
(1994) 01 BOM CK 0017
In the Bombay High Court
Case No : Writ Petition No. 907 of 1985

Gnyandeo Pirange

APPELLANT

Vs

Pandurang Jyoti Pirange

RESPONDENT

Date of Decision : 12-01-1994

Acts Referred:

Transfer of Property Act, 1882 — Section 105

Citation : AIR 1994 Bom 265 : (1994) 3 BomCR 559 : (1994) 2 MhLj 1174

Hon'ble Judges : V.V. Kamat, J;B.N. Deshmukh, J

Bench : Division Bench

Advocate : Shri A.M. Kanade, for the Appellant;

Judgement

Kamat, J.—The petition comes before us on a reference, under the following circumstances :

2. The petitioner-Gnyandeo Pirange, being aggrieved by the order dated April 30, 1985, of the Maharashtra Revenue Tribunal, Aurangabad, dismissing the revision application under S. 99A of the Hyderabad Tenancy and Agricultural Lands Act, 1950, has approached this Court. The proceeding before the tenancy authorities arose out of the reference under S. 99A of the said Act as to whether the defendant (the present petitioner) proves that he is a tenant of the suit land on the strength of the lease-deed.

3. The lease-deed is dated February 17, 1969. It is a written document between the defendant and the plaintiff in the civil suit. The petitioner-defendant started cultivation of the suit land on the strength of this written lease-deed and consequently his name is recorded to that effect in the record of rights with regard to the lands which are Survey Nos. 95/E and 97/E of village Manzari-Haveli Tq. & Dist. Beed. This is for the years 1969-70 up to 1974-75.

4. The plaintiff-Pandurang Pirange filed Regular Civil Suit No. 63/1974 for possession of the suit property and the petitioner-defendant contested the suit on the basis that he is in possession under the contract. One Jyoti was the owner

of the suit property and Pandurang (the plaintiff) claimed to be the adopted son. The question that Pandurang was the adopted son came to be finally concluded and on its conclusion, the present suit is filed by the plaintiff-Pandurang against the petitioner-Gnyandeo Pirange. As the contention raised by the present petitioner could not be adjudicated by the Civil Court, a reference came to be made to the tenancy Court.

5. On the basis of evidence led before the tenancy authority (Additional Tahsildar, Sub-Division, Beed), a finding is recorded that the lease-deed dated February 17, 1969, is amply proved and further that the petitioner-defendant is in possession of the suit property by virtue of this written document executed by the original land-holder. There was a dispute between the original land-holder and Pandurang with regard to the status of Pandurang on adoption which was finally concluded. Under a written lease-deed, the original owner Jyoti had granted lease to the petitioner-defendant-Gnyandeo and in pursuance of which he was in possession of the disputed land. The trial authority held this relationship to be on the basis of lease-deed dated February 17, 1969, and recorded its finding accordingly.

6. This fact finding is confirmed by the appellate authority (Deputy Collector, Land Reforms, Beed). The appellate authority also held that Pandurang was the rightfully adopted son of the original land-holder Jyoti a concluded situation in the earlier litigation. It was during the pendency of this dispute between Jyoti and Pandurang, the petitioner-defendant was in actual possession of the suit land and it is for this reason that the adopted son-Pandurang instituted the present civil suit. The appellate authority held that the present petitioner-defendant came into possession of the suit property on the basis of the lease-deed and continued in possession thereof as such. However, the appellate authority held that this would not create a situation of tenancy because as observed, a separated member of the joint family cannot be a tenant of the land belonging to another separated member of the joint family. The appeal was allowed holding that the petitioner-defendant cannot be given a status of a tenant of the suit land.

7. The Revenue Tribunal considered the question with reference to the relations between the parties and on facts came to the conclusion that the parties are relations, such that they are the children of common ancestors. The original owner Zuraji had 2 brothers -- Maruti and Zuraji. Pandurang is the adopted son of Maruti, whereas present petitioner-defendant Gnyandeo is the son of Zuraji. Recording these factual findings with regard to the close relationship between the parties -- the plaintiff and defendant, the Tribunal, placing reliance on the decision of this Court, 1977 MIJ 443, Nilavabai Khajure v. Chanamalappa Khajure to the effect that the word "family" not having been defined, the mere fact that the person cultivating had separated would not alter the blood relationship and does not cease to be a member of the family and, therefore, cannot be deemed to be a tenant under S. 5(a), of the Hyderabad Tenancy and Agricultural Lands Act, 1950."

8. It is this decision denying rights of tenancy to the present petitioner-defendant

that is challenged in the present writ petition.

