

(1955) 09 BOM CK 0078

In the Bombay High Court

Case No : Special Civil Application No's. 1449 and 1450 of 1955 and C.A. No. 1545 of 1955

Ganpati Joti Kumbhar

APPELLANT

Vs

Jayasingrao Abasaheb and Others

RESPONDENT

Date of Decision : 22-09-1955

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 3(11)
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 12, 2(21), 3, 88(1)
Civil Procedure Code, 1908 (CPC) — Section 100, 101, 115
Constitution of India, 1950 — Article 226, 227
Evidence Act, 1872 — Section 3
Transfer of Property Act, 1882 — Section 105, 109, 5

Citation : AIR 1956 Bom 749 : (1956) 58 BOMLR 20 : (1956) ILR (Bom) 51

Hon'ble Judges : Vyas, J;Dixit, J

Bench : Division Bench

Advocate : R.B. Kotwal, for the Appellant; A.G. Desai and K.S. Daundkar, for the Respondent

Judgement

Dixit, J.—These two special civil applications raise an interesting question u/s 88(1)(b), Bombay Tenancy and Agricultural Lands Act, 1948. The facts leading up to the applications are simple, but the facts in each application will have to be stated separately.

2. In Special Civil Application No. 1449, "the facts are these. The land in dispute is a piece of land which is described as Block No. 32 situate at a village called Murgud in the Kagal Jahagir of the former Kolhapur State. The owner is the Rajasaheb of Kagal and by a lease dated "10-12-1948 the land Was given to the applicant Ganapathi upon a lease for a period of 4 years. The period of the lease would expire on 9-12-1952.

3. In Special Civil Application No. 1450 of 1955, the facts are these. Two pieces of land described as Block Nos. 4 and 5 situate at a village Yamage in the same Jahagir of the former Kolhapur State are of the ownership of the Rajesaheb of

Kagal and by a lease dated 18-12-1947 the Rajesaheb granted the property to the applicants Ramchandra and Govind and two others for a period of four years. The period of the lease would expire on 17-12-1951.

4. On 1-3-1949 the Kolhapur state merged with the State of Bombay and on 1-3-1949 the Bombay Tenancy and Agricultural Lands Act, 1948 was made applicable to the Kolhapur State.

5. It appears that a company called the Maharashtra Agricultural Products Ltd. was formed some time in 1948-49 and the Rajesaheb of Kagal granted a lease to this limited company on 19-2-1949, the period of the lease being a period of twelve years. The tenants in the two special applications made in 1949 separate applications to the Mamlatdar, Kagal, for determination of reasonable rent u/s 12 of the Act and the Mamlatdar passed two separate orders fixing reasonable rent at Rs. 2,225-3-0 in the one case and Rs. 2,550-8-6 In the other.

It may be mentioned that the rent agreed Under the two leases was respectively Rs. 7,450-4-10 and Rs. 5,434. The matters were then taken before the District Deputy Collector S. D. Kolhapur both by the landlord and by the tenants and in the appeals filed by the landlord, the District Deputy Collector, S. D. Kolhapur, allowed the appeals and set aside the orders passed by the Bombay Revenue Tribunal and from the last named orders the tenants have filed the aforesaid special Civil applications under Article 227 of the Constitution. As the two special civil applications raise a common question, it will be convenient to dispose of these two applications by a common Judgment.

6. The only question for decision is whether the lease executed by the Rajesaheb in favour of the Maharashtra Agricultural Products Limited, is saved from the operation of the Bombay Tenancy and Agricultural Lands Act, 1948, and this question depends upon a proper interpretation of Section 83(1)(b) which provides:

"Nothing in the foregoing provision of this Act shall apply-

to lands held on lease for the benefit of an Industrial or commercial undertaking."

It is not disputed that the Maharashtra Agricultural Products Limited is an industrial or commercial undertaking. But Mr. Kotwal contends that the lease in favour of the company is not one which is covered by Section 88(1)(b).

Now, so far as the two leases are concerned those leases passed on 18-12-1947 and 10-12-1948 would be in operation until the expiration of the period of each "of them, so that the tenants under the lease of 18-12-1947 will be entitled to remain in possession until 17-12-1951, while the tenant under the lease passed on 10-12-1948 will be entitled to remain in possession until 9-12-1952 and here arises the question about the construction of Section 88(1)(b).

