
(1991) 07 BOM CK 0052
In the Bombay High Court
Case No : Writ Petition No. 670 of 1984

Khajabhai Lukade and Others	Vs	APPELLANT
Mohammed Ishaq Lukade and Others		RESPONDENT

Date of Decision : 12-07-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 13, 54
Maharashtra Land Revenue Code, 1966 — Section 247(1)

Citation : (1991) 3 BomCR 58

Hon'ble Judges : N.P. Chapalgaonker, J

Bench : Single Bench

Advocate : V.G. Mete, for the Appellant; Namrata Ranade, Holding and S.A. Deshmukh, for respondent No. 1, S.K. Barlotia, Asst. Govt. Pleader for respondent Nos. 4 to 8, for the Respondent

Final Decision : Allowed

Judgement

N.P. Chapalgaonker, J.—A decree for partition passed in Regular Civil Suit No. 144/1981 and sought to be executed in Regular Darkhast No. 14/1983 was sent to the Collector, Osmanabad, for execution under the provisions of section 54 of the Code of Civil Procedure, 1908. Since some of the property involved was assessed to the payment of revenue to the Government, Collector, Osmanabad, was pleased to sent it to Tahsildar, Paranda. Tahsildar, Paranda, directed the District Inspector of Land Record, Osmanabad, to measure the lands and submit a report about proposed partition. Lands were accordingly measured and a report was submitted. A grievance was put forth by the petitioner that all the fertile land is allotted to the share of the respondent whereas he is given the land of inferior quality. But this objection was rejected by Tahsildar, Paranda by his order dated 30th April, 1984, on the ground that the contentions raised by the petitioners are not within his competence and directed that the plaintiff should be put in possession of the share allotted to him.

2. It appears that an appeal bearing No. 1984-ROR-490 was filed by the present

petitioners before the Sub-divisional Officer, Bhoom. This appeal came to be dismissed by the Sub-divisional Officer on the count that since Tahsildar was passing an order in a matter which originally Collector is authorized to deal, order passed by the Tahsildar under the delegated powers will have to be presumed to be that of the Collector himself and Sub-Divisional Officer being subordinate to the Collector, is not competent to hear the appeal and the appeal is not maintainable. This order of the Sub-Divisional Officer, Bhoom, dated 1st June, 198 came to be challenged before the Addl. Commissioner, Aurangabad. It was submitted by the petitioners before the learned Addl. Commissioner that since the order of the Tahsildar is taken to be order of the Collector, they are approaching the Addl. Commissioner as an appellate authority. Learned Addl. Commissioner noticing that the Sub-Divisional Officer, Bhoom, had dismissed the appeal, took a view that since the appeal was decided by the Sub-Divisional Officer, a second appeal could have been filed before the Collector under the provisions of Maharashtra Land Revenue Code, 1966. He did not notice that the appeal is not decided on merits. But finding that the appeal is maintainable to the Collector, rejected the revision as untenable.

3. I heard Shri V.G. Mete, learned Counsel for petitioners; Miss, Namrata Ranade, holding for Shri S.A. Deshmukh, for respondent No. 1; and Shri S.K. Barlota, learned Assistant Government Pleader, for respondent Nos. 4 to 8. There was no appearance for respondent Nos. 2 and 3 who are served.

4. Following points arise for my consideration :

(i) When an order passed by Tahsildar in execution of a Civil Court decree, whether the order can be said to be that of the Collector himself for the purpose of remedies?

(ii) What is the extent of jurisdiction of a Revenue Officer while executing the decree sent to him u/s 54 in respect of the objections to the proposed partition?

5. First I will consider the question raised about the remedies available to the petitioner. Provision in section 54 of the Code of Civil procedure, 1908, that a gazetted Officer subordinate to the Collector can be asked by the Collector to execute the decree, do not indicate that any order passed by such an Officer would be that of the Collector. Section 247(1) of the Maharashtra Land Revenue Code, 1966, reads thus :---

"In the absence of any express provisions of this Code, or of any law for the time being in force to the contrary, an appeal shall lie from any decision or order passed by a revenue or survey officer specified in column 1 of the schedule E under this Code or any other law for the time being in force to the officer specified in column 2 of that schedule whether or not such decision or order may itself have been passed on appeal from the decision or order of the officer specified in column 1 of the said schedule :

Provided that, in no case the number of appeals shall exceed two."