9. When this petition came up for hearing before one of us (Deshmukh, J.), on March 20, 1990, it was contended by the learned counsel for the petitioner that Nilavabai's case is not a matter to govern the factual position that have emerged. It was urged that the petitioner was not claiming to be a deemed tenant on the basis of his lawful cultivation under the provisions of S. 5(A) of the Hyderabad Tenancy and Agricultural Lands Act, 1950. It was also urged that this was a case under the written contract of lease executed by the original owner of the land --Jyoti with the present petitioner-defendant. It was contended that the question which misled the lower authorities was to proceed to consider the relationship on wholly wrong legal footing. In other words, what was submitted was that the concept of deemed tenancy as is available under S. 5 of the said Act, is wholly different and has to be considered de hors the said provisions. What was submitted was that the relationship has to be determined on the basis of the document which is admitted and proved to have been executed between the parties. The document is between the original owner of the land --Jyoti and the present petitioner-defendant and was executed at the time when the plaintiff-Pandurang Pirange had no relationship with the original owner of the land --Jyoti and was in fact his claim on the basis of status on adoption was a pending res between them and that it was only after the conclusion of the said status as determined by the Civil Court, the present proceeding was initiated by the plaintiff. As it was felt that the question that is involved is of great importance and is likely to affect many persons by throwing them out of their legal rights under the written documents, the petition was referred to the larger Bench.

10. The learned counsel in fact placed before us more or less the same submissions with additional ammunition which was available to him in the intervening period. To sum up, the learned counsel urged that here the claim to the status of tenancy is on the basis of a written document dated February 17, 1969, coupled with the revenue record for a period of 6 to 7 years thereafter. The learned counsel clarified that the claim is not on the basis of his character of cultivation for a prayer that his status be considered on the deeming provisions of S. 5 of the said Act. The learned counsel submitted that the provisions of Chapter V of the Transfer of Property Act, 1882, insofar as they are not inconsistent with the provisions of this Act apply to the determination of relationship of a person with reference to the property in question, and, it is so contended, the provisions of S. 4A of the said Act are amply clear in regard thereto. The learned counsel submitted that it is not the position that a relation can in no circumstances enter into a contract of tenancy with his other relation. The need to look after cultivation of the land occurs due to multifarious reasons. The learned counsel contended that a relation nearabout the land can be found to be more suitable person for cultivation, the terms and conditions of which can be reduced into a document which is in the nature of a document creating a specified kind of relationship dealing with the mode of cultivation, the period of cultivation and the manner of regulation of relationship between the parties to

the document. The learned counsel contended that relationship cannot be said to be barring formation of tenancy at all times to come in any situation. The learned counsel contended that ultimately there can be no sacrosanct proposition to be laid down and to conclude therefrom that merely because a person is cultivating the land of another person who is a relation, such relationship cannot be understood to be a relationship of tenancy at any occasion. In support of this submission, the learned counsel placed reliance on the decision of this Court 1991 MLJ 68, Kishan Naikwade v. Asrabai Naikwade. Since the respondent has not chosen to appear, though served, the learned counsel in his characteristic fairness, after referring to the decision of this Court 1977 MLJ 443 referred us to yet another decision of this Court 1990 MLJ 631, Syd. Ibrahim Syd. Ashraf v. Zamarrudbi decided by one of us (Deshmukh, J.) again considering the word "family" used in S. 5.

11. Citing these two decisions, as stated above, the learned counsel contended that in both the decisions, the question that was taken up as necessary for consideration was as to whether for the purpose of application of the provisions of S. 5 of the Act, the word "family" if construed for its proper application, would mean a Hindu joint family on separation and also relationship based on other personal laws other than the Hindu Law. Referring to these two decisions, the learned counsel stated that these two decisions would not govern the questions raised in the petition before us. The learned counsel urged that in both these decisions, there was no written document and, therefore, in both of them, the Court was rightly concerned with the application of the provisions of S. 5 of the said Act.

12. When we consider Nilavabai's case, factual positions become necessary to be borne in mind. The petitioner-Nilavabai was a widow and in her difficulties, the respondent Nos. 1 and 2 cultivated the lands and according to her grievance, no payment was made to her. She was ultimately driven to the filing of the suit in the Civil Court, which made the reference under S. 99A of the said Act. The question that come up for consideration in the said proceeding was the interpretation of the situation to find out as to whether there was cultivation personally and in the context, the word "family" was required to be considered. The Court has considered the term "family" with reference to various angles. There is no document of lease-deed in Nilavabai's case. It is observed that family relations do not come to an end for general purposes of blood relations by partition or separation which only severs the legal status as a joint family. On the basis of finding of facts, which was consistent from the 3 authorities, the question was considered with regard to the application of S. 5(a) of the Hyderabad Tenancy and Agricultural Lands Act, observing that (he legislation did not intend to give protection to the relatives of persons like a widow or old people who could not cultivate or do physical labour in the lands.

