

(2022) 04 BOM CK 0060
In the Bombay High Court
Case No : Writ Petition No. 2887 Of 2018

Bhimrao And Others

APPELLANT

Vs

Bhagwat And Others

RESPONDENT

Date of Decision : 13-04-2022

Acts Referred:

Hyderabad Tenancy And Agricultural Lands Act, 1950 — Section 32, 38, 38A, 38E, 50(B), 91, 98, 98(C)

Citation : (2022) 04 BOM CK 0060

Hon'ble Judges : Nitin B. Suryawanshi, J

Bench : Single Bench

Advocate : M .M. Patil, S. B. Pulkundwar, M. P. Tripathi, N. B. Khandare

Final Decision : Dismissed

Judgement

Nitin B. Suryawanshi, J

1. Rule. Rule made returnable forthwith. Heard finally by the consent of the parties.

2. This petition challenges the order dated 19-07-2017, passed by the learned Member (Judicial) of Maharashtra Revenue Tribunal, Bench at Pune, in Appeal No. (8/A/2015/B) New No.A/Beed/IV/1/2017, thereby allowing the appeal filed by the respondents and dismissing the application moved by the petitioners for summary eviction of the respondents.

3. The predecessors of the petitioners were tenants of the land in question i.e. Gut Nos. 93A, 93AA, 94A, 94AA, 95A and 95AA to the extent of 23 Acres 34 Gunthas at village Massajog, since 1948-1949. The provisions of the Hyderabad Tenancy And Agricultural Lands Act, 1950, (for short, 'the said Act, 1950') are applicable to the present case. Name of Mahadu Ramchandra Solunke, the predecessor of the petitioners, was entered in the revenue record as a protected tenant and therefore, he was declared as owner under Section 38A and 38E of the said Act, 1950, by order dated 17-02-1969, to the extent of 23 Acres 34

Gunthas. Certificate of ownership was issued by the competent authority in the name of Mahadu after he deposited price of the land. Accordingly Mutation Entry No.138 was certified therein recording Mahadu's name as owner of the land in question.

4. It is the case of the petitioners that Mahadu's brother Vishwanath was never in possession of the suit land / land in question and Vishwanath was never declared as a protected tenant. Vishwanath never purchased the suit land from the original owner. Mahadu never allotted the suit land to Vishwanath either by partition or by any other mode and the name of Vishwanath was never recorded as a tenant to the suit land. Vishwanath applied to the Talathi to enter his name to the revenue record to the extent of 11 Acres 37 Gunthas on the basis of partition. Accordingly name of Vishwanath was entered on Mutation Entry No.162 which is certified on 27-01-1971. The petitioners claimed that this was without notice to Mahadu. Vishwanath thereafter sold 54½ R land from Survey Nos. 94A and 94AA and 60 R land from Survey No.93A in favour of Bharat @ Babasaheb s/o Balasaheb Khandare on 08-09-1987. After the death of Bharat Khandare his wife submitted application under Section 50(B) for permission to transfer the said land.

5. The petitioners filed proceedings under Section 98(C) of the Act, 1950, praying that the suit land be taken out of the physical possession of respondent Nos. 1 to 7 and the same be restored to the petitioners being protected tenants.

The respondents opposed the said proceedings contending that Mahadu was Karta of the joint family and therefore, Mutation Entry No.138 was effected in his name. Vishwanath and Mahadu had equal share in the suit lands and the suit lands were partitioned between Vishwanath and Mahadu.

6. The Collector allowed the application filed by the petitioners vide order dated 30-12-2014 and directed that possession of the suit lands should be restored by respondent Nos. 1 to 7 to the petitioners. Being aggrieved, the respondent Nos. 1 to 7 approached the Maharashtra Revenue Tribunal, Aurangabad, under Section 91 of the said Act, 1950. The Maharashtra Revenue Tribunal allowed the appeal of the respondents. Hence the present petition.

