

(1991) 10 BOM CK 0012
In the Bombay High Court
Case No : Second Application No. 378 of 1981

Dinkar Dada Mahadik

APPELLANT

Vs

Shrirang Dada Mahadik and Others

RESPONDENT

Date of Decision : 21-10-1991

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 70B

Citation : (1991) 93 BOMLR 617

Hon'ble Judges : A.D. Mane, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.D. Mane, J.—This second appeal, at the instance of original plaintiff No. 2, arises on the following facts: - The properties in suit originally owned by one Jagubai wd/o Yeshwant Jadhav. She had adopted one Jayvant Yeshwant Jadhav as her son. After the death of Jagubai, Jayvant succeeded to her estate in the suit lands. The suit lands were mortgaged to and in possession of Bala Krishan and Dada Krishan. In 1963 Jayvant however redeemed the mortgage and obtained possession of the lands through Court.

2. On June 24, 1965 Jayvant executed a registered agreement of sale in favour of plaintiff No. 1 and on November 30, 1965 executed a regular sale deed in his favour. On October 12, 1965 the defendant filed a tenancy application u/s 70-B of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short, the Act), inter alia, claiming that he was inducted as a tenant on the lands by Jayvant in the year 1963. The plaintiff purchaser was, however, not made a party to the said proceedings. The Tenancy Authority, however declared the defendant as the tenant on April 30, 1969. Jayvant carried the matter in appeal but the appeal was dismissed on September 19, 1970, and also the revision before the Revenue Tribunal on September 7, 1972.

3. Thereafter on November 15, 1975 the plaintiffs filed a suit against the

defendant for a declaration and injunction. The declaration was sought in the form that plaintiff No. 2 being the Karta of the family is the owner of the lands on the basis of sale deed dated November 30, 1965. They also sought injunction restraining the defendant from interfering with their right of ownership, possession and enjoyment of the lands.

4. The suit was contested by the defendant. One of the contentions raised was that the defendant is a tenant with possession, and sale deed in favour of plaintiff No. 1 would not affect his right. Another contention was raised by contending that the sale deed was executed during the pendency of the tenancy proceedings between the defendant and Jayvant and, therefore, the transaction between plaintiff No. 2 and Jayvant was hit by the principle of *Us pendens*.

5. The learned trial Judge accepted both the contentions raised by the defendant and dismissed the suit on March 22, 1979. In appeal preferred by the plaintiffs to the District Court, the learned Assistant Judge by his judgment and decree dated October 27, 1980 dismissed the appeal by concurring with the view taken by the learned Trial Judge.

6. It may be stated that the appeal was admitted on July 24, 1981, only on the question of jurisdiction of Civil Court to decide the validity deed in view of the restriction contained in Sections 63 and 64 of the Act.

7. Shri Mohite, learned Counsel appearing for the appellant-plaintiff No. 2 urged that the view taken by the Courts below in dismissing the plaintiffs on the ground that the transfer was contrary to the provisions contained in Sections 63A and 64 of the Act is not correct. In this context he invited my attention to the provisions of Section 84C of the Act, and according to the learned Counsel Section 84C empowers the Magistrate to hold an enquiry as provided for in Section 84B and decide whether the transfer or acquisition is or is not invalid. Therefore it has been submitted by the learned Counsel for the appellant that as a matter of fact the Courts below ought to have held that the question involved in the suit is directly and substantially falls within the ambit of Section 84C of the Act, thereby ousting the jurisdiction of Civil Court and, hence, the impugned judgment and decree are liable to be quashed and set aside on the grounds that the Courts have no jurisdiction, by virtue of provisions contained in Section 85 of the Act. The Civil Court cannot decide or deal with any question which requires to be decided or dealt with by the Mamlatdar.

8. Shri Mohite learned Counsel appearing for the appellant has further contended that the Courts below have erred in taking the view that the sale deed in favour of the appellant was hit by the principle of *lis pendens* and, therefore, the plaintiff was not entitled for any declaration of ownership. In this context he invited my attention to a decision in the case of *Nathaji Anandrav Patil v. Nana Sarjerao Patil* 9 Bom. L.R. 1173 in support of his contention that the doctrine of *lis pendens* is not based on the equitable doctrine of notice, but on the ground that it is necessary to the administration of justice that decision of the Court in a

suit should be binding not only on the litigant parties but on those who derived title from them pendente lite whether with notice of the suit or not. The effect of the doctrine of lis pendens is not to annul the conveyance made in contravention of it, but only to render it subservient to the rights of the parties to the litigation.

9. There is merit in both the contentions of Shri Mohite, learned Counsel appearing for the appellant. Shri Naik learned Counsel appearing for the respondent fairly conceded that restrictions on transfers of agricultural lands as provided under Sections 63 and 64 of the Act will have to be read with the provisions contained in Section 84C of the Act.

