(2015) 06 BOM CK 0105

In the Bombay High Court

Case No : Writ Petition No. 303 of 1997

Dnyandeo and Others APPELLANT

Vs

Raskaur and Others RESPONDENT

Date of Decision : 10-06-2015

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 125, 2(12), 2(2), 89
Civil Procedure Code, 1908 (CPC) — Section 47

Citation : (2015) 06 BOM CK 0105

Hon'ble Judges : Z.A. Haq, J

Bench : Single Bench

Advocate : N.B. Kalwaghe, for the Appellant

Final Decision : Dismissed

Judgement

Z.A. Haq, J.—Heard Shri N.B. Kalwaghe, the learned advocate for the petitioners, Shri T.B. Pantawane, the learned advocate for respondents 1(ii) to 1(vii), Shri N.R. Patil, the learned A.G.P. for respondent No. 2 and Shri Shrikant Saoji, the learned advocate for respondents 4(i) to 4(vi).

2. The petition takes exception to the order passed by the Maharashtra Revenue Tribunal, answering the point as to whether Namdeo was an Agriculturist or not, in proceedings arising out of reference under the provisions of Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (for short "Act of 1958").

3. Namdeo and his uncle Rambhau had purchased Survey No. 78 of village Nandrakoli on 30th March, 1951 and Survey No. 37/3 of village Kolwad on 12th May, 1960. The Survey No. 37/1 of village Kolwad was sold on 22nd January, 1971.

The original respondent No. 1 - Dagdu Sampat Patil filed Regular Civil Suit No. 126/1984 praying for decree for specific performance of agreement and for possession of the suit field. The civil suit was filed against the petitioners and the respondent Nos. 3 and 4. The petitioners and the respondent Nos. 3 and 4 (defendants in Regular Civil Suit No. 126/1984) filed their written statements. The learned trial Judge framed the issues and one of the issue was as follows:-

"10. Does plaintiff prove that deceased Namdeo was not Agriculturist on 25.10.1977 as alleged?"

This issue had arisen as the respondent Nos. 3 and 4 (defendants 1 and 2 in Regular Civil Suit No. 126/1984) had sold Survey No. 47/2 situated at Kolwad, Distt. Buldhana, admeasuring 1.67 Hectors (suit field), to Namdeo on 25th October, 1977. According to the respondent No. 1 (original plaintiff), Namdeo was not an Agriculturist on 25th October, 1977 and he was not having any agricultural land at Kolwad and was serving at Mumbai and he could not have purchased the suit land (Survey No. 47/2 of Kolwad) without prior permission of the Competent Authority under the provisions of Section 89 of the Act of 1958. The respondents (defendants in Regular Civil Suit No. 126/1984) denied the contentions of the respondent No. 1(plaintiff) that Namdeo was not an Agriculturist. In view of the pleadings of the parties, the learned trial Judge had framed the issue as to whether the plaintiff proves that Namdeo was an Agriculturist or not. The issue was referred to the Tenancy Tahsildar for decision as per the provisions of Section 125 of the Act of 1958. The Tenancy Tahsildar by the order dated 30th November, 1992 concluded that Namdeo was not at Agriculturist on 25th October, 1977. This order was challenged in appeal before the Sub-Divisional Officer. The appeal was allowed by the order dated 28th June, 1993 and it was held that Namdeo was an Agriculturist on 25th October, 1977. This order was challenged before the Maharashtra Revenue Tribunal in revision. The Maharashtra Revenue Tribunal by the impugned order allowed the revision, set aside the order passed by the Sub-Divisional Officer and restored the order passed by the Tenancy Tahsildar concluding that Namdeo was not an Agriculturist on 25th October, 1977. The petitioner being aggrieved by the above mentioned order has filed this writ petition.

4. However, certain events have taken place which have direct bearing on the adjudication of this writ petition. Though this writ petition has been pending, the parties to the Regular Civil Suit No. 126/1984 had not brought to the notice of the Civil Court the pendency of this writ petition before this Court and it was represented that the issue referred by the Civil Court for decision as to whether Namdeo was an Agriculturist on 25th October, 1977 has been finally decided by the Maharashtra Revenue Tribunal. The Civil Court accordingly proceeded with the Regular Civil Suit No. 126/1984 and dismissed the civil suit by the judgment dated 5th October, 1998. The respondent No. 1 had filed appeal before the District Court challenging the judgment and decree passed by the trial Court. The appeal was allowed on 15th February, 1999 and the suit filed by the respondent No. 1 came to be decreed. The judgment and decree passed by the District Court was challenged before this Court in Second Appeal No. 137/1999 which came to be dismissed on 17th November, 2000. The petitioners had challenged the

judgment passed by this Court in Second Appeal No. 137/1999 in Petition for Special Leave to Appeal (Civil) No. 1477/2001 which came to be dismissed on 1st October, 2001. The petitioners filed Review Application vide M.C.A. Stamp No. 22169/2001 before this Court seeking review of the judgment passed in Second Appeal No. 137/1999. As there was delay in filing the review application, an application vide C.A. No. 6315/2001 was also filed praying for condonation of delay. This Court by the order dated 19th January, 2007 dismissed the Civil Application No. 6315/2001 praying for condonation of delay and consequently disposed of the review application.

The respondent No. 1 has filed execution proceedings vide Regular Darkhast No. 20/1999. In these execution proceedings, the petitioner No. 3 had filed an application (Exh. No. 102) under Section 47 of the Civil Procedure Code praying that the execution proceedings be dismissed. The Executing Court, by the order dated 19th November, 2013 dismissed the application (Exh. No. 102). This order is challenged by the petitioner No. 3 before this Court in Civil Revision Application No. 40/2015 which is pending.