7. Heard Mr. M. M. Patil (Beedkar) learned advocate for petitioners, Mr. M. P. Tripathi learned advocate for respondent Nos. 1, 2, 5 & 6, Mr. N. B. Khandare learned advocate for respondent Nos. 1 to 7 & 10 and Mr. S. B. Pulkundwar, learned Assistant Government Pleader for respondents – State.

8. According to the learned advocate for petitioners, the certificate is admittedly issued in the name of Mahadu and it was never challenged by Vishwanath. Therefore, The Maharashtra Revenue Tribunal has erred in holding that Vishwanath was co-holder of the suit property. He submits that Mahadu was the exclusive owner. There is no presumption of joint property which is wrongly drawn by the Tribunal. By relying on Hasan Bin Salam s/o Salam Bin Abdul Habib Vs. Madhavrao s/o Ranganathrao Shinde [2015 (2) Mh.L.J. 483] and Anil

Shripatrao Badge Vs. Sundrabai Mahada Mali since deceased through L.Rs. And Others [2000 (1) Bom.C.R. 893] he submits that the impugned order of Maharashtra Revenue Tribunal is unsustainable and the Collector was justified in allowing the application filed by the petitioners.

9. The learned advocate for the respondents on the other hand by relying on the mutation entries standing in the name of Mahadu and Vishwanath since 1959-1960, submits that the name of Vishwanath is also recorded to the suit property since 1959-1960 as a tenant. He submits that the notice in the name of Vishwanath and Mahadu was issued at the time of acquisition of the land, which shows joint possession of the property by Vishwanath and Mahadu. According to him, Mahadu never objected the possession and ownership of Vishwanath, so also, Mahadu never claimed ownership of the entire suit land on the basis of certificate issued under Section 38E. By placing reliance on the Citizens National Register 1951 he submits that Mahadu and Vishwanath had a joint family. During the life time of Mahadu till 2008, Mahadu never challenged the ownership and possession of Vishwanath to 11 Acre 37 R land. Mahadu and Vishwanath were joint tenants and owners of the land and therefore, they both have received equal compensation for the acquired land of 7 Acre 34 R i.e. to the extent of 3 Acre 32 Gunthas each. By pointing out the plaint in R.C.S No.273/1987 he submits that Mahadu and Vishwanath jointly filed the suit against the original owners of the suit property as protected tenants and claimed relief of permanent injunction not to disturb their peaceful possession of the suit property. By pointing out the sale deed executed by Vishwanath, he submits that Mahadu is witness to the said sale deed. Further submission is that the Mutation Entry No.162 taken in the year 1971 was not challenged by Mahadu during his life time. In that view of the matter, he submits that findings of facts recorded by the Tribunal are not liable to be interfered with. In support of his submissions he relied on the decision of the Co-ordinate Bench of this Court in Nagya Vs. Bhujya and Another [1988 Mah LR 1725].

10. The learned Assistant Government Pleader supports the impugned order passed by the Maharashtra Revenue Tribunal.

11. The proceedings filed under Section 98(C) of the said Act are summary proceedings. Though it is a fact that certificate under Section 38E of the said Act is issued in favour of Mahadu, however, it is a matter of record that Vishwanath's name is recorded to the suit property along with Mahadu since 1959-1960 onwards. It is also admitted position that in the year 1972 compensation of part of the suit property was jointly awarded to Mahadu and Vishwanath.

12. Mahadu and Vishwanath being plaintiffs filed R.C.S. No.273/1987 against the original owners of suit land, had specifically pleaded that "The entire land S.No.93/A, 93/Aa, 94/A, 94/AA, 95/A, 95/AA were owned by defendants, who were joint owners of the suit lands. Entire lands are being cultivated by the plaintiffs as protected tenants. The protected tenancy certificate received in the name of plaintiff No.1 being the Karta and eldest member of the family, as

plaintiffs No.1 and 2 are real brothers”, “That an area of 23 acres 34 gunthas from S.Nos. 93, 94, 95 was declared u/s 38E of the said Act, 1950 to plaintiffs as owners. The ownership certificate has been issued in the name of plaintiff No.1 as the Karta and eldest member of the family of plaintiffs. The original ownership certificate is filed herewith”, “Plaintiffs have been compensated as per law for the said acquired area”, “That, thus the entire suit land described above in para 1st of the plaint is in possession and in enjoyment of the plaintiffs as owners and as tenants”.