13. In Syed. Ashraf's case (cited supra), the dispute was as to whether the nephew of the landlord, where parties were Muslims, was entitled to claim that

he was a tenant under the provisions of the Hyderabad Tenancy Act. In this case also, there was a reference to the tenancy Court, to ascertain as to whether the nephew of the landlord were cultivating the land as tenants. It was observed that the cultivation by nephew will have to be accepted and treated as cultivation for and on behalf of uncle irrespective of the character of the jointness of the family, the parties were Muslims and obviously were not governed by the principles of Hindu Law. Again, in considering the application of the provisions of S. 5 of the said Act, reliance was placed on the decision of the Supreme Court, S.N. Sundalaimuthu Chettiar Vs. Palaniyandavan, to the effect that it is necessary to establish that someone is contributing his physical labour in the cultivation of land and that someone is a member of his family. In the said case, it is observed that a son-in-law can be regarded as a member of the family because the word "family" is not to be construed in a narrow sense or meaning, only a member of the Hindu Joint Family, because the Act applies to all tenants irrespective of the personal laws. It is observed that a person can be properly regarded as being a member of his wife's family and not merely of his father's family. This Court had also no document of lease before it and was considering the application of the provisions of S. 5 of the said Act where the parties were governed by the Muslim Law. It was held that there cannot be a claim in favour of the nephews for advantage of their occupation as a deemed tenancy.

14. In our judgment, the decisions in Nilavabai's case and Syd. Ashraf's case do not govern the situation. As already observed, the question that is required to be considered in this petition is the application of Section 4A of the said Act. This is because there is a written document of lease dated February 17, 1969. Section 4 A of the Act clearly enacts that the provisions of Chapter V dealing with lease under the Transfer of Property Act, 1882, shall apply insofar as the said provisions are not inconsistent with the provisions of Hyderabad Tenancy and Agricultural Lands Act, 1950, to tenancies and leases of land to which the Agricultural Tenancy Act applies. Under the Transfer of Property Act, a transfer means an act conveying property by a living person to another living person. Chapter V of the said Act defines a lease to be a transfer of a right to enjoy property in consideration of price paid or promised either in terms of money, a share of crops, service or any other thing of value to be rendered periodically or on specified occasions to the transferer by the transferee who accepts the transfer on such terms. What is required to be considered is as to whether there is a property conveyed under the document for consideration. Consideration may be of a kind as defined in Section 105 of the Transfer of Property Act. It is essentially an agreement as in this petition there is a document dated February 17, 1969. In regard to this document, what is required to be considered is as to whether the said document is inconsistent with any of the provisions of the Hyderabad Tenancy and Agricultural Lands Act, 1950. If such an agreement is not inconsistent, then it would be a document valid in law creating relationship under the said document of lease.

15. Illustratively, but not exhaustively, occasions can be contemplated

whereunder in spite of relationship connecting the parties to the lease even to the extent of they being the members of a family either a continuing Hindu joint family or a separated one, there are factors and occasions which would necessitate on clear understanding the formation of such relationship. The landlord may be unable to exercise his rights of ownership either he being at a far distance from the land in question, or he being unable to do agricultural jobs by reasons of his old age, infirmity or difficulties of similar character. It cannot be ignored that the relationship is a basic factor for the genesis of an implicit faith and if for conveying property, a relation is chosen with full open eyes, it will have to be accepted for its legal consequences. It would be a transfer by the transferor in favour of the transferee. What is required to be considered is not the relationship but satisfaction of the conditions of the relationship as emerged in Section 105 of the Transfer of Property Act and a further satisfaction that such relationship is not inconsistent with the provisions of this Act.

16. In reaching conclusions with regard to the above two aspects, examination of the document would be necessary and equally well, the examination of the provisions of the Hyderabad Tenancy and Agricultural Lands Act, 1950, would be equally necessary.

17. Before dealing with these two aspects, reference would be necessary to the decision in Kishan Naikwade's case (supra). In the said case, the plaintiff was a nephew of the owner of the land and claimed to be a tenant under an agreement of lease and for the said purpose, approached the Civil Court with a suit for declaration and perpetual injunction. In the said suit, the issue regarding tenancy was referred u/s 99A of the Hyderabad Tenancy Act. There was written agreement of lease. The learned single Judge of this Court (Chapalgaonker, J.) has tersely observed that a near relation in possession of land cannot be deemed to be a tenant under the deeming provision of Section 5 of the Tenancy Act. He proceeded to observe that this does not, however, mean that if a nephew or a similar relative can in no circumstances enter into contract of tenancy with other relation. A person can claim to be a contractual tenant under an agreement of lease and this position will have to be considered not in the context of the provisions of Section 5 of the Tenancy Act, but independently thereof, depending on the nature of the document. Nilavabai's case as well as Syd. Ashrafs case are considered by the learned single Judge to reach conclusion that no tenancy can be spelt out under the provisions of Section 5 of the Hyderabad Tenancy Act.

