(1980) 03 BOM CK 0021

In the Bombay High Court

Case No : Special Civil Application No. 2159 of 1975

Devidas Dank	APPELLANT
Vs	
Sudhakar Deshpande and Another	RESPONDENT

Date of Decision : 06-03-1980

Acts Referred:

Citation : (1980) 03 BOM CK 0021

Hon'ble Judges : S.C. Pratap, J

Bench : Single Bench

Advocate : V.M. Kanade, for the Appellant; P.S. Pinitkar and S.G. Deshmukh, for the Respondent

Judgement

S.C. Pratap, J.—This petition under Article 227 of the Constitution by the original plaintiff is directed against the order dated 11th February, 1975 passed by the Revenue Tribunal, Aurangabad, in reference proceedings under the Hyderabad Tenancy and Agricultural Lands Act.

2. The plaintiff filed Regular Civil Suit No. 32 of 1969 in the Court of the Civil Judge, Junior Division, Partur, against the defendant, respondent No. 1 herein, for possession of the suit land Survey No. 24 admeasuring 26 acres 24 gunthas situated at village Pimparkheda, Taluka Partur, District Parbhani. The defendant having contended that he is a tenant of the suit land, issue accordingly was framed as follows :

"Does defendant prove that he is in lawful possession of the suit land as plaintiff''s tenant since Chaitra of 1957 under oral contract of lease as alleged in additional facts of written statement of Exhibit 13".

3. This issue was referred for its determination to the Tenancy Authority under the provisions of section 99-A of the Hyderabad Tenancy and Agricultural Lands Act, 1950. The Tahsildar held that the defendant was a tenant of the suit land. Appeal therefrom by the plaintiff was allowed. It was held that the defendant was not a tenant of the suit land. Revision against the appellate order was allowed by

the Revenue Tribunal and the matter was remanded to the Appellate Authority for deciding the case afresh on merits and in accordance with law after discussing and appreciating the entire oral and documentary evidence on record and after giving a fair hearing to the parties. On remand, the Appellate Authority confirmed the finding of the Tahsildar holding that the defendant was tenant of the suit land. Revision against the appellate order by the plaintiff stood dismissed. Hence, this petition by the plaintiff.

4. Hearing Mr. V.M. Kanade, the learned Advocate for the petitioners, and Mr. P.S. Palnitkar, the learned Counsel instructed by Mr. S.G. Deshmukh for respondent No. 1 herein and going through the judgments of the authorities below, I am of the view that this is a just and fit case where the matter deserves to be sent back to the Appellate Authority for complying with the directions of the Revenue Tribunal embodies in the Tribunal''s Order dated 6th July, 1973. The cryptic appellate judgment reflects breach of the Revenue Tribunal''s directions under its order of 6th July, 1973. The appellate judgment fails to disclose even fair and reasonable compliance with the Tribunal''s directions to decide the case afresh on merits after discussing and appreciating the entire oral and documentary evidence on record. The appellate judgment miserably falls to satisfy Court higher in hierarchy that the Appellate Authority had gone through the evidence on record, oral and documentary, and appreciated and considered the same in its capacity as the final Court of facts. Mechanical reference to some evidence can hardly partake the character of a judgment expected from an Appellate Authority acting as a final Court of facts. Even the earlier judgment of the Appellate Authority given on 16th December, 1971 was also equally unsatisfactory and cryptic. That was the reason why the Revenue Tribunal by its order dated 6th July, 1973 was constrained to remand the matter to the Appellate Authority with specific directions referred to above. Inspite thereof, the Appellate Authority, after remand, has performed and done no better. In a matter involving substantial and vital rights the least expected from an Appellate Court was a discussion, consideration and appreciation of the entire oral and documentary evidence on record with reasons for its inferences and conclusions, one way or the other, based on such discussion, appreciation and consideration of the entire evidence on record. It is unfortunate that even after bring directed accordingly, the Appellate Authority failed to comply with the directions.

5. The Revenue Tribunal dismissed the plaintiff''s revision application on the ground inter alia that there was concurrent findings of the two authorities below. The test of concurrent findings becoming binding on the Revenue Tribunal can be invoked and applied if the Appellate Court has properly discharged its own responsibilities and duties as a final Court of facts. Judgment as of the instant Appellate Authority in this case falling blissfully short of the nature and character referred to above. Confirmation of the said judgment in revision of the ground of there being concurrent findings can hardly be said to be a just and correct approach.

6. In these circumstances, interest of justice requires setting aside the order of the Revenue Tribunal as also of the Appellate Authority and sending the matter back to the Appellate Authority for denovo hearing of the appeal in question on merits and in accordance with law and after fully discussing, considering and appreciating the entire oral and documentary evidence on record with its ultimate judgment reflecting the same in support of its inferences and conclusions one way or the other on the issue referred to by the Civil Court. Before parting mention may be made of the facts that the matter was argued before me by the respective advocates vehemently and with considerable competence.

7. In the result, this petition is allowed. Order dated 11th February, 1975 at Exhibit-C hereto passed by the Revenue Tribunal and order dated 23rd November, 1973 at Exhibit-B hereto passed by the Deputy Collector are set aside and quashed. The matter is sent back to the Appellate Authority for hearing and deciding the appeal in question afresh on merits and in accordance with law, after discussing, considering and appreciating the entire oral and documentary evidence on record and with its judgment ultimately reflecting the same in support of its inferences and conclusions one way or the other on the issue referred to by the Civil Court.

8. As the matter is pretty old, the Appellate Authority should hear and decide the appeal in question expeditiously.

9. Rule earlier issued on this petition is made absolute in terms aforesaid. In the circumstances of the case, however, there will be no order as to costs.