

(1988) 06 BOM CK 0009
In the Bombay High Court
Case No : Second Appeal No. 386 of 1979

Datta Pandit Bokan

APPELLANT

Vs

Babu Raoji Babar through legal representative and Another

RESPONDENT

Date of Decision : 13-06-1988

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1985 — Section 70

Citation : (1988) 3 BomCR 38 : (1989) MhLj 948

Hon'ble Judges : B.N. Deshmukh, J

Bench : Single Bench

Advocate : Deelip Bhadekar, for R.G. Bhadekar and S.S. Choudary, for the Appellant; A.B. Naik, for the Respondent

Final Decision : Allowed

Judgement

B.N. Deshmukh, J.—This second appeal is filed by original defendant No. 1 Datta s/o Pandit Bokan. The plaintiff Babu, who was respondent No. 1 in this second appeal died during the pendency of this appeal, and an order came to be passed on 11-4-1986 in Civil Application No. 1206/85, by which it is directed that the respondent No. 2 shall be representing the cause of the respondent No. 1.

2. The respondent No. 2 Raosaheb was real nephew of the plaintiff Babu. Raosaheb sold the property to defendant No. 1 Datta by a sale deed, dated 1st November, 1972. The claim of the plaintiff is that the sale deed executed by Raosaheb in favour of Datta is ineffective and inoperative.

3. The trial Court framed several issues; one of the main issue, with which we are concerned in this Second Appeal is issue No. 4, which is as follows:

"Does defendant No. 1, prove that he is agriculturist and hence sale-deed executed by defendant No. 2 in his favour without permission is valid as contended by him ?

The trial Court decided this issue, holding that the defendant No. 1 has

successfully established that he is an agriculturist and that the sale deed executed by defendant No. 2 Raosaheb in his favour is valid. However, as the findings on other issues were against the defendant No. 1, it was held that the sale deed executed by defendant No. 2 in favour of defendant No. 1 is ineffective and inoperative against the right of plaintiff.

4. In appeal, filed by defendant No. 1, the learned Extra-Assistant Judge held that there is no error in the judgement of the trial Court, confirmed the findings recorded by the lower Appellate Court and dismissed the appeal filed by the defendant No. 1.

5. Shri Bhadekar, Advocate for the appellant wanted to challenge the finding of fact recorded by both the courts below in this second appeal. He also contended that now as the interest of the plaintiff is represented by the respondent No. 2 Raosaheb after his death, this Court can grant relief to the appellant on the basis of the provisions of section 43 of the Transfer of property Act, as the respondent No. 2-Raosaheb is stopped from denying the ownership of the defendant No. 1 over the suit land, as he was the person who had transferred the title in favour of the defendant No. 1 by the sale deed. It is not necessary to consider these issues at this stage, as it is necessary to remand the matter back to the trial Court.

6. Shri Naik, , learned Advocate, who was appointed as Amicus Curie for respondent No. 2 has invited my attention to the provisions of the Hyderabad Tenancy and Agricultural Lands Act, 1950 and contended that the Civil Court has no Jurisdiction to decide the issue as to whether the defendant No. 1 is an agriculturist. He relied upon the decision of Supreme Court in Gundali Satwaji Shinde v. Ramchandra Bhikaji Joshi, 1979 Maharashtra Law Journal, Page 283. The Supreme Court in that case, after considering the provisions of Bombay Tenancy and Agricultural Lands Act, 1948 has laid down that the Civil Court has no jurisdiction to decide whether the purchaser is an agriculturist. That issue is required to be decided by the Competent Authorities under the provisions of that Tenancy Act.

7. The contention of Shri Naik will have to be accepted in this case also. Section 47 of the Hyderabad Tenancy and Agricultural Lands Act, 1950 provides for transfers of agricultural lands and transfer to non-agriculturist is barred under the provisions of section 47 in favour of a person, who is not an agriculturist. It is true that there is no provision like the one u/s 70 of the Bombay Tenancy and Agricultural Lands Act, whereby a duty is cast upon the Mamlatdar to decide whether the person is an agriculturist. But if we consider the provision of section 98-C of the Hyderabad Tenancy and Agricultural Lands Act, which empowers the Tahsildar, even suo motu, to hold that any alienation of an agricultural lands is invalid, if it is in contravention of the provisions of the Hyderabad Tenancy and Agricultural Lands Act, 1950. The whole scheme of section 98-C of the Act for holding an enquiry regarding validity of alienation empowers the Tahsildar to hold the alienation as valid or invalid, as the case may be. The question, therefore, is whether the alienation is invalid on the ground that the property is being

transferred in favour of a person who is not an agriculturist. That question is necessarily required to be decided by the Tahsildar under the provisions of section 98-C of the Act. The Civil Court is barred from trying such issue by virtue of the provisions of section 99 of the Hyderabad Tenancy and Agricultural Lands Act, 1950, which provides that no Civil Court shall have the power to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Tahsildar, Tribunal, Collector or Commissioner or the Government. As the issue regarding whether the defendant No. 1 is an agriculturist is required to be decided by the Tahsildar u/s 98-C, the Civil Court has no jurisdiction to decide that issue.

8. In view of the above legal position, the decisions and decrees, passed by the Courts below are required to be set aside. The matter is remanded back to the learned Civil Judge (Junior Division), Sailu to decide the issue afresh, who shall refer Issue No. 4 to the Competent Tahsildar for his decision. On receipt of such reference he shall proceed to decide the other issues arising between the parties. It would then be open to the appellant (Defendant No. 1) to raise all other contentions including the claim u/s 43 of the Transfer of Property Act.

9. In the result, decisions and decrees, passed by the courts below are set aside and the matter is remanded back to the learned Civil Judge, (Junior Division), Sailu. Appeal allowed with no order as to costs.

10. In spite of service, respondent No. 2 was unrepresented in this Court. As the point involved in this second appeal was of some importance, Shri Naik, learned Counsel was requested to appear as Amicus Curie. I must appreciate the co-operation given and efforts made by him in pointing out certain provisions of the Act, which enabled me to decide this second appeal.