
(1957) 08 BOM CK 0013
In the Bombay High Court
Case No : Second Appeal No. 789 of 1954

Devaji Limbaji

APPELLANT

Vs

Ganpatlal Shivdayal

RESPONDENT

Date of Decision : 21-08-1957

Acts Referred:

Berar Regulation of Agricultural Leases Act, 1951 — Section 3

Citation : (1958) 60 BOMLR 629

Hon'ble Judges : Vyas, J

Bench : Single Bench

Judgement

Vyas, J.—This is an appeal by the defendant-tenant and it arises out of the judgment and decree passed by the learned District Judge, East Berar, Amravati, in Civil Appeal No. 60-A of 1953 which, in its turn, arose out of the judgment and decree passed by the learned Civil Judge, Class II, Yeotmal, in Civil Suit No. 8-A of 1953. The learned trial Judge decreed the suit of the plaintiff-landlord. On appeal by the defendant-tenant, the learned District Judge substantially confirmed the decree of the trial Court in so far as it related to the ejectment of the defendant-tenant and dismissed the appeal of the tenant. From that decree the tenant has appealed, and this is that appeal.

2. The plaintiff-landlord has filed a suit for the ejectment of the defendant-tenant. The defendant-tenant took survey No, 56 of mouza Yeotmal on lease from the father of the plaintiff for the year 1950-51. The plaintiff contends that the defendant failed to hand over possession of the field on the expiry of the period of lease. The period of the lease which was a lease for the year 1950-51 expired on March 31, 1951, and the plaintiff says that the defendant failed to give back the possession of the land to him or his father on March 31, 1951. It is not disputed that the lease of the year 1950-51 was a lease for a year only. The lease is exh. P-15. There is also no dispute that the plaintiff called upon the defendant to hand over possession on the expiry of the term of the batai agreement on April 1, 1951. The plaintiff admits to have received a batai share

of the crops from the defendant for the year 1950-51, and he claims an enquiry into the mesne profits for the period subsequent to April 1, 1951, till delivery of possession. The plaintiff has filed the present suit on September 17, 1951.

3. The plaintiff's suit is resisted by the defendant. The defendant contends that he is a tenant for life under an agreement made by him with the grandfather of the plaintiff. The plaintiff's grandfather was one Khetsidas, and the defendant's case is that he had entered into an agreement with Khetsidas that although an agreement of lease in respect of the suit survey number would be taken from him (defendant) every year, he would not be called upon to hand over possession at any time during his life. In other words, says the defendant, the agreement which he had entered into with Khetsidas, the plaintiff's grandfather, was an agreement for life tenancy.

4. The second contention upon which the defendant has resisted the suit of the plaintiff is a contention based upon the provisions of the Berar Regulation of Agricultural Leases Act, 1951 (XXIV of 1951) as amended by Act No. XXII of 1953. Reliance is put upon the provisions of Section 3 of the Berar Regulation of Agricultural Leases Act, and it is contended by the defendant that he is a protected lessee of this land. Reliance is next put on Section 16 of the Act, and it is contended that if any dispute arises in regard to a lease, such a dispute has to be decided not by the civil Court but by the Revenue Officer. Section 16, Sub-section (1), of the Act provides:

Whenever any question arises whether any transaction between a landholder and a person claiming to be his lessee is a lease within the meaning of this Act, such question shall be decided by the Revenue Officer.

It is the contention of the defendant in this case that he was a lessee for the year 1951-52 also, and upon such a contention being raised, the defendant says that the question at issue cannot be decided by the civil Court, tout must be decided by the Revenue Officer as provided by Section 16, Sub-section (1), of the Act. It is upon these contentions that the suit of the plaintiff is resisted by the defendant-tenant.

5. Now, upon the evidence before them, both the Courts below have held that there is no substance in the defendant's contention that there "was an agreement between him and the plaintiff's grandfather that he was to be the tenant for life in respect of this land, namely, survey No. 56 of mouza Yeotmal. Therefore, so far as that particular submission of the defendant is concerned, it must stand negatived once for all. However, so far as the second contention of the defendant is concerned, there is considerable substance in it and it must be upheld. It is to be seen that the present suit was filed on September 17, 1951, by the plaintiff. The Berar Regulation of Agricultural Leases Act, 1951, came into force in this area on November 15, 1951. It is scarcely necessary for me, for the purpose of the present appeal, to consider whether the provisions of the Berar Regulation of Agricultural Leases Act are retrospective or not. The defendant

