

(2011) 04 GUJ CK 0113
In the Gujarat High Court

Case No : Letters Patent Appeal No. 2281 of 2010 In Special Civil Application
No. 13067 of 2008

Gulabbhai Ravjibhai Patel

APPELLANT

Vs

Badriprasad Vithalrao Bende and Others

RESPONDENT

Date of Decision : 11-04-2011

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 2(2), 2(6), 63, 84C, 84C(2)

Citation : (2011) 3 GLR 2472

Hon'ble Judges : S.J. Mukhopadhyay, C.J.; J.B. Pardiwala, J

Bench : Division Bench

Advocate : K.K. Trivedi and Imtiyaz M. Kureshi, for the Appellant; Dharendra Mehta, for Respondent 1 and Govt. Pleader for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

J.B. Pardiwala, J.—Appellant, original Petitioner by way of this appeal seeks to challenge order passed by learned Single Judge dated 16.12.2009 in the Writ Petition being Special Civil Application No. 13067 of 2008; wherein, learned Single Judge dismissed the petition.

2. Facts relevant for the purpose of deciding the present appeal can be summarized as under:

2.1 The Appellant original writ Petitioner and his brother, namely, Dayaljibhai Ravjibhai Patel were the joint owners of the land bearing block No. 72, ad-measuring 2 Hectares 73 Gunthas 51 Ares situated at village: Parujan, Tal. Jalalpore. Dayaljibhai Ravjibhai Patel i.e. brother of the Appellant herein transferred his one half (1/2) share in favour of Respondent No. 1 vide registered sale dated 21.9.1986; whereas, the share of the Appellant herein was given on lease in favour of Respondent No. 1 for a monthly rent of Rs. 200/-vide registered lease dated 21.5.1986. Record reveals that the said lease deed dated 21.5.1986 was executed by Dayaljibhai Ravjibhai Patel as the Power of Attorney

of the Appellant herein. Record also reveals that necessary mutation entry No. 1276 and 1277 dated 7.10.1986 were effected in the record of rights. Entry No. 1276 was with respect to the transfer of 1/2 share of Dayaljibhai Ravjibhai Patel vide registered sale deed in favour of Respondent No. 1 and entry No. 1277 was with respect to the lease which was executed by the Appellant herein through his Power of Attorney in favour of Respondent No. 1.

2.2 It appears that thereafter some family disputes arose and 3rd brother of the Appellant, namely, Haribhai Ravjibhai Patel, approached the Deputy Collector, Val sad alleging that the transactions in favour of Respondent No. 1 are in violation of Section 2(2), 2(6) read with Section 63 of the Bombay Tenancy and Agricultural Lands Act (for short "the Act").

2.3 Record reveals that Mamlatdar & ALT held that Respondent No. 1 as purchaser of the land in question was not holding any agricultural land within the radius of 8 Kms. of the land in question and he, therefore, ordered to restore the possession as per Section 84-C(2) of the Act to the original owner i.e. Appellant and his brother Dayaljibhai. Respondent No. 1 preferred Tenancy Appeals before the Deputy Collector, Navsari and the appeals also came to be dismissed by common order dated 29.11.2000. Respondent No. 1 preferred 2 revision applications being 14/2001 and 15/2001 before the Gujarat Revenue Tribunal and the Gujarat Revenue Tribunal vide judgment dated 18.1.2006 allowed the revision applications by quashing and setting aside the orders passed by the Authorities on the ground that suo-motu powers u/s 84-C has been exercised beyond reasonable period of time and also took notice of the fact that in view of the amendment, there was no requirement of having the agricultural land within the radius of 8 Kms. of land in question.

