
(1969) 07 BOM CK 0013
In the Bombay High Court
Case No : S. Application No. 51 of 1963

Kashiprasad	Vs	APPELLANT
Wasudeo		RESPONDENT

Date of Decision : 14-07-1969

Acts Referred:

Contract Act, 1872 — Section 65

Citation : (1969) MhLj 905

Hon'ble Judges : B.N. Deshmukh, J

Bench : Single Bench

Advocate : B.R. Mandlekar, for the Appellant; M.S. Chaudhary, for the Respondent

Final Decision : Allowed

Judgement

B.N. Deshmukh, J.—This is plaintiff's appeal. The claim relates to rent, or, as it is now alleged in the argument before me, mesne profits for the years 1957-58 to 1959-60. The facts giving rise to this litigation are not at all in dispute and may be briefly stated as follows:

The land in suit is survey No. 215/1, measuring 10 acres, 7 gunthas, assessed at Rs. 17-12-0, of village Kurhar, taluq Chandur, district Amravati. It is admittedly owned by one Shantabai who made a contract of lease for five years with the plaintiff on 7-3-1953. She executed another contract of lease in favour of the plaintiff, dated 22-3-1955. The fact of the two contracts and their being in force is not challenged in this litigation.

2. The plaintiff having obtained a lease in his favour in this manner covering a period from 1953-54 to 1964-65, sublet the suit land to the defendant in the year 1956-57 on a rental of Rs. 125. The defendant continued to cultivate the land in the same capacity for the subsequent three years 1957-58, 1958-59 and 1959-60. In spite of cultivation for the three subsequent years, the defendant did not pay any rent to the plaintiff. Hence the plaintiff has filed this suit for

recovering Rs. 375 and interest as rent for the years 1957-58 to 1959-60. The only defence raised was that the defendant was unaware that one Shantabai was the owner. He considered the plaintiff as the owner and took a tenancy from him. The relationship between the plaintiff and defendant was that of landlord and tenant. The defendant is not liable to pay more than ten times the assessment as rent under the Leases Act and more than four times the assessment as rent under the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958.

3. On these pleadings, the learned trial Judge awarded Rs. 375 as the agreed rent for the three years but refused interest thereon. The defendant filed an appeal against this decree in the District Court. The learned District Judge holds that the subletting to the defendant made him a person in lawful cultivation of the land and, as such, a deemed tenant u/s 6 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 hereinafter called the Vidarbha Tenancy Act. Accordingly, the learned Judge confirmed the decree for Rs. 125 for the first year of cultivation, namely 1957-58, but awarded rent at the rate of four times the assessment for the years 1958-59 and 1959-60. As the rental was Rs. 17-12-0, the rent or compensation allowed for the last two years was at the rate of Rs. 71 per year. Being aggrieved by the difference of Rs. 108 caused by the approach of the learned District Judge, the plaintiff has come up in appeal.

4. Only one point arises for consideration. Briefly stated, the point would be whether the defendant was in lawful cultivation of the suit land in the years 1958-59 and 1959-60 within the meaning of that expression used in section (i) of the Vidarbha Tenancy Act. The undisputed facts are that the land is situated in the Berar Region governed by the Berar Regulation of Agricultural Leases Act, 1951. When the plaintiff made a contract of tenancy with his landlord Shantabai, the Leases Act was in force. The plaintiff would be deemed to be a protected lessee under the Leases Act in view of the definition of "protected lessee" in section 3. The restrictions on transfers of a protected lessee are enacted in sub-section (1) of section 7 which is as follows:

7. (1) No protected lessee shall, except as provided in this Act, be entitled to transfer by way of sale, gift, mortgage, sub-lease or otherwise, his right in the land or in any portion thereof and every such sale, gift, mortgage, sub-lease, or other transfer shall be voidable at the option of the landholder:

Provided that a sub-lease may be granted by or on behalf of a protected lessee if such person is a person under disability.