The petitioner No. 3 has filed Regular Civil Suit No. 76/2014 before the Civil Court Buldhana praying for decree for declaration regarding title, for confirmation of possession over the suit field and for perpetual injunction restraining the defendants in that civil suit from disturbing his possession over the suit field. The petitioner No. 3 has also prayed that the judgment and decree passed in Regular Civil Appeal No. 19/1998 on 15th February, 1999 is not binding on him. The trial Court has passed an order in Regular Civil Suit No. 76/2014 on 29th March, 2014 directing the parties to maintain status-quo in respect of possession of the petitioner No. 3 over the suit field.

5. Shri Kalwaghe, the learned advocate for the petitioners has made detailed submissions. It is argued that the Maharashtra Revenue Tribunal has passed the impugned order relying on the definition of "Agriculturist" as per Section 2(2) of the Act of 1958, however, it has not considered the definition of "to cultivate personally" as per Section 2(12) of the Act of 1958. The learned advocate has relied on the following judgments:-

(i) Judgment given in the case of Bhupinder Kumar Vs. Angrej Singh, (2009) 12 SCALE 4 : (2009) 8 SCC 766 : (2009) 13 SCR 978 : (2009) 9 UJ 4113 .

(ii) Judgment given in the case of Shankar Balwant Lokhande (dead) by L.Rs. Vs. Chandrakant Shankar Lokhande and Another, AIR 1995 SC 1211 : (1995) 3 JT 186 : (1992) 2 LLJ 18 : (1995) 2 SCALE 318 : (1995) 3 SCC 413 : (1995) 2 SCR 776 : (1992) 1 SLJ 7 : (1995) 1 UJ 707 .

6. Shri Pantawane, the learned advocate for the legal representatives of original plaintiff - respondent No. 1 has supported the order passed by the Maharashtra Revenue Tribunal. It is submitted that the sale-deed pursuant to the judgment and decree passed in Regular Civil Appeal No. 19/1998 has been executed on 9th December, 2014.

7. Shri Saoji, the learned advocate for the legal representatives of original defendant No. 2 - respondent No. 4 has submitted that the suit field was sold by the original defendant No. 2 to Namdeo and the legal representatives of the original defendant No. 2 have no concern with the present subject matter.

8. In these factual aspects, the point which is required to be considered by this Court is as to whether the legality of the order passed by the Maharashtra Revenue Tribunal is required to be examined by this Court in the extraordinary jurisdiction.

It is undisputed that the writ petition arises out of the orders passed in proceedings under Section 125 of the Act of 1958. Section 125 of the Act of 1958 reads as follows:-

"125. Suits involving issues required to be decided under this Act.

(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 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 Court Act, 1906 (Bom. II of 1906)."

9. As recorded above, in the present case, the parties to the Regular Civil Suit No. 126/1984 in which the relevant issue was framed and referred to the Tenancy Tahsildar for decision, had represented to the Civil Court that the decision of the Maharashtra Revenue Tribunal on the issue is final. It goes unexplained as to why the parties to the Regular Civil Suit No. 126/1984 did not point out to the Civil Court that the order passed by the Maharashtra Revenue Tribunal on 4th January, 1996 is challenged before this Court in the present writ petition and it is pending. Because of the serious lapse on the part of the parties to the Regular Civil Suit No. 126/1984, including the present petitioners, the Civil Court proceeded with Regular Civil Suit No. 126/1984 considering that the order passed by the Maharashtra Revenue Tribunal on 4th March, 1996 is final. The judgment and decree passed in Regular Civil Suit No. 126/1984 was challenged before the District Court in Regular Civil Appeal No. 19/1998. The Regular Civil Appeal No. 19/1998 was allowed by the judgment dated 15th February, 1999 and the Regular Civil Suit No. 126/1984 came to be decreed. The judgment and decree passed in Regular Civil Appeal No. 19/1998 has been maintained by this Court and the petition for Special Leave to Appeal has also been dismissed by the

Hon''ble Supreme Court. In these facts, in my view, it would be inappropriate for this Court to examine the legality of the order passed by the Maharashtra Revenue Tribunal on 4th January, 1996. If it is held that Namdeo was an agriculturist on 25th October, 1977 and the impugned order passed by the Maharashtra Revenue Tribunal is set aside; it may have repercussions on the judgment and decree passed in Regular Civil Appeal No. 19/1998 which is maintained by this Court and the Special Leave Petition has also been dismissed by the Hon''ble Supreme Court. Such an exercise would be impermissible and this Court cannot pass any order in the extraordinary jurisdiction which may directly affect the legality and validity of the judgment and decree passed by the competent Court and which has attained finality.

In these circumstances, I refrain myself from undertaking the exercise of examining the legality and validity of the impugned order.

10. Shri Kalwaghe, the learned advocate for the petitioners has submitted that the petitioner No. 3 has filed Regular Civil Suit No. 76/2014 before the Civil Court, Buldhana praying for declaration in respect of his title, for confirmation of possession over the suit field and for other reliefs. If an issue arises in Regular Civil Suit No. 76/2014 as to whether Namdeo was an Agriculturist on 25th October, 1977, the trial Court shall take appropriate decision on the matter according to law.

11. With the above observations, the writ petition is dismissed. Rule is discharged. In the circumstances, the parties to bear their own costs.