The lease which has been executed by the Rajesaheb in favour of the Maharashtra Agricultural Products "Ltd. contains the following provisions.

Although the lease was executed on 19-2-1949, the lease was to commence from December. 1948. The lease provides that the lands were given in possession of the limited company for the Bagayat and Jirayat cultivation of crops during the year 1949.

The lease also provides for the payment of the annual rent in respect of the Bagayat sugar crop which is limited to one-fourth and in respect of the Jirayat crop the annual rent is limited to one-third. The more important provision in the lease is contained in Clause 6 and under that clause it is stated that some out of the blocks situate at Murgad and Yamage have been given to tenants for cultivation yx.k- The period of the cultivation is yet to expire and information in connection therewith is to be found in Sch. C. The Kabulayats have been given by the Shrimant by way of transfer in the name of the company.

The Shrirnant has a right to recover the amount of the rent from the tenants in accordance with those Kabulayats and in respect of that right no right or interest of whatever description is left in the Shrimant. All the rights in connection with the Kabulayats have accrued to the company. It is clear that under clause 6 the right to recover rent from the tenants, that is to say from the applicants in the two applications has been given to the company.

The lease further provides that the company is to recover possession from the tenants in the two special applications after the expiry of the periods of the leases in their favour, and the question is whether the registered lease of 19-12-1949 does not come within the language of Section 88(1)(b).

7. Now, a lease is defined in the Transfer of Property Act as meaning a transfer of a right to enjoy property made for a certain time, so that the interest which is conveyed to a tenant is an interest by way of a right of the tenant to enjoy the property during the currency of the lease. Now, the lease of 19-2-1949 embraces blocks other than the blocks which are in dispute.

With respect to the blocks other than the blocks in dispute actual possession seems to have been given to the company and with respect to possession of the blocks in dispute, actual physical possession could not be given to the company because the possession was lawfully with the tenants-then holding the lands by virtue of the leases until the expiration of the respective periods mentioned in the two leases.

Under the Transfer of Property Act there are various transfers. There is, first, a transfer by way of a sale. There is a transfer by way of a mortgage, also a transfer by way of a lease and transfers by way of gifts and exchange and actionable claim. In the case of a transfer arising upon a sale, the transfer is a transfer of the totality of the rights of the vendor. In the case of a mortgage the transfer is of a limited right which is a transfer by way of security of an interest in specific Immovable property, while in the case of a lease the transfer is also a limited transfer which is the transfer of a right to enjoy the property.

It is clear, therefore, that when a lease is executed in favour of a person, the transfer which takes place is a transfer of a limited right and the right which the tenant gets is a right to enjoy the property during the period of the lease. If the right conveyed to a tenant under a lease is a limited right, there is still a right which remains in the landlord because the only right conveyed, to the tenant is a right to enjoy the property and the reversion still remains in the landlord. This will be clear from the observations made by Sir Dinshah Mulla in his Transfer of Property Act, Ed. 3, 1949, page 47. There, a reversion is stated to be the residue of an original estate which is left after the grantor has granted a smaller estate.

Thus, the interest of a lessor is a reversion of a future estate pending the termination of a lease. While, therefore, a tenant has a right to enjoy the property, there is still the reversion which is in the landlord i.e. the ownership in the property still continues to remain in the landlord, though there is a limited transfer of a right which is a right to enjoy the property in favour of the tenant.

Under the lease of 19-2-1949 the limited company obviously could not get actual physical possession of the property in dispute because at the date of the execution of the lease the tenants were in possession of the property demised. At the same time, there was a transfer of a right to enjoy the property in favour of the company. Now, the expression "transfer" which occurs in Section 105 is defined in Section 5, Transfer of Property Act which says:

"In the following sections "transfer of property" means an act which a living person conveys property, in present or in future, to one or more other living persons and to "transfer property" is to perform such act".