When the plaintiff sublet the land to the defendant on a fixed rental of Rs. 125 per year, he was acting in breach of the prohibition in sub-section (1) of section 7 quoted above. Could the occupation of the defendant as a sub-tenant of the land be deemed to be lawful cultivation? If it is possible to call this occupation or cultivation as lawful, then undoubtedly, the defendant will be entitled to be considered as a deemed tenant u/s 6 of the Vidarbha Tenancy Act. Under the new Act, which is passed by the Legislature, for awarding enlarged rights to

tenants, the definition of the word "tenant" is introduced which is a comprehensive one. Primarily, the tenant is a person who holds land on lease, which means a contract of lease in his favour. Apart from there being a direct contract, there are certain deemed tenancies which are recognised by the Vidarbha Tenancy Act and such persons are given the status of tenants under that Act. The definition contained in clause (32) of section 2 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 refers not only to tenants who hold land on lease but includes a person who is deemed to be a tenant u/s 6, 7 or 8, as also a person who is a protected lessee or occupancy tenant. Sub-section (2) of section 6, therefore, says that for the purposes of this Act, a person shall be recognised to be a protected lessee if such person was, immediately before the commencement of this Act, deemed to be a protected lessee u/s 3 of the Berar Regulation of Agricultural Leases Act, 1951.

5. It is, therefore, obvious that the plaintiff was a protected lessee under the Berar Regulation of Agricultural Leases Act, 1951, in view of his contract in writing with Shantabai and in view of the provisions contained in section 3 of the Berar Regulation of Agricultural Leases Act, 1951. Whether such a protected lessee could create a sub-lease and if he did, what is the position of the sub-lessee. Sub-section (1) of section G of the Vidarbha Tenancy Act gives another concept of deemed tenancy. It says that 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 member of the owner's family, or a servant on wages payable in cash or kind but not in crop share or a hired labourers cultivating the land under the personal supervision of the owner or any member of the owner's family or a mortgagee in possession. This is a new concept of a deemed tenancy where a person lawfully cultivating any land belonging to another person is made a tenant in his own right. The learned District Judge has held that the sub-tenancy of the defendant was a lawful sub-tenancy making the cultivation of the land by the defendant as a lawful cultivation. The land belongs to Shantabai who is not personally cultivating it. If the defendant was lawfully cultivating the land belonging to her, who is not personally cultivating it, then he shall be deemed to be a tenant under sub-section (1) of section 6 of the Vidarbha Tenancy Act. On those premises, the learned District Judge says that the provisions of section 11 (b) of the Vidarbha Tenancy Act would be attracted. Section 11 provides the quantum of rent payable by a tenant irrespective of any agreement, usage, or any decree or order of a Court or any law. Under that section the maximum rent payable by a tenant under clause (b) is four times the land revenue of the land. In that manner, the learned District Judge awarded Rs. 71 as four times the assessment, as rent for the years 1958-59 and 1959-60. The only question that requires consideration is whether the defendant's cultivation is lawful. On the plain reading of section 7(1) of the Berar Regulation of Agricultural Leases Act, 1951 quoted above, I find that it is difficult to accept such an interpretation. The plaintiff is undoubtedly a protected lessee as I have pointed out earlier. Being a protected lessee, the

restrictions on transfer incorporated in sub-section (1) to section 7 will apply to him. The very opening clause says that no protected lessee shall be entitled to transfer by way of sale, gift, mortgage, sub-lease or otherwise, his right in the land or in any portion thereof except as provided in this Act, namely, the Berar Regulation of Agricultural Leases Act, 1951. Sub-sections (2) and (3) provide for certain transfers for raising loan by the protected lessee and offering his leasehold rights as security to Land Mortgage Bank etc. No other transfer of his right in the land or any portion in the land could be transferred by him either by way of sale, gift, mortgage, sub-lease or otherwise. As I find, the plain wording of sub-section (1) enacts a complete prohibition with the exceptions provided under the Act. A sub-letting of the present type is a prohibited sub-letting. The Second part of the sub-section says "every such transfer shall be voidable at the option of the landholder". If a sub-lease or some other kind of transfer prohibited by this sub-section is undertaken by the protected lessee, then such transfer is voidable at the instance of the landholder. In other words, having undertaken the transfer prohibited by sub-section (1) of section 7, the transfer is not voidable at the instance of the transferee, namely, the protected lessee himself.