contends that even for the year 1951-52, during which year the Act came into force, he was a lessee of the plaintiff, and, therefore, he must get the protection of the Act. The defendant says (vide para. 8 of his written statement) that even after March 31, 1951, he used to give to the plaintiff, and the plaintiff used to accept from him, every week one-third produce of the garden by way of rent. Now, if this averment of the defendant is a true averment, then there is no doubt that even after March 31, 1951, the defendant was a lessee of the plaintiff, that is to say, he was a lessee of the plaintiff for the year 1951-52 also. The point is: who is to decide whether the above averment of the defendant is a true averment or not? Is it competent to a civil Court to examine that contention of the defendant and decide one way or the other whether the defendant used to give to the plaintiff by way of rent every week one-third share in the produce of the garden? This really is the bone of contention between the parties in this appeal. Mr. Abhyankar, relying on Sub-section (1) of Section 16 of the Act, says that this matter is beyond the competence of the civil Court to decide, whereas Mr. Khare contends, and contends strenuously, that it is competent to the civil Court, to decide this question. Mr. Khare is not right in his submission which is clearly against the plain language of Sub-section (1) of Section 16. The defendant alleges that in the year 1951-52 also there was brought into existence the relationship of landlord and lessee between the plaintiff and himself by reason of a certain transaction, namely, the acceptance by the plaintiff from him (defendant) of a share in the produce of the garden, and that question has to be decided. Sub-section (1) of Section 16 of the Act provides that it shall be decided by the Revenue Officer. Mr. Khare contends that the jurisdiction of the civil Court is ousted and the jurisdiction of the Revenue Officer is attracted only when the transaction is admitted. He says that the provisions of Sub-section (1) of Section 16 apply only when a question arises, not as to the existence of a transaction, but as to the effect to be given to the transaction. According to Mr. Khare, if the transaction is admitted, but a controversy arises only as to the effect thereof, then only the jurisdiction of the civil Court is ousted. If the transaction is disputed, says Mr. Khare, that is, if the transaction upon which the tenant claims to be a lessee for a particular year is disputed by the landlord, the jurisdiction to decide the dispute is of the civil Court alone, and not of the Revenue Officer. I regret I am unable to agree. The relationship of landlord and lessee is to be deduced from certain facts or transactions, and if those facts are determined by the civil Court, what remains for the Revenue Officer to decide? When a certain function is solemnly intended to be discharged by the Revenue Officer, it is intended that the Revenue Officer must apply his own mind and must use his own judgment in the discharge of it. In enacting Sub-section (1) of Section 16 the Legislature did not intend that the function which the Revenue Officer was to perform was something which followed merely mechanically from, and as a necessary consequence of, the finding arrived at by somebody else. A contention like the one advanced by Mr. Khare in this case was advanced for the tenant in *Paika v. Rajeshwur* (1957) 60 Bom. L.R. 8 . and was negatived by the Full Bench of the Bombay High Court. The Full Bench said that if a transaction was disputed

and if that issue could only be tried by the civil Court, then it was difficult to understand what power had been conferred upon the Revenue Officer by Sub-section (1) of Section 16. The Full Bench held that reading Section 16(1) and (2) together, it was clear that when the defendant put forward a transaction on the strength of which he contended that he was a lessee and that his lease was a protected lease u/s 3, then it was the Revenue Officer who must, investigate into that transaction and determine the real nature of the transaction under the power conferred upon him under Sub-section (2) of Section 16.

6. In the present case also, the defendant-tenant has pleaded a transaction, namely, that he paid every week to the plaintiff (his landlord) one-third share in the produce of the garden by way of rent. This transaction is disputed by the plaintiff. Upon the language of Sub-section (1) of Section 16, the competence to decide this dispute is vested in the Revenue Officer alone, and not in the civil Court. To decide the question whether in the year 1951-52 also the defendant was paying every week to his landlord one-third share in the produce of the garden by way of rent is itself tantamount to a decision whether the transaction amounted to a lease or not; and if it is competent to a civil Court to decide that question, what remains for the Revenue Officer to decide under Sub-section (1) of Section 16? In that case, nothing would remain for the Revenue Officer to decide, and the scheme of the Act would be defeated. I must, therefore, uphold Mr. Abhyankar's contention that it is not for the civil Court to decide, but for the Revenue Officer to determine, whether in the year 1951-52 also the defendant was paying to his landlord every week by way of rent one-third share in the produce of the garden and was his lessee for that year also. If the answer to this question is in the affirmative, the defendant would be entitled to all the benefits of a protected tenancy as observed by the learned Chief Justice in *Paika v. Bajeshwar*. Accordingly, I set aside the judgment and decree passed by the learned District Judge, East Berar, Amravati, in Civil Appeal No. 60-A of 1953, and direct, that the record and proceedings of this case be sent to the Revenue Officer, that is, the Sub-Divisional Officer, Yeotmal, and the said Revenue Officer is directed to decide whether the defendant's averment is right or otherwise, namely, that even after the expiry of the year 1950-51, that is, even after March 31, 1951, the defendant used to pay to his landlord, the plaintiff, every week by way of rent one-third share in the produce of the garden. The decision of the Revenue Officer shall be subject to the usual course of appeal and revision, and when the question which is referred to the Revenue Officer by this judgment is finally decided by the highest Revenue Authority, the finding shall be communicated to this Court. Until such time that this Court receives a finding upon the question mentioned above from the highest Revenue Authority, this appeal shall stand stayed. It shall be disposed of by this Court after the finding of the highest Revenue Authority is received by it. No order as to costs at this stage. The cross-objections shall also be stayed pending the receipt of the finding of the highest Revenue Authority on the question referred to above.