

(1998) 11 BOM CK 0092

In the Bombay High Court

Case No : Writ Petition No. 4510 of 1985

Dinkar Vithoba Salgaokar and Others

APPELLANT

Vs

Sharad Jagannath Kulkarni and Others

RESPONDENT

Date of Decision : 27-11-1998

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1999) 101 BOMLR 486

Hon'ble Judges : P.S. Patankar, J

Bench : Single Bench

Judgement

P.S. Patankar, J.—I passed the order on 5.10.1998 remanding the matter to the Assistant Collector, Sawantwadi, to hear the Appeal afresh. It was based upon the concession given by the learned Counsel for the Respondents. However, the learned Counsel for the Respondents filed a note stating that he has not made any such concession. In view of this, I recall the said order.

2. Heard both sides.

3. This Petition arises out of a reference made by the Civil Court u/s 85A of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereafter referred to as the Tenancy Act). The suit was filed by one Jagannath Kulkarni for permanent injunction restraining the Petitioners from interfering with his possession. The Respondents are the heirs of the said Jagannath. The question referred under 85A was whether the petitioners were tenants in respect of the lands bearing Survey Nos. 45/4, 45/13, 45/19 and 45/4 situated at Village Malwan, District Sindhudurg. The case of the petitioners was that they are the tenants of those lands since 1958-59 and as rent sharing crops and paying Rs. 50/-.

4. This issue has been answered by the Tahsildar as well as the Appellate Court against the Petitioners and the learned Member of the Maharashtra Revenue Tribunals, Bombay, in revision declined to interfere with the finding of the Appellate Court. This is under challenge in this Petition.

5. In my opinion, even on the basis of the pleadings of the respondents which are recorded by the Appellate Court it can be said that the appellants were tenants of the land bearing Survey Nos. 45/13 and 45/19. It was the Respondent's case that they were cultivating those lands along with the Petitioners in partnership and half crop share was given to them. In respect of Survey No. 45/4, the case of the Respondents was that the petitioners were Rakhwaldas (watchmen) since 1969 and there were coconut trees on the said lands. Half the fruits were to be given to the Respondents and half to the petitioners. For the half share to be given to the Respondents, the petitioners were paying Rs. 50/- per year. There is no dispute on the fact that the petitioners have produced six Money Order Receipts of Rs. 50/-each for the six years from 1972 to 1976. The Appellate Court which is the final fact finding authority held that the petitioners were lawfully cultivating the lands of respondents, but failed to prove that the bar of Section 4(b) of the Bombay Tenancy Act is not attracted in the present case. In view of this, the claim made by the petitioners was rejected. The M.R.T. has, while summarising, wrongly recorded that Appellate Court held that bar of Section 4(a) is not attracted.

6. In the light of the above, I am required to consider the provisions of Section 4 of the Tenancy Act. The relevant part of Section 4 reads as under:

4. A person lawfully cultivating any land belonging to another persons shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not-

(a) a member of the owner's family, or

(b) a servant on wages payable in cash or kind but not in crop share or a hired labourer cultivating the land under the personal supervision of the owner or any member for the owner's family, or

(c) a mortgagee in possession.

The Appellate Court has recorded a finding that the petitioners were lawfully cultivating the lands i.e. Survey Nos. 45/13 and 45/19. According to the Appellate Court even this was admitted by the Respondents. Those lands were belonging to the Respondents. According to their own case, there was crop sharing between the two. In view of this, clearly, Section 4(b) is attracted. The Appellate Court has failed to consider the import of the words "but not in crop share" and has erroneously held that the petitioners have failed to prove that their case is not hit by the provisions of Section 4(b). Even considering the case of respondents, it is not hit in respect of these lands i.e. Survey Nos. 45/13 and 45/19. The finding in this respect was perverse.

7. As far as Survey No. 45/4 is concerned, the case of the Respondents was that they were Rakhwaldas (watchmen). If that was so, the Respondents should have made the payment to the petitioners for watching the coconut trees i.e. employers paying to the employees. But here the case is otherwise. Employees

paying to employers. To get over this situation, the case tried to be made out by respondents was that the petitioners paid fixed Rs. 50/- since 1971 in respect of half the fruits receivable by them. Even accepting this case as correct, this clearly showed that even in the case of Survey No. 45/4, the fruits were to be divided between the parties and instead of the fruits, the petitioners agreed to pay Rs. 50/-. On that basis also petitioners become deemed tenants u/s 4 of the Tenancy Act. The respondents were at Bombay and petitioners cultivating the lands and, admittedly sent M.O. of Rs. 50/- every year since 1971. The learned Member of the Maharashtra Revenue Tribunal has failed to exercise the jurisdiction vested in It.

8. The learned Counsel for the respondents relied upon the Judgments of the Supreme Court in AIR 1975 1297 (SC) and Mrs Labhkuwar Bhagwani Shaha and Others Vs. Janardhan Mahadeo Kalan and Another, . Both these judgments dealt with the jurisdiction of the High Court under Article 227 and it was held that the jurisdiction of High Court under Article 227 is limited only to see that the subordinate Court functions within the limits of its authority and does not extend to correction of mere error of fact by examining the evidence and re-appreciating it. It was held that the error of fact even though apparent on the face of the record, is not subject to correction by the High Court in the exercise of its jurisdiction under Article 227. In fact, I am not correcting any error of fact or examining the evidence and re-appreciating it. As pointed out above, even accepting the case made out by the respondents, the petitioners fall within the ambit of Section 4 of the Bombay Tenancy Act.

9. In view of this, I pass the following order:

The Judgment and order passed by the Maharashtra Revenue Tribunal, Bombay dated 21st March, 1985 by the Assistant Collector, Sawantwadi dated 4.9.1982 and by the Tahsildar, Malwan, dated 5.10.1978 are set aside. The reference is answered in favour of petitioners.

10. Rule made absolute accordingly. No order as to costs.

11. Certified copy expedited.