

(1956) 10 BOM CK 0007

In the Bombay High Court

Case No : Special Civil Application No. 1766 of 1956

Jotirao Narayanrao Diwan

APPELLANT

Vs

Ananda Dadu Patil

RESPONDENT

Date of Decision : 03-10-1956

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1957) 59 BOMLR 50

Hon'ble Judges : Gokhale, J;Bavdekar, J

Bench : Division Bench

Judgement

Gokhale, J.—This Special Civil Application under Article 227 of the Constitution raises a short point of law, and it arises in this way.

2. Survey No. 144 of Mangaon in the district of Kolhapur is owned by the present petitioners. Dadu Tukaram Patil cultivated the land as their protected tenant. He died in 1952, and it appears that he was in arrears in payment of rent for the years 1949-50, 1950-51 and 1951-52. Dadu left as his heirs a minor son and two widows. According to the petitioners, even after notice, Dadu's heirs did not pay the arrears of rent. It is common ground that the names of the minor son as well as of the widows of Dadu are entered in the record of rights as heirs of the protected tenant in respect of this land. As these heirs of Dadu did not pay the arrears, the landlords gave them a notice terminating the tenancy, and applied to the Mamlatdar for possession on the ground that the tenants had failed to pay rent for three years. The learned Mamlatdar held that there was failure on the part of the tenants to pay rent, as alleged by the landlords, and therefore he awarded possession of survey No. 144 to the petitioners. There was an appeal by the tenants to the Prant Officer. He was of the view that the notice of the petitioners was not valid, since it was a notice only by one of the joint owners; and since the land stood in the names of both the petitioners, the notice, according to the appellate authority, was not valid. On the question of failure to pay rent, the Prant Officer was of the view that the landlords failed to discharge

the onus which lay on them of proving non-payment, because they had not produced any convincing evidence such as counterfoils etc., and he was not disposed to rely on the statement of petitioner No. 1 that there was failure by the opponents in payment of rent. On both these grounds, the learned Prant Officer allowed the appeal and dismissed the landlords' application for possession. In revision before the Revenue Tribunal, it was urged on behalf of the landlords that the view of the Prant Officer that the notice was invalid was not correct, since no notice was necessary u/s 14 of the Bombay Tenancy and Agricultural Lands Act, 1948, on the date when the application was filed. That argument urged on behalf of the landlords was accepted by the Revenue Tribunal. It seems that the tenants were not represented before the Revenue Tribunal, as the notice of the revision was not served on them, on the date that the matter was heard by the Tribunal. The Tribunal, it appears, raised a new point against the maintainability of the landlords' application, and that point was that the heirs of the deceased protected tenant, Dadu Patil, were not liable in law for the consequences of the defaults made by the protected tenant during his lifetime. That contention was accepted by the learned members of the Tribunal, on the ground that Section 40 of the Tenancy Act provided for an offer by the landlord to the heir or heirs of the deceased protected tenant and that was different from succession under Hindu Law, that the protected tenancy rights were not heritable, and that, therefore, the heirs of the deceased protected tenant could not be evicted, on the ground that the deceased had made a default in payment of rent for three years. In the result, the Tribunal held that the landlords have no right to proceed against the son and widows of the deceased protected tenant, on the ground of default committed by the deceased protected tenant, and consequently the application of the landlords was dismissed.

3. In this application Mr. Chandrachud, the learned advocate for the petitioners, has not disputed the legal position that the protected tenancy rights are not heritable by virtue of the provisions of Section 40. He, however, says that u/s 40 of the Tenancy Act the landlord has to make an offer to continue the tenancy on the same terms and conditions on which the deceased tenant was holding the land at the time of his death to the heir or heirs of the deceased tenant; and Mr. Chandrachud argues that if the heir of the deceased accepts the offer, it means that the previous tenancy is continued on the same terms and conditions, which would include the liability to be evicted for default in payment of rent. It appears from the record that the names of the opponents are entered in the record of rights as the heirs of the protected tenant. In fact, it does not seem to have been ever disputed in the lower Courts that the opponents are the protected tenants on the land. It must, therefore, be assumed for the purpose of this application that the necessary offer was made by the landlords u/s 40, and that offer was accepted by the opponents.

