

(1957) 06 BOM CK 0013

In the Bombay High Court

Case No : First Appeal No. 382 and 553 of 1952

Jagannath Balwant Shedge

APPELLANT

Vs

The Maharashtra Sugar Mills Ltd.

RESPONDENT

Date of Decision : 20-06-1957

Acts Referred:

Transfer of Property Act, 1882 — Section 107

Citation : (1958) 60 BOMLR 782

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

Bench : Division Bench

Judgement

Vyas, J.—His Lordship, after stating the facts as above, proceeded. It is clear that these appeals raise an important point of law. On July 30, 1938, Kisan Jagdhane leased S. Nos. 26 and 27 of Nandur, District Ahmednagar, to defendant No. 3. The rent note which was passed in favour of defendant No. 3 in that connection was exh. 43. It was a rent note for ten years. The period of ten years was to begin from April 1938 and it was to expire in April 1948. On August 20, 1942, Kisan Jagdhane mortgaged these two S. Nos. 26 and 27 to defendant No. 1 for Rs. 2,500. The period of the mortgage was five years and the deed of mortgage is exh. 44. Defendant No. 1 was a binamidar for defendant No. 2. On August 8, 1945, Kisan executed a second rent note of these lands in favour of defendant No. 3. The period of this rent note was 15 years. It was 15 years from April 1948. On September 23, 1943, defendant No. 2 executed a rent note of these lands in favour of the plaintiff company. This rent note was not registered. It became, therefore, ineffective. So, on May 22, 1944, defendant No. 2 executed a fresh rent note in favour of the plaintiff company and it was to be effective from April 1948. Only one of the two survey numbers was mentioned in this rent note and it was Section No. 26 which was mentioned. Now, the question is whether the provisions of the Tenancy Act of 1948 would apply to the lands Section Nos. 26 and 27 of Nandur, in which case a civil Court would have no jurisdiction to make an order regarding delivery of possession, or whether Section 88, Sub-section (1), Clause (b) of the Act of 1948 would apply and the provisions of

Sections 1 to 87 of the said Act would not apply, in which case a civil Court would be competent to pass orders regarding giving of possession. Mr. Kotwal says that the provisions of Section 88, Sub-section (1), Clause (b), of the Act of 1948 would not apply, but the provisions of Sections 1 to 87 of the Act would apply and the civil Court would have no jurisdiction to direct the delivery of possession of these lands by defendant No. 3 to the plaintiff. Mr. Kotwal has made this contention by a three-fold argument.

2. As I have mentioned above, the rent note exh. 43 dated July 30, 1938, was executed by Kisan Jagdhane in favour of defendant No. 3 and the period of the rent note was ten years expiring on April 16, 1948. Under that rent note, defendant No. 3 became a tenant of the two S. Nos. 26 and 27 of Nandur and his tenancy was to last till April 16, 1948. The Tenancy Act of 1939 was made applicable to Ahmednagar District, where these lands are situated, on April 11, 1946. Upon that date, Section 23 of the said Act (Act of 1939) came into force in Ahmednagar District and its provisions applied to the lands which are the subject-matter of this suit. Section 23, Sub-section (1), Clause (b), of the Act of 1939 provided that every lease subsisting on the said date or made after the said date in respect of any land in such area shall be deemed to be for a period of not less than 10 years. Mr. Kotwal says that in this case, as it happened, the period of the rent note exh. 43 dated July 30, 1938, in favour of defendant No. 3 was a period of ten years, but even if it had been for a shorter period, the lease would have been deemed to be for a period of not less than ten years. Then, as to the construction of the term "years" in Section 23, Sub-section (1), Clause (b), Mr. Kotwal has referred us to Section 2, Clause (12) of the Act, and Section 2, Clause (12), says that the word "year" means the year ending on March 31, or on such, date as the Provincial Government may, by a notification, appoint for any locality. In this manner, reading Section 23, Sub-section (1), Clause (b), and Section 2, Clause (12), of the Tenancy Act of 1939 together, Mr. Kotwal says that the period of defendant No. 3's rent note exh. 43 dated July 30, 1938, was to expire on March 31, 1949, and not in April 1948. But, before March 31, 1949, the Tenancy Act of 1948 was made applicable to Ahmednagar District. It came into force in that District on December 28, 1948. Now Mr. Kotwal's argument is that if on December 28, 1948, defendant No. 3 was a tenant of S. Nos. 26 and 27 as Mr. Kotwal says he was, the tenancy of the plaintiff company could only commence after March 31, 1949, since the period of defendant No. 3's lease exh. 43 was to expire on March 31, 1949. Therefore, says Mr. Kotwal, on the date on which the Tenancy Act of 1948 was applied to Ahmednagar District (December 28, 1948), the plaintiff company was not a tenant of the lands S. Nos. 26 and 27 of Nandur. The result would be, says Mr. Kotwal, that when the Act of 1948 was made applicable to the suit lands situate in the Ahmednagar district, the plaintiff company did not hold these lands on lease. Therefore, Section 88, Sub-section (1), Clause (b), of the Act of 1948 would not apply to these lands, but the provisions of Sections 1 to 87 of the Act would apply, and accordingly the civil Court would have no jurisdiction to direct the delivery of possession of the suit