18. The question of the document of agreement of lease not being inconsistent with any provisions of Hyderabad Tenancy Act is also considered by the learned single Judge, again to reach the conclusion that there is no provision of the Hyderabad Tenancy Act prohibiting the execution of an agreement of lease under the Transfer of Property Act.

19. The document in question is dated February 17, 1969. It is obtained by the present petitioner-defendant from Jyoti Pandurang Pirange. There is no dispute that Jyoti is the owner of the land in question, which is specifically described in

the document. By the document, the land is given on crop share basis ?cVbus?

It is mentioned in the document that the expenses of cultivation which are specified therein, are to be undertaken by the petitioner-defendant at his expenses and the agricultural produce is to be shared equally between the parties. It is also specified that there is no objection to take steps regarding the entry of the name of the petitioner-defendant in the relevant record of rights as a tenant. The reason in the document is also mentioned and it is the old age of Jyoti Pirange resulting into inability to look after and cultivate the lands. It is added there that his wife is also old and it is, therefore, the document is executed by conveying the property in the land on equal crop share basis. The document is attested by witnesses and as stated hereinbefore the fact finding authorities have accepted the document as legally proved.

20. The provisions of the Hyderabad Tenancy and Agricultural Lands Act, will have to be scanned to find out as to whether there is any inconsistency. Chapter III of the said Act deals with the general provisions relating to tenants, beginning with Sections 4A and 5. The said Chapter provides for the powers and jurisdiction of the Tahsildar to decide questions whether a person is tenant and prescribes the quantum of rent, rights and liabilities in regard thereto, together with the provisions of termination of tenancy. Chapter IV deals with the recognition and legal rights of the tenants protected under the provisions of the Act. The Chapter deals with the persons who have already acquired the status of a tenant on a particular date as specified declaring them to be the protected tenants and thereafter deals with their rights and liabilities. Added Chapter IV-A recognises the right of protected tenants as well as ordinary tenants and other land-holders and provides for the procedure to be followed by the Agricultural Lands Tribunal in determining the price of the land to be paid by the tenants who are statutory purchasers of the land is question. The Chapter also provides for the mode of transfer of ownership and allied questions. Equally well, Chapter IV-B deals with the rights of the landlords or landholders in the event of the land being required by them for personal cultivation. There is also a provision in the Chapter IV-C in regard to the serving members of the Armed Forces in relation to agricultural lands, with reference to serving members of the Armed Forces either in their capacity as owners of the lands or tenants in any capacity. Chapter V deals with restrictions on transfer to non-agriculturists. Chapter VI deals with the situations under non-cultivation, improper cultivation or there being surplus land over the economic holding. Chapters VII and VIII are deleted. Chapter IX provides for the procedural framework, powers of the tenancy authorities and appellate remedies. Chapter X deals with the offences under the Act, whereas the Chapter XI deals with miscellaneous statutory provisions. It is in this Chapter XI, there is a provision for summary eviction, Validation of alienations made before December 1, 1957, disposal of land where alienation is invalidated, ending with the provisions of Sections 99 and 99A. Section 99 bars the jurisdiction of the Civil Court to settle, decide or deal with any question that is required to be decided by the authorities under the said Act and Section 99A enacts the

necessity of a reference. The perusal of the provisions of the Hyderabad Tenancy and Agricultural Lands Act, 1950, make it more than clear that there is no prohibition to enter into a document creating lease by the parties who are relations. Therefore, in our judgment, independently also, tenancy can be created and in regard to this, the provisions of Section 5 of the Tenancy Act will have to be ignored. As stated above, the issue that is referred to by the Civil Court to the tenancy Court is as follows :

"Whether the defendant proves that he is a tenant of the suit land by virtue of the sale deed on that date, i.e. 17-2-1969?"

In the light of the above discussion, in our judgment, there is no hesitation to answer the same issue in favour of the petitioner-defendant. In this context, as discussed above, the decisions in Nilavabai's case and Syd. Ashraf's case do not govern the situation and need no disturbance. The decision in Kishan Naikwade's case takes the right view in law. The learned single Judge, however, has recast the issue. In the said case, the issue that was framed was as follows :--

"Whether the plaintiff proves that he was cultivating the suit land on the strength of this document entered with deceased Babu?"

and the issue that is recasted is as follows:--

"Whether the plaintiff proves that he is cultivating the suit land on the strength of agreement of tenancy entered into with deceased Babu?"

21. In this petition, as we have stated above, the issue is clearly framed in the proper perspective. It is not necessary to recast the same. In the light of the above reasoning, the issue will have to be answered and we answer accordingly in favour of the petitioner-defendant.

22. For the above reasons, the petition stands allowed. Rule is made absolute and the issue as-framed by the Civil Court is hereby ordered to be decided in favour of the petitioner-defendant. There shall be no order as to costs. Order accordingly.

23. Petition allowed.