs are not required to again approach the tenancy authorities alone for restoration of the possession.

4.1. Now, so far as the reliance placed upon the decision of the Hon''ble Supreme Court in the case of Parmar Kanaksinh Bhagwansinh (Dead) by Lrs. Vs. Makwana Shanabhai Bhikhabhai and Makwana Prabatbhai Bhikhabhai, by the learned Advocate appearing on behalf of the appellants-original defendants in support of his submissions that Civil Court would not have any jurisdiction to pass an order to restore the possession to the plaintiffs is concerned, considering the aforesaid decision it appears to the Court that the said decision would not be of any assistance and/or helpful and/or applicable to the facts of the present case. Even in the said decision, the Hon''ble Supreme Court has specifically held that if any suit instituted in Civil Court involves the question of tenancy, the same being required to be decided or dealt with by the authority competent under the Bombay Tenancy Act, the Civil Court has to stay the suit and refer the issue to Mamlatdar and after receiving the decision thereon to dispose of the suit in accordance with such decision, even Sec. 85A of the Bombay Tenancy Act also provides that if any suit involves any issues which are required to be settled, decided or dealt with by any authority competent to settle, decide or dealt with such an issue under the Bombay Tenancy Act, the Civil Court shall stay the suit and refer such an issue to such competent authorities for determination and on receipt of such reference from the Civil Court, the competent authority shall deal with and decide such issues in accordance with the provisions of the Bombay Tenancy Act and shall communicate the decision to the Civil Court and such Court thereupon to dispose of the suit in accordance with the procedure applicable thereto. Thus, even considering the decision of the Hon''ble Supreme Court in the case of Parmar Kanaksinh Bhagwansinh (Dead) by L.Rs., [1995 (2) GLR 1409 (SC)] as well as considering Sec. 85A of the Bombay Tenancy Act, after the decision is communicated by the competent authority under the

Bombay Tenancy Act and in the mean time the Civil suit is stayed, thereafter the Civil Court is required to dispose of the suit on such decision and in accordance with the procedure applicable thereto. Under the circumstances, it is held that once the issue with respect to the tenancy/owner under Sec. 32 of the Bombay Tenancy Act came to be answered in favour of the plaintiffs by the competent authority under the Tenancy Act and the same has been communicated to the Civil Court thereafter, the Civil Court is required to proceed further with the suit and can pass an order to restore the possession to the plaintiffs on the basis of the decision of the competent authority under the Bombay Tenancy Act and for which bar under Sec. 85 of the Bombay Tenancy Act would not be applicable.

4.2. Under the circumstances and considering the aforesaid facts and circumstances, no illegality has been committed by the Courts below in passing the decree of possession in favour of the plaintiffs and directing the defendants to hand over the peaceful and vacant possession of the agricultural suit land to the plaintiffs.

In view of the above and for the reasons stated above, present Second Appeal fails and the same deserves to be dismissed and is, accordingly, dismissed. No costs.