It is to be noted that, according to Section 3, Bombay Tenancy and Agricultural Lands Act, 1948,

"the provisions of Chapter V, Transfer of Property Act, 1882 shall, in so far as they are not inconsistent with the provisions of this Act, apply to the tenancies and leases of lands to which this Act applies."

Chapter V deals with leases of Immovable property. So whatever provision is contained in Section 105 will apply to the lease which is in dispute. Section 5, Transfer of Property Act makes it clear that a transfer of property can effectively take place not merely where a person conveys property in present but also when a living person conveys property in future, and this aspect has to be borne in mind, while considering the operation of Section 88(11)(b), Bombay Tenancy and Agricultural Lands Act 1948.

It is obvious that on 19-2-1949 the Rajesaheb of Kagal could not actually convey to the company the interest which the Rajesaheb of Kagal had already conveyed in favour of the tenants who are the applicants in the two special applications. That interest was the right to enjoy the "property and so long as the leases were in operation, the Rajesaheb could not effectively transfer the right to enjoy the property in favour of the company.

But two rights were conferred upon the company by the lease of 19-2-1949. The first of these was the right to recover the rent from the tenants i.e. from the applicants in the two special applications. The lease says that the right to recover the rent which was in the Rajesaheb was given to the company. The lease also says that the right which the Rajesaheb had to recover actual physical possession after the expiration of the periods of the leases was also conveyed to the company. If transfer of property can take place With respect to property in present and also with respect to property in future, it ;s difficult to see as to why the lease should not be an effective lease even with respect to the property in the possession of the tenants.

It may be that the limited company would not be entitled to actual physical possession so long as the tenants were in lawful possession under their respective leases. In this connection reference to Section 109, Transfer of Property Act would be helpful. That section deals with rights of lessor's transferee and provides, so far as material, that:

"If the lessor transfers the property leased, or any part thereof, or any part of his Interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it....."

This section shows that there may be a transfer by a lessor of the property which has been leased out by him. So also there may be a transfer of any part of the property leased out by him.

Further, there may be a transfer of any part of his interest in the property, So that if a part of his interest in the property could be transferred, it is difficult to see as to why the Rajesaheb was not in a position to convey that part of his interest in the property viz. to give the property upon a lease to the company which was to be effective from the date of the expiry of the periods of the two leases in favour of the tenants. In this connection this is what Sir Dinshah Mulla points out at page 705 of Mulla's Transfer of Property Act.

"The reversion may be severed by an assignment of the reversion in part or by an assignment of part of the reversion."

So that according to this view the reversion which is in the landlord may be separated by an assignment of the reversion in part or there may be a separation of the reversion by an assignment of part of his interest which exists in the landlord.

In the present case although the Rajesaheb had executed the two leases in favour of the tenants, he had still in him the reversion and that reversion is composed of various rights e.g., he has a right to recover the rent from his tenants; he has a right to recover possession after the expiration of the periods of the leases after due notice to the tenants and these two rights have been

conferred upon the limited company by the Rajesaheb under the lease of 19-2-1949 and this lease was executed at a time when the Bombay Tenancy and Agricultural Lands Act, 1948, was not made applicable to the place from which these matters arise.

Reference may also be made to what exactly is meant when property is given under a lease and this will appear at page 642 of Mulla's Transfer of Property Act. This is what is stated:

"Words of present demise are generally conclusive of a lease. There is a present demise even if the leasehold interest is to commence in the future."

This" shows that although the leasehold interest given to the company was to arise in future in-respect of "the lands which were in possession of the tenants, it is still effective as a lease. If, there fore, the lease of 19-2-1949 was effective not merely with respect to the lands which were given to the company other than the lands in possession of the" tenants, the lease was equally effective with respect to the lands which were then in the possession of the tenants.

But the lease was to be effective from a future-date which would be 19-12-1951 in the one case and 10-12-1952 in the other. If this is the true position in law, it is difficult to see as to why the lease of 19-2-1949 would not fall within the language of Section 88(1)(b). The lease is in respect of lands held on lease for the benefit of an industrial or commercial undertaking.

