

(2009) 08 BOM CK 0070

In the Bombay High Court

Case No : Second Appeal No. 336 of 1988

Dinu Govinda Kadam since deceased through his heirs and
legal representatives and Others

APPELLANT

Vs

Shankar Tatyaba Pisal and Dinkar Tatyaba Pisal

RESPONDENT

Date of Decision : 31-08-2009

Acts Referred:

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 —
Section 31, 31(1), 31(3)
Maharashtra Regional and Town Planning Act, 1966 — Section 113, 113(1), 113(2),
113(3), 40

Citation : (2009) 6 MhLj 45

Hon'ble Judges : J.H. Bhatia, J

Bench : Single Bench

Advocate : G.H. Keluskar, instructed by N.V. Walawalkar, for the Appellant; R.R. Bhosale, instructed by R.J. Mane, for the Respondent

Final Decision : Dismissed

Judgement

J.H. Bhatia, J.—The Second Appeal was admitted on the following Ground taken in the Grounds of Appeal:

(7) The lower Appellate court failed to consider the provisions of the Prevention of fragmentation and Consolidation of Holdings Act, prior to amendment by Maharashtra Act 41 of 1977 as applicable to the land presently in dispute, because, if the decree is passed directing sale of the said land to the plaintiffs, and sale is effected, such sale would be hit by Section 31 of the said Act, and would be against the provisions of law.

2. To state in brief, the appellant deceased Dinu Govinda Kadam, who was defendant in the suit, was admittedly owner of the land Gat No. 878 admeasuring 77 Ares of Village Pimpode Kh. Taluka Koregaon, District Satara. The plaintiffs filed Regular Civil Suit No. 32 of 1979 seeking decree of specific performance of contract contending that the defendant had agreed to sell the

suit land to them for consideration of Rs. 6,500/- and had received amount of Rs. 6,000/- as earnest money. The balance amount was to be paid at the time of execution of the sale deed after obtaining necessary permission. Possession was handed over to the plaintiffs on 9.6.1976 itself when the agreement for sale was duly executed. On 6.12.1977, the plaintiff issued a notice to the defendant calling upon him to execute sale deed of the suit land by accepting balance amount as by that time no permission for sale was required. As the defendant failed to perform his part of the contract, the suit was filed. The plaintiffs contended that they were always ready and willing to pay the balance amount of Rs. 500/- and get the sale deed executed.

3. The defendant contested the suit denying that there was any agreement for sale. According to him, he had received only amount of Rs. 4,100/- as loan and for security of that loan, the document purporting to be agreement for sale was executed. The document was not to be acted upon.

4. The trial Court dismissed the suit holding that the amount was paid to the defendant as a loan and for security of that loan the agreement for sale was executed. The plaintiff preferred Regular Civil Appeal No. 401 of 1985 challenging the dismissal of suit. The first appellate Court decreed the suit holding that the defendant had actually received amount of Rs. 6,000/-.

5. It is contended on behalf of the defendant/appellant that the plaintiffs were not the cultivators and, therefore, they could not purchase the land and that the sale deed would be in violation of the provisions of Section 31 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (for short "the said Act") as it stood prior to the Amendment by Maharashtra Act No. XLI of 1977.

6. Heard the learned Counsel for the parties. Perused the relevant evidence and the impugned judgments.

7. The appellate Court noted that the agreement for sale clearly showed that amount of Rs. 1900/- was received earlier by the defendant as a part of consideration amount and further amount of Rs. 4,100/- was received by the defendant in presence of the bond writer who had scribed the agreement for sale. Execution of that document was not disputed by the defendant. That document clearly shows that he had received amount of Rs. 6,000/- as part of the consideration and balance amount was to be paid at the time of execution of sale. Possession was handed over on the same day. The balance amount was not paid and the sale deed was not executed at that time because permission was required under the provisions of the said Act. Section 31 of the said Act prior to Amendment of 1977 stood as follows:

31. Notwithstanding anything contained in any law for the time being in force, no person to whom a holding has been allotted under this Act shall

(a) transfer any holding or part thereof except in accordance with such conditions

as may be prescribed;

(b) except with the permission in writing of the Provincial Government, sub-divide such holding.