Section 63(1) provides that

(1) Save as provided in this Act-

(a) no sale (including sales in execution of a decree of a Civil Court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue) gift, exchange or lease of any land or interest therein, or

(b) no mortgage of any land or interest therein, in which the possession of the mortgaged property is delivered to the mortgagee, shall be valid in favour of person who is not an agriculturist (or who being an agriculturist will after such sale, gift, exchange, lease or mortgage, hold land exceeding the ceiling area determined under the Maharashtra Agricultural Lands (Ceiling on Holdings) and (Amendment) Act, 1972, or who is not an agricultural labourer:

Provided that the Collector or an officer authorised by the State Government in this behalf may grant permission for such sale, gift, exchange, lease or mortgage, on such conditions as may be prescribed....

Section 63A(1) of the Act lays down the provision for fixing a reasonable price of land for the purpose of its sale and purchase; whereas Section 64 provides that where a landlord intends to sell any land, he shall apply to the Tribunal for determining the reasonable price thereof. The Tribunal shall thereupon determine the reasonable price of the land in accordance with the provisions of Section 63A.

10. It is common ground that prior to the transfer of the land in favour of the appellant procedure prescribed under the aforesaid provisions of the Act was not complied with. Nevertheless Section 84C, inter alia, provides that where in respect of the transfer or acquisition of any land made on or after the commencement of the Amending Act, 1955, the Mamlatdar suo motu or on the application of any person interested in such land has reason to believe that such transfer or acquisition is or becomes invalid under any of the provisions of this Act, the Mamlatdar shall issue a notice and hold an inquiry as provided for in Section 84B and decide whether the transfer or acquisition is or is not invalid.

Sub-section (2) of Section 84C further provides that if after holding such inquiry, the Mamlatdar comes to a conclusion that the transfer or acquisition of land is invalid, he shall make an order declaring the transfer or acquisition to be invalid,

provided that, where the transfer of land was made by the landlord to the tenant of the land and the area of the land so transferred together with the area of other land, if any, cultivated personally by the tenant did not exceed the ceiling area, the Mamlatdar shall not declare such transfer to be invalid, in certain contingencies as provided therein.

11. It is therefore clear from the provisions of Sections 84C(1) and (2), that the question as to whether the transfer of land by Jayvant in favour of appellant is or is not valid under the provisions of the Act, will have to be determined by the Authority prescribed u/s 84C of the Act. In this context reference may be made to the provisions of Section 85-A. Section 85-A reads as under:

85A. (1) If any suit instituted in any Civil Court involves any issues which are required to be settled, decided or dealt with by any authority competent to settle, decide or deal with such issues under this Act (hereinafter referred to as the "Competent Authority") the Civil Court shall stay the suit and refer such issues to such Competent Authority for determination.

(2) On receipt of such reference from the Civil Court, the Competent Authority shall deal with and decide such issues in accordance with the provisions of this Act and shall communicate its decision to the Civil Court and such Court shall thereupon dispose of the suit in accordance with the procedure applicable thereto.

Explanation?For the purpose of this section a Civil Court shall include Mamlatdar's Court constituted under the Mamlatdar's Courts Act, 1906.

The principal question in dispute is required to be settled, decided or dealt with by the Mamlatdar in exercise of his powers u/s 84C. Therefore the issue involved in the suit requires to be referred to the said Authority and it is only on receipt of the finding from the Competent Authority the suit could be disposed of in accordance with the procedure applicable thereto. In view of the above discussion, both the Courts below have committed an error in assuming jurisdiction to settle, decide or deal with the question in issue as to whether the transfer is contrary to the provisions under the Act. In that view of the matter the issue involved will have to be referred to the Competent Authority which is vested with the powers u/s 84C of the Act.

12. Coming to the other contention of the learned Counsel for the appellant it cannot be disputed that both the Courts have taken the view that transfer in favour of the appellant became void by reason of doctrine of lis pendens. In the case cited (supra) the principle that the effect of the doctrine of lis pendens is not to annul the conveyance made in contravention of it, but only to render it subservient to the rights of the parties to the litigation, seems to have been overlooked. The doctrine is not applied so as to affect the title of the alienee of a landlord by virtue of a claim not interfering with the title of tenant in the pending litigation. Therefore that finding of the Courts below is however required to be set aside.

13. The result, therefore, is that appeal is allowed. The judgments and decrees passed by the Courts below are hereby set aside and the suit is remanded to the Trial Court for fresh decision on issues except issues Nos. 7, 8, 9 and 10. The Trial Court is directed to make a reference on issue No. 6 to the Competent Authority u/s 85A of the Act and on receipt of the finding from the Competent Authority dispose of the suit according to law. The parties are directed to bear their own costs.