6. Mr. M. S. Choudhari, learned counsel appearing for the respondent, argues that the transfer is made voidable only at the instance of the landholder. Until, therefore, the landholder avoids it, it is a good transfer and must be allowed to have its full effect. He further asserts that this is the only rational way to read sub-section (1) of section 7. It is not possible to countenance such argument. This does not require me to read the clause "no protected lessee shall be entitled" as "every protected lessee shall be entitled". This would be doing violence to the plain language of the section. The entire sub-section divides into two parts and each part has to be independently understood and appreciated. The first part enacts a prohibition against transfers and the second part enacts the person at whose instance such prohibited transfers are voidable. The transfers are voidable because they are declared as prohibited under the first part. If the transfer itself was valid and recognised by the laws of the land, it is difficult to understand how the landholder would be in a position to avoid it. To declare a transfer prohibited is one function or one part of subsection (1) of section 7. The prohibition is complete so far as the protected lessee is concerned. If the protected lessee undertakes a transfer prohibited by that clause, he acts against the laws of the land and the act in contravention of law is unlawful. Such an act could not be declared as valid-may be that the remedy is restricted to a particular person, namely, the landholder. If the protected lessee were to challenge the sub-lease himself, the second part of sub-section (1) of section 7, would be a good defence to the action. That would not make the transfer legal or valid. It continues to be a prohibited transfer and, therefore, an unlawful transfer. If this is the obvious meaning of sub-section (1) of section 7, the creation of sub-lease in favour of the defendant is an unlawful transfer by the plaintiff. It is equally unlawful for the defendant to cultivate the land. The cultivation of the land by the defendant could not be styled by any stretch of imagination as lawful

cultivation within the meaning of that expression used in section 6. I would, therefore, hold that the provisions of section 6 of the Vidarbha Tenancy Act are not attracted to the case of the present defendant. Obviously, therefore, he is not entitled to the protection of section 11(b) of the Vidarbha Tenancy Act, and would not be able to plead that the rent should be four times the assessment.

7. The next point that arises for my consideration is whether the plaintiff is entitled to recover the contractual rent of Rs. 125 from the defendant. The plaintiff's contract is unlawful. If it is unlawful under the provisions of section 7 (1) of the Berar Regulation of Agricultural Leases Act, it is not possible to enforce the contract in part. The plaintiff could not, therefore, be awarded a decree for Rs. 125 per year on the strength of his contract. What would be the position of such a plaintiff? Is he to get nothing at all from the defendant for having caused the breach of section 7 of the Berar Regulation of Agricultural Leases Act? A similar proposition arose under the C.P. and Berar Letting of Houses and Rent Control Order, Clauses 22 and 23. When a vacancy occurs, it is obligatory upon the landlord under clause 22 of that Order to notify that vacancy to the House Allotment Officer. The House Allotment Officer is obliged to let that house within fifteen days from the date of receipt of the intimation about the occurrence of the vacancy, failing which the landlord is free to deal with the property. If a tenancy is created without notifying the vacancy under clause 22, the tenancy is clearly unlawful. Will the landlord be entitled to recover any amount from such a tenant who is in unlawful occupation of the property? This question arose in the case of *Janabai v. K.R. Rushia* 1961 Nag. L J Notes Section Note No, 27 (C. R. Appl. No. 396 of 1959) decided on 26-9-1960 by a Division Bench of this Court. The learned Judge said that "there is in fact no difference between a contract which is illegal and a contract which is otherwise void". A contract of that type could be described as a contract discovered to be void u/s 65 of the Contract Act. The presumption that a very one must know the law would not debar a person from claiming the benefit of the provisions of section 65 of the Contract Act. They, therefore, held that the plaintiff was entitled to a decree for compensation for use and occupation, if not for rent.

8. I think the principle laid down and the approach of that judgment would apply to the facts and circumstances of the present case. The defendant has received income of the land and he was inducted upon the land by the plaintiff. The contract upon which the defendant entered upon the land may have been discovered void, but the defendant must make the compensation for use and occupation of the land to the plaintiff. It is well-known that, mesne profits, which represent the compensation for use and occupation, are usually much more than rents which people agree to pay. The rent agreed by the defendant is Rs. 125 per year. The compensation for use and occupation would easily exceed that amount. Since the plaintiff has confined his claim to Rs. 125, a decree for that amount could be passed. The reduction in that amount by the learned District Judge on the footing that the defendant was in lawful cultivation of the land was clearly erroneous. I think the plaintiff is entitled to a decree for Rs. 375 on account of

compensation for use and occupation of the land for three years only.

9. I would, therefore, allow this appeal and set aside the decree passed by the learned District Judge and restore that of the trial Court. The plaintiff will be entitled to his full costs throughout.