From this, it is clear that no person to whom a holding was allotted under this Act could transfer any holding or part thereof except in accordance with such conditions as might be prescribed. As per this condition, permission would be required from the Collector who could prescribe certain conditions for transfer. Under Clause (b) no person could transfer the land except with permission in writing of the Government if the transfer would sub-divide that holding. This Section 31 was amended in 1977 and after the amendment, it reads as follows:

31. Restrictions on alienation and sub-division of consolidated holdings:

(1) Notwithstanding anything contained in any law for the time being in force, no holding allotted under this Act, nor any part thereof shall save as otherwise provided in this section

(a) be transferred, whether by way of sale (including sale 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) or by way of gift, exchange, lease, or otherwise; or

(b) be sub-divided, whether under a decree or order of a Civil Court or any other competent authority, or otherwise, so as to create a fragment, without the previous sanction of the Collector. Such sanction shall be given by the Collector in such circumstances and subject to such conditions as may be prescribed.

(2) Nothing in Sub-section (1) shall apply to any land

a) which is situated in any area for which

i) a municipal corporation is constituted under the Bombay Provincial Municipal Corporations Act, or the City of Nagpur Corporation Act, 1948; or

(ii) a municipal council is constituted under the Maharashtra Municipalities Act, 1965; or

(iii) a cantonment is constituted under the Cantonments Act, 1924; or

(b) which is situated in a notified area for which a Special Planning Authority is constituted or appointed u/s 40 of the Maharashtra Regional and Town Planning Act, 1966; or

(c) which is situated in an area designated as a site for a new town for which a Development Authority is constituted u/s 113 of the Maharashtra Regional and Town Planning Act, 1966; or

(d) which is situated in any area specified by the State Government, by notification in the Official Gazette, as being reserved for non-agricultural or

industrial development.

(3) Nothing in Sub-section (1) shall also apply to any land which is to be transferred

i) to the tenant of the holding or his heir; or

(ii) to the owner of the adjoining holding who cultivates his land personally; or

(iii) to an agriculturist or agricultural labourer, in its entirety; or

(iv) to a person who is rendered landless by reason of acquisition of his land for a public purpose; or

(v) to a co-operative society; or

(vi) by way of gift (whether by way of trust or otherwise) bona fide made by the owner in favour of a member of his family; or

(vii) by way of exchange, where such land is cultivated personally by the holder, for any other land allotted under this Act, which is also likewise cultivated personally by its holder: Provided that no such transfer shall be made so as to create a fragment.

In view of this, no holding allotted under this Act nor any part thereof could be transferred or sub-divided so as to create a fragment, without previous sanction of the Collector. Sub-section (2) is not applicable. Sub-section (3) makes it clear that Sub-section (1) would not be applicable where the land is to be transferred to the persons described in the Clauses (i) to (vii) therein. As per Sub-section (3) Clauses (ii) and (iii), Sub-section (1) would not be applicable if such holdig is transferred to the owner of the adjoining holding who cultivates his land personally or to an agriculturist or agricultural labourer in its entirety.

8. In the present case, the total area of Gat No. 878 was 77 Ares and this holding in its entirety was to be transferred under the agreement for sale. Therefore, it would not create any fragment. As it would not create any fragment, permission would not be required u/s 31(b) as it stood prior to amendment. Section 31(a) indicated that the transfer could be made only subject to such conditions as may be prescribed and therefore permission would be required. That provision was applicable when the agreement for sale was entered into on 9.6.1976. However, old Section 31 was substituted by new Section 31 by the Amendment Act of 1977 which received assent of Governor on 25.8.1977 and which was published in the Gazette on 29th August 1977. This old Section had no application thereafter. After the amendment, permission of the Collector would be required if the case would fall under Sub-section (1) of Section 31. However, it would not be applicable if the transfer would be covered by any of the exceptions under Sub-section (3). The plaintiffs claimed that they hold the land adjoining to the suit land to the North and West and they were cultivating the same. Even the defendant admitted in the cross-examination that the plaintiffs were holding the land to the North and West of the suit land. This

shows that the plaintiffs are agriculturist. There is no material to disbelieve the contention of the plaintiffs that they were cultivating the suit land personally. In view of this, the transfer would be covered by Clauses (ii) and (iii) of Sub-section (3) and no permission would be required from the Collector. That is why on 6.12.1977, the plaintiffs issued a notice to the defendant to execute sale deed even though no permission was obtained for the same. After perusal of the provisions of Section 31, I find that the sale deed would not be hit by Section 31 after 29.6.1977 in view of the amendment. Therefore, I do not find any illegality in the decree for specific performance of the contract granted by the first appellate Court.

9. For the aforesaid reasons, the Appeal stands dismissed.