4. Now, Mr. Paranjpe, the learned advocate for the opponents, contends that the effect of the provisions of Section 40 is that there is an offer by the landlords, which, if accepted, creates a new tenancy altogether, and therefore the heirs who

accept the offer cannot be made liable for the defaults committed by the deceased protected tenant. In the case of an ordinary contractual tenancy, according to Mr. Paranjpe, the liability of the tenants would arise on the basis that the tenancy rights are heritable, and since the heirs inherited the tenancy rights, they become liable to pay the rent and the arrears of rent to the landlord. In the case of a protected tenant, however, there is no inheritance as such.

5. It will, therefore, be necessary to consider the provisions of Section 40 of the Tenancy Act. The relevant part of that section is in the following terms:-

If a protected tenant dies, the landlord shall offer to continue the tenancy on the same terms and conditions on which such tenant was holding it at the time of his death to the heir or heirs of the deceased tenant:...

Explanation.-For the purposes of this section, an heir means the lineal male descendants of a tenant or his adopted son and failing both his widow who has not remarried.

It is not necessary for us to consider the two provisos to this section, because, as I have already stated, it must be assumed in this application that there is no dispute that the landlords in this case made an offer to the tenants, and the same was accepted, with the result that they are now recorded as protected tenants in the record of rights. It will be, therefore, seen that u/s 40 what is required is that on the death of a protected tenant, the landlord has to make an offer to continue the tenancy on the same terms and conditions on which such tenant was holding it at the time of his death to the heir or heirs of the deceased tenant.

7. According to Mr. Paranjpe, as a result of the offer made by the landlords and accepted by the heir or heirs, a fresh tenancy is created, and such a tenant or tenants cannot be evicted for the defaults committed by the previous tenant. We cannot accept this argument. Mr. Paranjpe has, in the first instance, drawn our attention to the provisions of Section 28 of the Tenancy Act. Under that section, with certain exceptions, any interest in the land held by a tenant is not liable to be attached, seized or sold in execution of a decree or order of a civil Court, and Mr. Paranjpe contends that even if the landlord had obtained a decree against the previous protected tenant for arrears of rent, that could not have been executed against his heirs. But we are not concerned with the execution of a decree obtained against a deceased protected tenant with regard to the arrears of rent in this case. Under an offer made by the landlords, the heirs continue on the land, and they themselves become the protected tenants; but that protected tenancy is a continuation of the previous tenancy, and under the provisions of Section 40 that has to be on the same terms and conditions on which the deceased protected tenant was holding the land at the time of his death. Now, it is obvious that the protected tenant deceased Dadu was under a liability to pay rent regularly to the landlord. He was also under a liability to be evicted for failure to pay the rent as his tenancy was liable to be terminated. If that be so,

since it is the same tenancy which is being continued with the heirs of the protected tenant, we must hold that the opponents are holding the property as protected tenants of the suit land, subject to the liability of being evicted for the arrears of rent which have remained due from the time of the deceased protected tenant. The effect of Section 40 seems to be that on the acceptance of the offer of the landlords by the heir or heirs of the deceased tenant, the previous tenancy is continued on the same terms and conditions on which the previous tenant was holding it prior to his death. The tenancy of the deceased protected tenant was liable to be terminated for non-payment of rent u/s 14 of the Tenancy Act, and he was also liable to be evicted for the same cause. That liability equally attaches to the tenancy of the present opponents. The decision of the Revenue Tribunal, therefore, that the landlords have no right to proceed against the heirs of the deceased protected tenant in ejectment on the ground of defaults committed by the deceased protected tenant during his life time in payment of rent cannot be upheld.

8. Mr. Paranjpe also argued that the view of the Revenue Tribunal that notice was unnecessary was not correct. According to him, though notice might not have been necessary u/s 14 of the Tenancy Act, as it stood when the application of the landlords was made, notice was necessary u/s 84 of the Land Revenue Code, which provides for a notice for the termination of an annual tenancy. Mr. Paranjpe also urged that the Revenue Tribunal did not go into the question of defaults in payment of rent as the landlords' application was disposed of on the law point arising u/s 40 of the Tenancy Act. It is also clear from the record that the opponents were not represented before the Revenue Tribunal, and the postal acknowledgment indicating service of notice was not even received, it appears, on the day that the application was heard by the Revenue Tribunal.

9. We, therefore, propose to send back the case to the Revenue Tribunal for disposal of the revision application in accordance with law. We do not propose to deal with the other contentions raised by Mr. Paranjpe. He will be at liberty to raise these contentions before the Revenue Tribunal.

10. Consequently, we set aside the order of the Revenue Tribunal and remand the case back to the Tribunal for disposal according to law after giving proper notice to both the parties. Each party will bear its own costs in this application.