

(1956) 12 BOM CK 0006

In the Bombay High Court

Case No : Special Civil Application No. 1717 of 1956

Gulabrao N. Wani

APPELLANT

Vs

Hemakashiram Gajare and Others

RESPONDENT

Date of Decision : 04-12-1956

Acts Referred:

Bombay Tenancy Act, 1939 — Section 2
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 2(18), 4
Constitution of India, 1950 — Article 227

Citation : AIR 1957 Bom 198 : (1957) 59 BOMLR 194 : (1957) ILR (Bom) 373

Hon'ble Judges : Shah, J;Palnitkar, J

Bench : Division Bench

Advocate : G.R. Madhbhavi, for the Appellant; K.J. Abhyankar, for the Respondent

Judgement

Palnitkar, J.—The petitioner in this case is the owner of Survey No. 80 at Bhusaval City. He, on 28th March 1949, entered into an agreement with Opponent No. 1 Hemakashiram Gajare under a registered deed agreeing to sell the suit land to the said Opponent No. 1 for a sum of Rs. 2,500; it was agreed that the payment should, be made every year at the yearly installment of Rs. 200 towards the satisfaction of the price of the land with monthly interest of annas four per cent, and that after the whole amount was thus paid, Opponent No. 1 will be given a "pucca" sale-deed. According to the terms of the said agreement, it was further agreed that Opponent No. 1 was to be in possession of the land. The petitioner complained that Opponent No. 1 paid Rs.. 500 only to the petitioner and that thereafter the said Opponent did not pay the remaining amount in accordance with the terms of the agreement. The petitioner had, therefore, to file a suit being regular Suit No. 275/1953 in the Bhusaval Civil Court: the Opponent No. 1 resisted that suit alleging that he was the tenant" of the- suit land and therefore the petitioner had to file a Tenancy Suit in the Court of the Mamlatdar of Bhusaval for a declaration that Opponent No. 1 was not a tenant of the suit land.

2. The Mamlatdar held that Opponent No. 1 was not the tenant of the suit land. On appeal, the District Deputy Collector held that Opponent No. 1 was a tenant and reversed the order of the Mamlatdar. This order was upheld by the Revenue Tribunal.

3. It is against the order of the Revenue Tribunal that this application under Article 227 of the Constitution of India, has been filed before us. The short question to be considered is whether taking into consideration the terms of the agreement alleged by the applicant, Opponent No. 1 can be regarded as a tenant. Tenant has been defined u/s 2 Clause (18) thus :

" "Tenant" means a person who holds land on lease and includes a person who is deemed to be tenant under the provisions of this Act.

....."

It is conceded that Opponent No. 1 is not a Person who holds the land in dispute on lease. The question "to be considered is, therefore, whether u/s 2 Clause (18) (a) he could be regarded as a person who is deemed to be a tenant u/s 4. Section 4 reads thus :

"A person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not

(a) a member of the owner's family, "or (b) a servant on wages payable in cash or in kind but not in crop share or a hired labourer cultivating the land under the personal supervision, of the owner or any member of the owner's family, or

(c) a mortgagee in possession." It is clear from the facts of the case that Opponent No. 1 is not a member of the owner's family nor does he fall in any of the categories as mentioned in the above definition. It is, however, apparent that he is lawfully cultivating the land belonging to the applicant. We have, therefore, to see whether he shall be, deemed to be a tenant for the purposes of this Section. The phrase "deemed to be in our opinion, raises a presumption in favour of the person lawfully cultivating the land, of his being a tenant. But that presumption, in our opinion, is a rebuttable presumption. The explanation to Section 4 reads thus :

"A person shall not be deemed to be a tenant under this section if such person has been on an application made by the owner of the land as provided u/s 2-A of the Bombay Tenancy Act, 1939, declared by a competent authority not to be a tenant."

This sufficiently supports our view. Section 4 in Itself does not confer any status of tenancy as stated above: it only raises a presumption. In our opinion it is clear from the terms of the agreement that there was a special contractual relationship between the applicant and Opponent No. 1. That contractual relationship is not in the nature of tenancy and therefore obviously Opponent No. 1 is not a tenant.

4. Shri Abhyankar, however; contends that there was an oral agreement between the applicant and Opponent No, 1 to the effect that during the period pending conclusion of the agreement for sale, the possession of Opponent No. 1 should be deemed to be that of a tenant. This question has not been considered by the District Deputy Collector. We therefore remand the case to the Court of the Mamlatdar for deciding the question whether there was an agreement of tenancy between the parties as stated above. The parties will be free to lead such evidence as they deem fit.

We, therefore, allow this petition, make the rule absolute and remand the case to the Court of the Mamlatdar for trial and decision as stated above. Costs will abide the result.

5. Petition allowed.