13. The above pleadings are binding on Mahadu and his predecessors. From the above pleadings it is clear that both Mahadu and Vishwanath were cultivating the suit land as protected tenants and being Karta and eldest member of the family, tenancy certificate was received in the name of Mahadu.

14. In the year 1971 Mutation Entry No.162 was effected at the instance of Vishwanath on account of partition between Vishwanath and Mahadu. As per the said entry, by way of partition Vishwanath had become owner of 11 Acre 37 Gunthas land. During his life time Mahadu never challenged this entry. Mahadu is witness to the sale deed executed in favour of Bharat Khandare. From all these facts and record it can be safely inferred that Mahadu and Vishwanath were tenants of the suit land and they partitioned the suit land equally amongst themselves. The Tribunal was justified in passing the impugned order after considering all these facts.

15. In Anil Shripatrao Badge (supra) Co-ordinate Bench of this Court has held that certificate of ownership is a conclusive evidence of sale as against the land holder and all other persons interested therein.

16. Similar is the ratio of Division Bench of this Court in Hasan Bin Salam s/o Salam Bin Abdul Habib (supra). The Division Bench has held that “the land which has been transferred to the tenant on the notified date provided under the provisions of Hyderabad Tenancy Act and shall vest in the tenant and tenant shall be deemed to be full owner of such land. The deeming provision introduced legal fiction. Thus, the contention of the appellant that remedy under Section 32 is available to the respondent does not stand to scrutiny.”

In the case in hand, the facts are otherwise. The revenue record indicates that Mahadu and Vishwanath were tenants and the contentions of the respondents that since Mahadu was Karta the tenancy certificate was issued in his name, is liable to be accepted in the light of the pleadings in R.C.S. No.273/1987. In that view of the matter both these rulings do not help the petitioners’ case.

17. The learned advocate for respondents was right in relying on Nagya Vs. Bhujya (supra), wherein in similar facts the Co-ordinate Bench of this Court held thus:

“6. The petitioner challenges the order of the Revenue Tribunal dated 30-10-1984 in this petition. The learned Counsel Shri Mandlik, for the petitioner

contended that there is voluminous documentary evidence on the record to show that the declaration under Section 38 to the extent of 8 acres 8 gunthas is in favour of the petitioner alone and was not meant for the joint family. He argues that the declaration is made during the life-time of the father. If the declaration was to be in favour of the jointly family then the declaration would have been made in the name of the father and not in the name of the petitioner. As the declaration is made during the life-time of the father, it must be treated to be in favour of the petitioner alone and respondents have no concern with the declared area. I am in agreement with the finding recorded by the Revenue Tribunal that this is a dispute between two brothers relating to the ownership of property declared under Section 38-E. The claim of the respondent is that the declaration even though in the name of the petitioner was for the joint family. It is also admitted position that the claim of the petitioner for the share in the purchased property cannot be considered in an application under Section 98 of the Hyderabad Tenancy and Agricultural Lands Act. The Revenue Tribunal was right therefore, in considering that such an application cannot be considered in a summary proceedings under Section 98 of the Act. The petitioner can by following proper remedy approach the proper forums for possession. The issues involved in this case cannot be summarily dealt with. In the result, Rule discharged. There shall be no order as to costs."

The above observations support the case of the respondents.

18. For the aforesaid reasons, this Court is of the considered view that the impugned order passed by the Tribunal is not liable to be interfered with in extraordinary writ jurisdiction. The Tribunal has rightly set aside the judgment of the Collector and allowed the appeal filed by the respondents. No case is made out by the petitioners to exercise extraordinary writ jurisdiction. The writ petition is, therefore, dismissed.

19. It is made clear that in case the petitioners propose to avail remedy available in law, the same shall be decided on it's own merits in accordance with law, without being influenced by the observations made in this judgment.

20. Rule is discharged. No costs.