
(1987) 09 BOM CK 0073
In the Bombay High Court
Case No : Second Appeal No. 555 of 1986

Kisan Raoji Manjare

APPELLANT

Vs

Baban Kondiba Gade

RESPONDENT

Date of Decision : 29-09-1987

Acts Referred:

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 —
Section 14, 31(1)

Citation : (1988) 1 BomCR 126

Hon'ble Judges : S.N. Khatri, J

Bench : Single Bench

Advocate : S.G. Page and Deepak R. More, for the Appellant; B.P. Apte, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Khatri, J.—This is a defendant's second appeal.

2. The facts which are no longer in dispute before me as having been either admitted in pleadings or having been concluded by findings of fact of the District Court are these: The plaintiff-respondents owned half undivided share in Survey Nos. 87/4-B, 87/5, 87/6 and 85/12 of village Manjarwadi. By a registered Sale-Deed dated 11th July, 1968 he sold away this undivided half share to the defendant-appellant. On the same day, the latter executed an Agreement to reconvey the lands to the former within 15 years meanwhile Consolidation Scheme under the Bombay Prevention of Fragmentation and Consolidation of Holding Act (hereafter "the Act" for short) came into force in that village. The original four lands came to be formed into a Block bearing No. 355. In 1977, the plaintiff sued the defendant for specific performance of the contract of reconveyance. There are concurrent findings of fact of the two Courts below that the plaintiff is entitled to specific performance. The trial Court has further directed that the Sale Deed will be executed by the defendant in favour of the plaintiff only after the Collector gives necessary sanction under the Act.

3. Now while admitting this second appeal, my learned Brother Daud, J., has formulated the substantial question, "Whether the reliefs sought by the respondent would be in contravention of section 14 of Act 62 of 1947 (the aforesaid Act)". Shri page who appears for the appellant was permitted to argue a further question, namely, whether the agreement is invalid in view of the provisions of section 31 of the Act.

4. I have heard learned Counsel of both sides. A plain reading of section 14 will make it clear that the provision applies only where a fragment is sought to be sold under the orders of Court. This provision is thus not attracted to the facts of the present case, which involves a voluntary sale.

5. Now section 31, sub-section (1), is reproduced below :

"31. (1) Notwithstanding anything contained in any law for the time being in force, no holding allotted under this Act, nor any part thereof, shall save as otherwise provided in this section-

(a) be transferred, whether by way of sale (including sale in execution of a decree of a Civil Court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue) or by way of gift, exchange, lease, or otherwise; or

(b) be sub-divided, whether under a decree or order of a Civil Court or any other competent authority or otherwise,

so as to create a fragment, without the previous sanction of Collector. Such sanction shall be given by the Collector in such circumstances and subject to such conditions, as may be prescribed."

Shri page submits that the words, "so as to create a fragment.....as may be prescribed" are part of Clause (b) and do not apply to the cases transfer covered by Clause (a). He drew my attention to sub-sections (2) and (3) of section 31 and pointed out that the case of the Plaintiff is not covered by either of them.

6. Some confusion has arisen out of the manner in which the provisions of Clauses (a) and (b) of sub-section (1) are printed in the Maharashtra Government Publication of the Act. The last portion of sub-section (1) "so as to create a fragment.....as may be prescribed has been printed in such a fashion as to give the pictorial impression that it forms part of Clause (b). The Official Gazette in which the original Act is published was sent for and it is found that the aforesaid portion of section 31(1) is printed in the manner in which it has been placed above in the presiding paragraph. I am clear that the last portion of section 31(1) applies not only to the sub-division of lands contemplated by Clause (b) but also to the transfers falling under Clause (a). In fact a separate Rule being Rule 27 has been frame under the Act to deal with cases of transfer under Clause (a) of section 31(1). It is not necessary to delete further. I hold that Collector"s sanction can validate transfers falling under Clause (a) also.

7. As the impugned decree specifically provides for obtaining of the Collector's sanction as a condition precedent to the execution of the Sale Deed, I do not think any interference is called for. This second Appeal is without any substance and is accordingly dismissed with costs.