lands by defendant No. 3 to the plaintiff company. The above contentions of Mr. Kotwal have been based upon a misapprehension of Section 23, Sub-section (1), Clause (6), and Section 2, Clause (12), of the Tenancy Act of 1939. u/s 23, Sub-section (1), Clause (b), every lease subsisting on, or made after, the date of the coming into force of Section 23 in the particular area, in respect of any land in such area, shall be deemed to be for a period of not less than 10 years. The language of Section 23, Sub-section (1), Clause (b), would show that the intention of the Legislature in enacting it was to make its provisions applicable to leases of periods shorter than ten years. If a lease was expressly made for ten years, it would not attract the application of Section 23, Sub-section (1), Clause (b), since in that case there would be no need to provide that such a lease shall be deemed to be for a period of not less than ten years.

3. Next Mr. Kotwal's construction of Section 2, Clause (12), of the Tenancy Act of 1939 is also not correct. In our view, the word "year" as defined by Section 2, Clause (12), does not include its grammatical variations and, therefore, the meaning of the word "year" as provided by Section 2, Clause (12), would not extend to the construction of the expression "years" in Section 23, Sub-section (1), Clause (b).

4. Accordingly, Mr. Kotwal's contentions based upon a wrongly arrived at hypothesis that the lease of defendant No. 3 (exh. 43) dated July 30, 1938, would expire on March 31, 1949, and not in April 1948 must be rejected.

5. The next argument of Mr. Kotwal that the plaintiff company did not hold the lands 8. Nos. 26 and 27 of Nandur on lease and, therefore, the provisions of Section 88, Sub-section (1), Clause (b) of the Tenancy Act, 1948, would not apply, but the provisions of Sections 1 to 87 of the Act would apply, was made in this way. Mr. Kotwal said that the rent note exh. 46 dated May 22, 1944, executed by defendant No. 2 in favour of the plaintiff company was not a lease and, therefore, the plaintiff company holding the lands under that rent note did not hold them on lease. Mr. Kotwal invited our attention to Section 105 of the Transfer of Property Act which provides:

A lease of Immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Then Mr. Kotwal read Section 107 of the Transfer of Property Act which says:

A lease of Immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument....

Where a lease of Immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee:

Upon the authority of Section 107 of the Transfer of Property Act, Mr. Kotwal contended that if there was an instrument of transfer, written and registered, but not executed by both the lessor and the lessee, it would be an incomplete transfer which would not amount to a lease. Mr. Kotwal said that the rent note exh. 46 was not signed by defendant No. 2 or defendant No. 1, that it was signed only by Mr. Shah for the plaintiff company, and that, therefore, it was not a lease and the plaintiff company holding the lands under it did not hold them on lease and, therefore, Section 88, Sub-section (1), Clause (b), of the Act of 1948 would not apply, but Sections 1 to 87 of the said Act would apply.

6. We are not impressed by this argument of Mr. Kotwal. Section 3 of the Act of 1948 provides:

The provisions of Chapter V of the 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.

We may not call the rent note exh. 46 dated May 22, 1944, a lease. We would call it a document creating tenancy within the provisions of Section 3 of the Act of 1948. "Tenancy" is defined by Section 2, Clause (17), and the definition says that "tenancy" means the relationship of landlord and tenant. Thus, by the rent note exh. 46, a relationship of landlord and tenant was created between defendant No. 2 and the plaintiff company. Now, the term "tenant" is defined by Section 2, Clause (18), of the Act and the definition says that "tenant" means an agriculturist who holds land on lease and includes a person who is deemed to be tenant under the provisions of this Act. Thus, under this rent note exh. 46, the tenant, i.e. the plaintiff company, would be an agriculturist who held the land on lease. Be it noted that we are not holding that the plaintiff company was holding the lands Section Nos. 26 and 27 on lease on the date on which the Act of 1948 was made applicable to Ahmednagar District (December 28, 1948), All that we are pointing out at this juncture is that Mr. Kotwal's contention based upon Section 107 of the Transfer of Property Act is not a valid contention in view of the definitions of the terms "tenancy" and "tenant" in Section 2, Clause (17) and (18), and in view of the provisions of Section 3 of the Tenancy Act of 1948.

7. The next contention of Mr. Kotwal in this context is based upon Section 3A of the Act of 1939 and, in our view, it is a valid contention. Section 3A(1) provides:

Every tenant shall, on the expiry of one year from the date of the coming into force of the Bombay Tenancy (Amendment) Act, 1946, be deemed to be a protected tenant for the purposes of this Act and his rights as such protected tenant shall be recorded in the Record of Bights, unless his landlord has within the said period made an application to the Mamlatdar within whose jurisdiction the land is situated for a declaration that the tenant is not a protected tenant.