It gives a right of appeal in respect of any decision or order passed by a revenue or survey officer specified in column 1 of Schedule E under the Land Revenue Code or any other law for the time being in force to the officers specified in column 2. Orders passed by the Revenue Officers u/s 54 C.P.C. have not been made exception to the general right given by sub-section (1) of section 247 of the Maharashtra Land Revenue Code, 1966. This being the position, Tahsildar or any other Revenue Officer executing a partition decree would be a Revenue Officer subjected to a right of appeal as per Schedule E read with section 247. Tahsildar being an Officer subordinate to the Sub-Divisional Officer, an appeal should have been filed before the Sub-Divisional Officer and the Sub-Divisional Officer's observation that he had no right to hear the appeal is totally incorrect. Learned Addl. Commissioner, Aurangabad, has rightly taken a view that a second appeal was maintainable to the Collector.

6. Second question to be considered is regarding the extent of the jurisdiction of a Revenue Officer in relation to the objections to the shares proposed in execution. Section 54 of the Code of Civil Procedure, 1908, carves out an exception to the general rule that the Civil Courts would be competent to execute the decree passed by the Civil Court. If the property or a part of its subjected to the land revenue, then the execution petition in respect of such property will have to be sent to the Collector u/s 54 of C.P.C. Collector should execute the decree himself or appoint any gazetted officer subordinate to him to execute the said decree of partition.

7. If an agricultural land is to be partitioned, the partition will have to be made normally by measurement and the measurement is done by Cadestral Surveyor. When Tahsildar or any other Officer subordinate to the Collector is entrusted with the job of execution of partition decree or directs the District Inspector of Land Record or any officer subordinate to him to measure the land and submit a report proposing the partition, such Cadestral Surveyor or the measurement officer is nothing more than a Commissioner appointed under Order 26, Rule 13 of the Code of Civil Procedure. Report of the measuring officer is to be considered by the Tahsildar or the officer executing the partition u/s 54 and he has to apply his mind. Tahsildar is not merely a Post Office whereby the communicate of the Collector is to be sent to the District Inspector of Land Record. For the purposes of execution of a partition decree involving an estate subjected to the land revenue, Tahsildar steps into the shoes of the Civil Court executing the decree. Therefore, such officers are under a bounden duty to apply their mind to report about the proposed partition and they cannot refuse to exercise the jurisdiction vested in them. It is true that normally a report of the Commissioner in a partition decree need not be interfered into because the report is based on local enquiry. But the jurisdiction vested in the Court which is in the cases like the case at hand, is with the Tahsildar or the Revenue Officer and this jurisdiction cannot be delegated to the measuring Inspectors. In the instant case, I find that the Tahsildar simply said that he had no powers to do anything. Therefore, he had failed to exercise jurisdiction vested in him by law. He should have

considered the objections of the petitioner on merit and given a decision. Since the Tahsildar which is the first Court which was competent to consider the objections of the petitioner has failed to exercise the jurisdiction vested in him, it would not be necessary to direct the petitioners to avail of the remedy of second appeal to the Collector to which he would otherwise be entitled to. It is necessary to direct the Tahsildar to consider the objections put forth by the present petitioner.

8. Miss. Ranade, learned Counsel appearing for respondent No. 1, submitted that since an order has been passed under the Code of Civil Procedure, 1908, appeal would not lie before the revenue authorities under the provisions of the Maharashtra Land Revenue Code, 1966. This point is no more *res integra*. Division Bench of this Court in the case of Paygonda Survgonda Patil and Others Vs. Jingonda Surgonda Patil and Others, , has held that an order passed by the revenue officers u/s 54 of the Code of Civil Procedure, 1908, would be subject to the right of appeal as given by the relevant provisions of the Maharashtra Land Revenue Code, 1966.

9. Shri V.G. Mete, learned Counsel appearing for petitioners, submits that the possession of the land is already handed over as per the directions of the Tahsildar. In this view of the matter, Tahsildar will first hear the objections of the present petitioners and also hear other concerned parties including the decree-holder and then, if found necessary, pass suitable orders for restoration of possession. Tahsildar, Paranda, while rehearing the case shall also take into consideration the fact that the respondent has obtained possession of the part of the land and the allegations about any improvement thereon.

10. In the result, writ petition is allowed. Judgment and orders passed by learned Tahsildar, Paranda, on 30th April, 1984 in File No. 1984-JMB-WS-292; that of learned Sub-Divisional Officer, Bhoom, passed on 1st June, 1984, in File No. 1984-ROR-490; and that of learned Addl. Commissioner, Aurangabad, passed on 28th June, 1984, in Case No. 84-Rev-R-38, are all hereby quashed. Matter is remanded back to the Tahsildar, Paranda, for hearing objections of the petitioners under the said execution as per the directions contained in this judgment. In the circumstances, of the case, parties should bear their own cost of this petition.