

(1946) 04 BOM CK 0001
In the Bombay High Court
Case No : Second Appeal No. 103 of 1944

Dayabhai Jivabhai Patel

APPELLANT

Vs

Shana Bana Pagi

RESPONDENT

Date of Decision : 09-04-1946

Acts Referred:

Dekkhan Agriculturists Relief Act, 1879 — Section 10A

Citation : AIR 1947 Bom 190 : (1946) 48 BOMLR 627

Hon'ble Judges : Kania, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kania, J.—This is a second appeal from the judgment of the District Judge of Nadiad. Under a deed dated September 15, 1906(exhibit 34) the properties in dispute were stated to be conveyed to Bai Parsan. That document shows that the consideration for the transfer was previous debts due to the ostensible purchaser. Under a deed dated April 15, 1941, the original plaintiffs purchased the property from Bai Parsan. The plaintiffs allege that they were put in possession of the suit fields on the date of sale by Bai Parsan with the consent of the defendant, who was then Bai Parsan's tenant and who was unwilling to continue as the plaintiffs' tenant. It was alleged that in May, 1941, the defendant entered the said fields without any right and thus dispossessed the plaintiffs. The plaintiffs demanded possession, from the defendant but the defendant contended that the plaintiffs were not the owners but were mortgagees only. It was contended in the written statement that the transaction in favour of Bai Parsan was a mortgage and not a sale.

2. Two questions were thereupon raised: (1) Whether the transaction in favour of Bai Parsan was a mortgage. If so, the plaintiffs could not get a better title and must be treated as transferees from the mortgagee. The second question was one of law. It was argued that in 1906, when the sale-deed was executed in favour of Bai Parsan, Section 10A of the Dekkhan Agriculturists' Belief Act had

not been enacted. Therefore, the defendant was not entitled to lead evidence to show that the transaction was not a sale but was only a mortgage. On both these points the two Courts decided against the plaintiffs. The same two points have been raised before me in this second appeal.

3. On the first point there is little doubt. The parties to the original transaction being all dead no oral evidence was led. The Court considered the nature of the transaction, the assessment and the rent paid. It also dealt with the way in which the possession had remained after the deed. I see no adequate ground for disturbing the conclusion of the two lower Courts on this point. It was sought to be argued before me that the assessment stated to be of Rs. 22 was incorrect. I am unable to go into this question. This point was not raised in the lower Courts. It deals with the identity of the land in respect of which the assessment was made. The next point was as regards the value of the land in 1906. For that also there is no reason to disturb the conclusion of the lower Courts.

4. The question of law in substance is this. Under the deed of 1906(exhibit 34) there is an ostensible sale in favour of Bai Parsan. The defendant, who is the successor-in-title of the vendor, can lead evidence to prove that the transaction was a mortgage only if his case is covered by Section 10A of the Dekkhan Agriculturists' Relief Act. It was contended on behalf of the appellants that the proviso to the section prevented such evidence being led. That proviso runs as follows:-"Provided that such agriculturist or the person, if any, through whom the claims was an agriculturist at the time of such transaction". It "was argued that as the Act was not extended to the Nadiad District the definition of agriculturist found in Section 2 of the Act was not applicable to the Nadiad District. Therefore, at the time of the transaction of 1906 the defendant's predecessor-in-title was not an agriculturist within the meaning of the Act. It was argued that this interpretation of the proviso is supported by the full bench decision of Sawantrawa Fakirappa Ballurwad Vs. Giriappa Fakirappa Mudraddi, . In that case the transaction in dispute was entered into in 1899. The vendor attempted to lead evidence to show that the transaction was a mortgage and not a sale. The transaction was effected in the Dharwar District. Sections 1, 11, 56, 60 and 62 of the Dekkhan Agriculturists' Relief Act as stated in Section 1 were extended to the whole of British India on the Act coming into force. The rest of the Act was extended to that District in 1905. In that case it was argued that the word "agriculturist" in the proviso to Section 10A should be read as having its ordinary dictionary meaning irrespective of the definition in Section 2 of the Act, but that contention was rejected by the Court because of the definition of "agriculturist" in the Act. The definition is in the following terms:

"Agriculturist" shall be taken to mean a person who by himself or by his servants or by his tenants earns his livelihood wholly or principally by agriculture carried on within the limits of a district or part of a district to which this Act may for the time being extend....

The Court accepted the contention that as the Act was not extended to Dharwar

District till 1905 this definition found in Section 2 of the Act could not be considered as extended to Dharwar District. Therefore, the proviso to Section 10A came in the way of the claimant. This argument came to be considered by another full bench of our Court in *Ganpat v. Tulsi Ramchandra* (1923) 26 Bom. L.R. 118 . In that case Sections 2 and 20 of the Act were extended to the District and it was argued that as the whole Act was not extended the definition of "agriculturist" in Section 2 did not apply to the party. The Court rejected the contention. Marten J. (as he then was) dealt with the contention in these terms (p. 130) :

It follows,...that the third construction is the one which I think correct, namely, that the definition of an agriculturist refers to a person of the requisite agricultural qualifications within the limits of a district or a part thereof to which the Act "wholly or in part" may for the time being extend.

He held that as Sections 2 and 20 were extended to the District in question, the definition of "agriculturist" was applicable to the case. On remand when the appeal came to be disposed of before Shah Ag. C. J. and Crump J. the question whether Section 10A would control the transaction which was effected in April, 1905, came to be discussed. The Court decided that although Section 10A was enacted after the date of the transaction and although the section was made applicable to the District in 1911 evidence could be led to show that the transaction was a mortgage and not a sale.

5. In my opinion, that decision in effect rejected the reasons of Scott C. J. on which the decision in *Sawantrawa v. Giriappa* was based. In *Ganpat v. Tulsi* the Court held that in reading the definition of agriculturist it is proper to read after the word "Act", "wholly or in part." That was the view not only of Marten J. but also of the two other Judges who formed the bench. If that meaning is read in the proviso to Section 10A, it is clear that in the present case it is open to the defendant to prove, that the real nature of the transaction of 1906 under exhibit 34 was a mortgage and not a sale. The defendant's predecessor-in-title would be an agriculturist within the meaning of the proviso if the word "agriculturist" is so interpreted. Section 10A is a rule of evidence which allows an agriculturist-defendant to prove (by evidence what otherwise will not be admissible) the real nature of the transaction. If it is treated as a rule of evidence, the Court is bound to allow the party to lead evidence when the inquiry is held before it and when Section 10A is operative. The difficulty created by the interpretation of the word "agriculturist" in *Sawantrawa v. Giriappa* has been removed by the decision in *Ganpat v. Tulsi*, The result therefore is that the appellants' contention that the respondent was not entitled u/s 10A to prove that the transaction of 1906 was a mortgage must be rejected. The appeal therefore fails and is dismissed with costs.