Mr. Desai has pointed out that the meaning of the expression "held" may better be understood by a reference to the expression "to hold" which occurs in Section 3(11), Land Revenue Code. That this course is permissible will be clear from Section 2(21) Bombay; Tenancy and Agricultural Lands Act, 1948, which provides:

"Words and expressions used in this Act but not defined shall have the meaning assigned to them in the Bombay Land Revenue Code, 1879, and the Transfer of Property Act, 1882, as the case may be."

Section 3(11), Bombay Land Revenue Code provides that "to hold land", or to be a landholder or "holder" of land means to be lawfully in possession of land, whether such possession is actual or not.

In this connection it is necessary to examine the argument which has been pressed upon us by Mr. Kotwal. He contends that it cannot reasonably be said of the limited company that the company is holding lands upon a lease in so far as the lands in possession of the two applicants are concerned. He says that the tenants, who are the applicants in the two special applications, were in actual physical possession and they were also in lawful possession of the lands demised.

If these persons were, therefore, lawfully in possession of their respective lands, it is not possible to accept the argument that the company would, at the same time, hold those lands in Its possession. It is true that the two different persons

would not be in a position to physically hold the lands in their possession at one and the same time. If a tenant is in possession, then no other person can be in possession because the landlord in these circumstances would be in constructive possession of the property and Mr. Kotwal's contention is that Section 88(1)(b) requires that the person must be in lawful possession of the property

Now, if the interest which was conveyed by the Rajesaheb to the company was the transfer of limited interest which still remained in him after the transfer of the right to enjoy the property in favour of the tenants, who are the applicants in the two special applications, it was the transfer of the remaining Interest in the landlord which was conferred upon the limited company. After the expiry of the period of the two leases the Rajesaheb, as a landlord, would have the right to recover possession. That right was transferred in favour of the limited company and it is clear that there can be a transfer of a pan of the interest held by the landlord.

Likewise the Rajesaheb had a right to recover rent. That right also was conferred upon the limited company. In so far as there was a right to recover the amount of the rent, it was a right which remained in the landlord i.e. Rajesaheb and there was the transfer of that limited right. It was, therefore, the transfer of a limited interest in favour of the company. The only question is whether it can be said of the company that the company was in possession of the lands given to them under the lease.

Now, so long as the tenants were in actual physical possession the company could not claim to be in actual physical possession because the two rights would conflict and so long as the tenants had a right to remain lawfully in possession, the occupancy could not, at the same time, claim to be in actual physical possession of the lands in dispute. But if the right to recover rent was conferred upon the company I do not see why it should not be held that the company was not in constructive possession of the lands in dispute.

The company was not merely a Collector of the amount of the rent like an ordinary Mehtaji or a servant of the Rajesaheb. Under a document executed in favour of the company the right to recover rent was specifically transferred and I do not think that It would be a violence of language to suggest that by transferring the right to recover possession, it cannot reasonably be said that the company was not in constructive possession of the lands in dispute.

If the company was therefore in constructive possession of the lands In dispute, it seems to us that that is sufficient possession for the purpose of Section 88(1) (b). On all these grounds, we think that the view taken by the tribunal is right.

8. But then Mr. Kotwal has argued that it was his contention that the company in whose favour the lease was executed on 19-2-1949 was a nominal company or a bogus company. This is denied by the company. It is, therefore, a disputed question of fact and this disputed question of fact cannot be decided upon a writ petition. He also contended that if the lease of 19-2-1949 were permitted to

stand, it would result in circumventing the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948.

Mr. Kotwal says that the applicants in the two special applications were tenants under the leases executed in their favour, and therefore; they were entitled to take advantage of the provisions of the Act. This argument seeks to invoke sympathy, but it is not convincing. There is nothing in the Act to suggest that the execution of a lease like the one of 19-2-1949 is invalid.

There is no suggestion that the lease is illegal. If the lease is a perfectly legal lease in the sense that the owner has a right to grant the lease, it is not understood as to why we should not give effect to the full operation of the lease merely because persons like the applicants in the two special applications would thereby have their rights, if any, adversely affected. In our view, therefore, none of the arguments are valid and there is no ground to interfere.

9. The result is that both the applications fail and the rule in each case will be discharged with costs.

10. Civil Application No. 1545 of 1955 Will be dismissed, but there will, be no order as to costs.

11. Applications dismissed.