The Bombay Tenancy (Amendment) Act, 1946, came into force in Ahmednagar district on November 8, 1946. Therefore, says Mr. Kotwal, and in our view he is right, defendant No. 3 became a protected tenant of these lands on November 8,

1947. It is not disputed in this case that Kisan Jagdhane did not make, within the period mentioned in Section 3A of the Act of 1939, an application to the Mamlatdar within whose jurisdiction these lands are situated for a declaration that defendant No. 3 was not a protected tenant. Therefore, Mr. Kotwal is right in his contention that on November 8, 1947, defendant No. 3 became a protected tenant of these lands S. Nos. 26 and 27. On December 28, 1948, the Tenancy Act of 1948 was applied to Ahmednagar district and u/s 31 of the said Act, defendant No. 3 was deemed to be a protected tenant. So, says Mr. Kotwal, and again we think he is right, on December 28, 1948, defendant No. 3 became entitled to the protection and privileges of a protected tenant under the Act of 1948 in respect of these two lands S. Nos. 26 and 27. It may be noted at this stage that in the record of rights also, defendant No. 3's name was entered as a protected tenant in respect of both these lands S. Nos. 26 and 27 of Nandur. It must follow from this that upon the coming into force of the Act of 1948 in Ahmednagar district on December 28, 1948, the plaintiff company did not hold these lands on lease and, therefore, Section 88, Sub-section (1), Clause (b), of the Act of 1948 would not apply to these lands, but Sections 1 to 87 would apply and the civil Court would have no jurisdiction to direct the delivery of possession of these lands by defendant No. 3 to the plaintiff company.

8. Mr. Chandrachud for the plaintiff company says that the protected tenancy of defendant No. 3 in respect of these lands came to an end on December 28, 1948, as the extension of the provisions of the Act of 1948 to these lands was taken away by Section 88, Sub-section (1), Clause (6), of the Act. Mr. Chandrachud is not right. Section 88, Sub-section (1), Clause (b), would have no application unless it is shown in the first instance that the plaintiff company was holding these lands on lease on December 28, 1948. As I have just said, it was defendant No. 3 who was lawfully entitled to claim the privileges of a protected tenant of these lands on December 28, 1948, and the plaintiff company was not holding the lands on lease on that date. Mr. Chandrachud has referred, us to the case of Ganapati Joti v, Shrimant Jayasingrao (1955) 58 Bom. L.R. 20. We have carefully gone through this case and we are of the view that the case will not, assist Mr. Chandrachud's client. In that case, the Rajasaheb, who occupied a position analogous to the position of defendant No. 2 in the present case, was held in constructive possession of the lands, because he had a right to recover possession of the lands from the tenant on the date on which the Act of 1948 came into force. In the present case, however, defendant No. 3 was deemed to be a protected tenant of the lands on December 28, 1948, the date of coming into force of the Act of 1948, and that being so, defendant No. 2 was not entitled to recover possession of the lands from defendant No. 3, unless the conduct of defendant No. 3 offended against the provisions of the Tenancy Act. This circumstance would distinguish the case of Ganapati Joti v. Shrimant Jayasingrao from the present case and accordingly the decision in that case would not assist the plaintiff in the present case.

9. Mr. Chandrachud says that defendant No. 3 is not entitled to claim the

protection of Section 3A of the Act of 1939 in view of the provisions of Section 25 of the said Act. Now, Section 25 of the Act of 1939 says:

Nothing in this Act shall apply to lands-

- (1) held on lease from the Crown or a co-operative society, or
- (2) held on lease for the benefit of an industrial or commercial undertaking.

I have pointed out above that on December 28, 1948, the date of coming into force of the Act of 1948 in Ahmednagar district, defendant No. 3 was entitled to the privileges of a protected tenant in regard to the lands S. Nos. 26 and 27 and that the plaintiff company was not holding these lands on lease. In view of this circumstance, it is clear that the provisions of Section 25 of the Act of 1939 cannot be successfully invoked by the plaintiff in this case in support of its contention that defendant No. 3 would not be entitled to claim the protection of Section 3A of the Act.

10. Mr. Kotwal must, therefore, succeed in his contention that since defendant No. 3 became a protected tenant of these lands on November 8, 1947, and since he, by virtue of Section 31 of the Act of 1948, would be entitled to the protection and privileges of a protected tenant under the Act of 1948 on December 28, 1948, the plaintiff company was not holding these lands on lease on December 28, 1948, and, therefore, Section 88, Sub-section (1), Clause (b), would not apply, but Sections 1 to 87 would apply, and, therefore, it would not be competent to a civil Court to direct delivery of possession of these lands by defendant No. 3 to the plaintiff company.

11. The rest of the judgment is not material to this report.