3. The order passed by the Gujarat Revenue Tribunal dated 18.1.2006 was challenged by the Appellant herein by filing Special Civil Application No. 13067 of 2008. Learned Single Judge while dismissing the petition took into consideration the following aspects:

I. The transactions were of the year 1986. The proceedings before the revenue authorities were initiated by the brother of the Appellant herein on account of some internal disputes in the family and that is how the revenue authorities took cognizance of the transactions said to be in breach of Section 2(2), Section 2(6) read with Section 63 of the Act. Learned Single Judge took the view that assuming for the moment that the transactions were in breach of the provision of the Act then in that case, how the Appellant herein as the seller of the land in question can be said to be an aggrieved person and what legal right Appellant as a seller possesses to challenge the orders passed by the revenue Tribunal? For this purpose, learned Single Judge relied upon two reported judgments of this High Court (1) in the matter of Smt. Ratnaprabhabai D/o. Hirojirao Naranrao Mane v. Tulsidas V. Patel and Ors. 1982 (2) GLR 213 and (2) Patel Ratilal Maganbhai and Others Vs. State of Gujarat and Others,

II. Learned Single Judge also took notice of the fact that the Appellant herein cannot take advantage of his own wrong and Appellant cannot be permitted to say that the transaction was in breach of statutory provision of the Act after pocketing the money and having executed the sale deed / lease deed in favour of Respondent No. 1.

III. Learned Single Judge also came to the conclusion that revenue Tribunal rightly allowed revision applications preferred by Respondent No. 1 on the ground that suo-motu exercise of powers were beyond the reasonable period of time.

IV. Learned Single Judge took notice of the fact that the Appellant herein at no point of time raised any disputes as regards to the genuineness of the Power of Attorney said to have been executed in favour of his brother Dayaljibhai Ravjibhai Patel who, in turn, executed the lease deed in favour of Respondent No. 1. In this regard, it was noticed that the entry was mutated in the year 1986 showing execution of lease deed by brother of the Appellant in favour of Respondent No. 1 and at no point of time, thereafter, the Appellant herein objected to the same.

V. Learned Single Judge also took into consideration the amendment by which the requirement of having agricultural land within the radius of 8 Kms. of disputed land being no longer in force and learned Single Judge took into consideration circular and the amendment Act itself providing that the pending proceedings u/s 84-C of the Act for breach u/s 2(2) of the Act on the ground that the owner who possesses agricultural land within the radius of 8 Kms. which requires to be declared abated.

4. We have heard learned Counsel Mr. K.K. Trivedi for the petitioner, learned advocate, Mr. Dhirendra Mehta for respondent No. 1 and Ms. Krina Calla, learned AGP for respondent No. 2.

5. The main bone of contention put forward by learned Counsel appearing for the Petitioner is to the effect that the Appellant had never executed any Power of Attorney in favour of his brother Dayaljibhai and therefore, execution of the lease deed by Dayaljibhai in favour of Respondent No. 1 would be a nullity. He has also contended that the lease is for a period of 15 years and period of 15 years has also expired. His last contention was that revenue Tribunal has not heard him and the order has been passed in his absence.

6. Having regard to the rival contentions of the respective counsel for the parties and in the facts and circumstances of the case, we are of the view that appeal is merit-less. In our view, if the Appellant is aggrieved by the fact that the period of lease was only for a period of 15 years and if that period has expired then, in that case, it is always open for the Appellant to initiate appropriate proceedings before the appropriate forum for recovery of the possession so far as his share of the land in question is concerned. We can take judicial notice of the fact that till this date, the Appellant has never challenged the legality and validity of Power of

Attorney before any appropriate forum except making a bald assertion before the revenue authorities in this regard. Revenue Authorities have no powers to say anything as regards the legality and validity of a document and therefore, the Appellant ought to have filed a civil suit in this regard. We have also noticed that this aspect has also been taken care of by the learned Single Judge in para-13 of the judgment.

7. We are satisfied with the reasoning's assigned by learned Single Judge and are of the view that no interference is warranted at our ends in this present appeal. Appeal must, therefore, fail and the same is hereby dismissed with no order as to costs.